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Superior Court of California
County of Santa Barbara
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By: Sarah Sisto , Deputy

11 Attorneys for Plaintiff(s),
12 JOSE ANGEL FRAUSTO VILLEGAS and JOSE MANUEL BARRAGAN AGUILAR
13 (Additional attorneys for Plaintiff(s) on following page)

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF SANTA BARBARA**

16 **(UNLIMITED JURISDICTION)**

17 JOSE FRAUSTO VILLEGAS, on behalf of
18 himself, all others similarly situated, and the
19 general public,

20 *Plaintiff,*

21 *vs.*

22 DLP MANAGEMENT CO., INC., a California
23 corporation d/b/a DLP MANAGEMENT CO and
24 DLP MANAGEMENT INC.; and DOES 1–50,
25 inclusive,

26 *Defendants.*

Lead Case No.: 21CV04500
Consolidated with: 22CV01392
[Hon. Thomas P. Anderle, Department 3]

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**



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1 JOSE MANUEL BARRAGAN, on behalf of
2 himself, all others similarly situated, and
the general public,

3 Plaintiff,

4 vs.

5 DLP MANAGEMENT CO., INC., a
6 California corporation doing business in
7 California as DLP MANAGEMENT CO and
8 as DLP MANAGEMENT INC. and DLP
MANAGEMENT INC; DARIO L. PINI, an
individual; and DOES 1-50, inclusive,

9 Defendants.
10

Case No.: 22CV01392

11 **ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)**

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18 Attorneys for Plaintiff(s),

19 JOSE ANGEL FRAUSTO VILLEGAS, and all others similarly situated
20



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1. I am an attorney duly licensed to practice law in the State of California and am an attorney of record for Plaintiffs Jose Angel Frausto Villegas and Jose Manuel Barragan Aguilar (collectively “Plaintiffs”) in their lawsuit against Defendants DLP Management Co., Inc. and Dario L. Pini (collectively “Defendants”). Plaintiffs and Defendants are collectively referred to as the “Parties.”

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1 7. On September 26, 2023, following much of the foregoing informal discovery and
2 exchange of information, the Parties participated in a mediation session presided over by Mediator
3 Henry J Bongiovi, Esq. an experienced class action mediator. During the mediation, the Parties
4 had a full day of productive negotiations and reached agreement on a class-wide settlement. A
5 true and correct copy of the Memorandum of Understanding signed by all Parties is attached
6 hereto as **Exhibit 4**. During the mediation sessions, each side, represented by his/their respective
7 counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action and
8 all other matters covered by this Agreement pursuant to the terms and conditions of this
9 Agreement. on January 17, 2024, the Parties participated in a second mediation with Henry
10 Bongiovi, Esq. to address Defendants' concerns as to certain terms of the executed MOU that
11 relates to the release of claims and Plaintiff Jose Frausto Villegas' pending Workers'
12 Compensation claim against Defendants. One of the Parties' concerns was the scope of the release
13 as to Plaintiff Villegas who has a pending Workers' Compensation claim.

Ascertainable and Numerous Class

14 8. A class is ascertainable when it may be readily identified without unreasonable
15 expense or time by reference to official records. Here, each Plaintiff maintains that the above-
16 defined Class is ascertainable because its members may be identified by reference to Defendants'
17 records and Defendants have agreed to share the relevant information from their records to
18 facilitate the settlement process. Therefore, the Settlement Class is ascertainable.

19 9. The Settlement Class has sufficiently numerous members to render joinder
20 impractical. No set number is required as a matter of law to maintain a class action. The California
21 Supreme Court has upheld a class of as few as 10 individuals. Defendants estimate that there are
22 approximately 83 Class Members. Each Plaintiff maintains that it would be impractical and
23 economically inefficient to require each Settlement Class Member to separately maintain an
24 individual action or be joined as a named plaintiff in this action. In light of these considerations,
25 the Class' membership is sufficiently numerous.

Predominant Common Questions

26 10. A question of law or fact is common to the members of a class if it may be resolved
27 through common proof. In this case, there are many predominant common questions. Plaintiffs
28 assert all class members were subject to the same or similar operations and employment policies,
practices, and procedures. The claims arise from Defendants' alleged policy-driven failure to pay



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1 wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to
2 indemnify for business expenses, failure to timely pay wages, and related labor law violations, all
3 of which Plaintiffs claim constitute unfair business practices and give rise to PAGA penalties.
4 Plaintiffs assert that common questions include, but are not limited to: (1) Whether Defendants
5 failed to pay all wages earned to class members for all hours worked at the correct rates of pay;
6 (2) Whether Defendants failed to provide the class with all meal and rest periods in compliance
7 with California law; (3) Whether Defendants failed to pay the class one additional hour of pay on
8 workdays they failed to provide the class with one or more meal or rest periods in compliance
9 with California law; (4) Whether Defendants failed to indemnify the class for all necessary
10 business expenditures incurred during the discharge of their duties; (5) Whether Defendants
11 willfully failed to provide the class with timely final wages; and (6) Whether Defendants engaged
12 in unfair competition within the meaning of Business and Professions Code section 17200, *et*
seq., with respect to the class.

13 *Typicality*

14 11. Plaintiffs contend that their claims are typical for the purposes of certifying the
15 Settlement Class. Plaintiffs assert that they, like absent Class Members was subject to the same
16 relevant policies and procedures governing their compensation, hours of work and meal and rest
17 periods. Because Plaintiffs contend that they were subject to the same general course of conduct
18 as absent Class Members, resolving the common questions as they apply to Plaintiffs will
19 determine Defendants' *prima facie* liability to all Class Members. Moreover, Plaintiffs' claims
20 could potentially be subject to the same primary affirmative defenses as those of absent Class
Members. Accordingly, Plaintiffs' claims are typical of the Class.

21 *Adequacy*

22 12. The adequacy requirement is met where the plaintiff is represented by counsel
23 qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to
24 the class' interests. In other words, where the plaintiff has adequate counsel, the plaintiff may
25 represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's
26 ability to represent the class.

27 13. To the best of my knowledge, neither Plaintiffs nor I have any conflicts of interest
28 with the absent Settlement Class Members. Plaintiffs contend that they are adequate class
representative. Plaintiffs and the Class Members have strong and co-extensive interests in this



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1 litigation because they all worked for Defendants during the relevant time period, allegedly
2 suffered the same alleged injuries from the same alleged course of conduct, and there is no
3 evidence of any conflict of interest between Plaintiffs and the Class Members. Moreover, each
4 Plaintiff has demonstrated his commitment to the Settlement Class by, among other things,
5 retaining experienced counsel, providing counsel with documents and extensively speaking with
6 them to assist in identifying the claims asserted in this case, assisting them in identifying
7 witnesses, as well as exposing himself to the risk of attorneys' fees and costs awards against him
8 if this lawsuit had been unsuccessful. Thus, each Plaintiff is adequate to serve as settlement class
9 representative.

10 *Background of Class Counsel*

11 14. In 1991, I earned a Bachelor of the Arts degree with a major in Political Science
12 from the University of California at Berkeley. In 1995, I earned a Juris Doctor degree from
13 Southwestern University School of Law.

14 15. In December of 1995, the Supreme Court for the State of California admitted me
15 as an Attorney and Counselor at Law and licensed me to practice law in all the Courts of this
16 State. On May 11, 2012, I also became admitted to the District of Columbia Bar. In February
17 2013, I became admitted to the New York State Bar.

18 16. My law practice has always focused on representation of private and public
19 employees with claims of unpaid wages, wrongful termination, harassment, family and medical
20 leave, whistleblowing, discrimination, benefits, and civil rights violations. One of my websites,
21 FightWrongfulTermination.com, provides a further description of my practice.

22 17. I have tried many cases before California and federal courts, government agencies
23 and neutral arbitrators. I am a member of the California Employment Lawyers Association
24 (CELA).

25 18. Since I started practicing law, I have tried many cases before courts, arbitrators
26 and government agencies. Some of my cases are:

27 a. *Ricardo Sandoval v. Dept. of Treasury*, United States District Court,
28 Southern District of California (the Honorable Judith Keep presiding), 1998. Plaintiffs Special
Agent for the U. S. Customs Service alleged discrimination and retaliation in promotions and
discipline. The jury awarded compensatory damages. Court subsequently awarded additional
back pay and gave Plaintiffs a retroactive promotion. *See* "Lawsuit Puts Customs Service on Trial:



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1 Agent Alleges Corruption, White Supremacist Cabal" by Valerie Alvord, San Diego Union-
2 Tribune, April 29, 1998; "Customs Agent Is Awarded \$200,000: Jury Says He Faced Bias And
3 Retaliation" by Valerie Alvord, San Diego Union-Tribune, May 16, 1998.

4 b. *Jorge Guzman v. Department of Justice*, United States District Court,
5 Central District of California (the Honorable Lourdes Baird presiding), 1999. Plaintiffs Special
6 Agent for the Immigration and Naturalization Service alleged racial discrimination, retaliation
7 and police brutality by agents of the Office of the Inspector General. Jury found the Defendants
8 liable. Case settled shortly before the damages phase. See "U.S. to Pay \$400,000 to INS Agent in
9 Bias Suit; Courts: Complaint says he suffered 10 years of harassment on the job because he is
10 Latino, including falsified charges" by Patrick J. McDonnell, Los Angeles Times, January 21,
11 1999.

12 c. *Dr. Perry Crouch v. SHIELDS*, Los Angeles Superior Court, Compton (the
13 Honorable Michael Rutberg presiding), 2001. Plaintiff whistleblower brought civil rights claims
14 and wrongful termination claims against employer in a month-long jury trial. The jury awarded
15 compensatory and punitive damages. See "Activist Says Criticism of Rail Plan Cost His Job" by
16 Dan Weikel, Los Angeles Times, September 28, 2000; "Punitive Damages Awarded to Fired
17 Social Worker" by Dan Weikel, Los Angeles Times, June 10, 2000; "A Whistleblower's
18 Revenge" by Susan Goldsmith, New Times Los Angeles, June 8, 2000.

19 d. *Imagraph, Inc. (Steve Shiffman) v. Mohamed T. Nehmeh*, Orange County
20 Superior Court, Central Justice Center (the Honorable Kirk H. Nakamura presiding), 2004.
21 Plaintiff, who I represented pro bono sought the return of \$45,000.00 he paid to an attorney
22 escrow officer who subsequently absconded with the money. The jury awarded compensatory
23 damages. The Judgment with interest is now far in excess of that amount. Soon after this case was
24 litigated, the State Bar of California awarded me the Wiley W. Manuel Award for Pro Bono Legal
25 Services.

26 e. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
27 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated Customs
28 Agent, followed by an award of Attorneys' fees and costs.

f. *Richard Wamel v. Ocelot Engineering Co.*, Judicate West before the
Honorable Robert Polis (ret.) (2008). In that case, I represented a victim of FMLA violations and
wrongful termination against his former employer. The Neutral Arbitrator awarded compensatory



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1 and liquidated damages. The claims for damages, attorney's fees and costs were resolved shortly
2 thereafter by means of a confidential settlement.

3 g. *Alina Ghrdilyan v. RJ Financial, Inc., et al.*, LA Superior Court case no.
4 BC430633 (2012), the Honorable Ronald Sohigian presiding. To my knowledge, this case is the
5 first and only case to be successfully prosecuted through trial under the Labor Code Private
6 Attorney Generals Act of 2004, Labor Code §§ 2698, et seq. on behalf of plaintiffs and other
7 aggrieved employees against someone other than an employer for civil penalties including unpaid
8 wages. The case involves claims of unpaid overtime, unprovided rest and meal periods, unpaid
9 vacation, untimely interval and final wages, and unreimbursed expenses. For my work in that
10 case, the Court awarded me an hourly rate of \$600.00 hour based on my skill and experience.

11 19. Since 2007, I have prosecuted several traditional wage & hour class actions as the
12 sole or primary attorney for the plaintiffs, including *Pudelwitts v. Regent Parking, Inc., Singery*
13 *v. Quality Vessel Engineering*, *Tesillo v. LA Executive Towing Service, Inc.*, and *Madison v. The*
14 *Limousine Connection*. One such case is *Jose Tapia v. Mangen Group, Inc.*, LASC case no.
15 BC377114, a garden-variety wage & hour class action with many of the same claims at issue in
16 this case. The Honorable Jane Johnson of the Los Angeles Superior Court, presiding over the
17 motion for final approval of the Settlement Class action settlement in *Tapia*, had no quarrel with
18 an hourly rate of \$525.00 for my services.

19 20. In my representation of employees, I have prosecuted several lawsuits on behalf
20 of employees with claims of rest and meal period and overtime violations or other wage claims.

21 21. I have been involved in the prosecution of numerous wage and hour class actions
22 at various stages of litigation. A small sampling of the wage and hour class action cases in which
23 I have recently been counsel of records is as follows:

24 a. *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior
25 Court, Case No. VCU-245496 (appointed Class Counsel and granted final approval class action
26 settlement on behalf of assistant fitness manager employees).

27 b. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-
28 000382146 (appointed Class Counsel and granted final approval of class action settlement by the
court on behalf of nonexempt employees).



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1 c. *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct., Case
2 No. BC465017 (appointed Class Counsel and granted final approval by this Court of class action
3 settlement on behalf of merchandiser employees).

4 d. *Deckard v. MSL Community Management LLC*, Riverside County Superior
5 Court, Case No. RIC1204182 (appointed Class Counsel and granted final approval of class action
6 settlement on behalf of caregivers and medical technicians).

7 e. *DiCato v. Francesca's Collections, Inc.*, San Diego County Superior
8 Court, Case No. 37-2012-00094401-CU-OE-CTL (appointed Class Counsel and granted final
9 approval of class action settlement on behalf of boutique manager and assistant manager
employees).

10 f. *Evans v. Equinox, et al.*, Los Angeles Sup.Ct., Case No. BC440058
11 (appointed Class Counsel and granted final approval by this Court of class action settlement on
12 behalf of personal trainer employees).

13 g. *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No.
14 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class
15 action settlement on behalf of medical devices employees).

16 h. *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No.
17 BC480808 (appointed Class Counsel and granted final approval of class action settlement on
18 behalf of hourly employees).

19 i. *La Fleur v. Medical Management International, Inc.*, United States District
20 Court, Central District of California, Case No. EDCV13-00398-VAP (appointed Class Counsel
and granted final approval of class action settlement on behalf of practice managers).

21 j. *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior Court,
22 Case No. CIVDS1500146 (appointed Class Counsel and granted final approval of class action
23 settlement on behalf of non-exempt hourly employees excluding truck drivers).

24 k. *Lynch, et al. v. American Guard Services*, Los Angeles Superior Court,
25 Case No. BC462681 (appointed Class Counsel and granted final approval of class action
26 settlement on behalf of security guard employees).

27 l. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
28 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
on behalf of dairy and agricultural laborers).



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1 m. *Montes v. Branam Enterprises, Inc.*, Los Angeles Sup.Ct. Case No.
2 BC442608 (appointed Class Counsel and granted final approval by this Court of class action
3 settlement on behalf of call concert rigging employees).*Nardone v. Sequoia Beverage Company,*
4 *LP*, Tulare County Superior Court, Case No. VCU-248370 (appointed Class Counsel and granted
5 final approval of class action settlement by the court on behalf of hourly employees).

6 n. *Ogbuehi v. Comcast of California/Colorado/Florida/Oregon, Inc.*, United
7 States District Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN
8 (appointed Class Counsel and granted final approval of class action settlement on behalf of virtual
9 customer account executives).

10 o. *Rosen v. Image Transfer*, Los Angeles Superior Court, Case No.
11 BC511072 (appointed Class Counsel and granted final approval of class action settlement on
12 behalf of bobtail truck drivers).

13 p. *Sandoval v. Rite Aid Corp.*, Los Angeles Superior Court, Case No.
14 BC431249 (granted class certification through contested motion and appointed Class Counsel in
15 case on behalf of former pharmacy employees based on late final wage payments in violation of
16 Labor Code §§ 201–203).

17 q. *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District
18 of Colorado, Case No. 13-CV-01229-REB-BNB (appointed Class Counsel and granted final
19 approval of class action settlement by the court on behalf of auditor employees).

20 r. *Stucker v. L'Oreal*, Los Angeles Sup.Ct. Case No. BC456080 (appointed
21 Class Counsel and granted final approval by this Court of class action settlement involving alleged
22 misclassification of sales employees and unpaid vacation pay).

23 s. *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No.
24 BC462917 (appointed Class Counsel and granted final approval by this Court of class action
25 settlement on behalf of service account manager employees).

26 t. *Valencia v. SCIS Air Security Corp.*, Los Angeles Superior Court, Case
27 No. BC421485 (granted class certification through contested motion and appointed Class Counsel
28 in case on behalf of former security workers based on late final wage payments in violation of
Labor Code §§ 201–203).

u. *Vang v. Burlington Coat Factory Corporation*, United States District Court
Central District of California, Case No. 09-CV-08061-CAS-JCx (appointed Class Counsel and

1 granted final approval of class action settlement by the court on behalf of assistant store manager
2 employees).

3 v. *Volney-Parris v. Southern California Edison Company*, Los Angeles
4 Superior Court, Case No. BC493038 (appointed Class Counsel and granted final approval of class
5 action settlement on behalf of customer specialist employees).

6 w. *White v. 20/20 Communications, Inc.*, San Bernardino County Superior
7 Court, Case No. CIVRS1301718 (appointed Class Counsel and granted final approval of class
8 action settlement on behalf of hourly employees).

9 ***Class Action Treatment Is Superior***

10 22. A class action is also superior to other means adjudicating the issues in this action.
11 The predominance of common legal and factual questions shows that this Court could fairly
12 adjudicate the claims of Class Members through a single class action. In view of the *theoretical*
13 alternatives that proposed class members could potentially utilize—representative PAGA action
14 (where there is less relief available), individual civil lawsuits or wage claims through the Division
15 of Labor Standards Enforcement (where there would be relatively little money at stake, but the
16 claims would be time-consuming to litigate)—a class action is plainly superior to all of them.
17 Thus, this consideration supports conditional class action treatment for purposes of this
18 Settlement only.

19 ***The Settlement is Presumptively Fair***

20 23. The class settlement here satisfies all of the *Kullar* factors. The Settlement resulted
21 from thorough, arms' length, negotiations between experienced counsel with the assistance of a
22 respected mediator after sufficient discovery was exchanged to assess the relative strengths and
23 weaknesses of their respective cases and Defendants' estimated exposure. Both defense counsel
24 and I are particularly experienced in employment law and wage and hour class actions. We are
25 experienced and qualified to evaluate the class claims, the viability of the defenses, and the risks
26 and benefits of settlement versus trial on a fully informed basis. I have negotiated many wage and
27 hour class settlements, including many involving the same issues presented here. Counsel on both
28 sides share the view that the Settlement is a fair and reasonable settlement in light of the
complexities of the case and uncertainties of class certification and litigation, and a fair result for
the Class Members.



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Exposure & Risk Analysis

24. Plaintiffs claim that Defendants failed to pay all wages at the correct rates of pay, failed to provide timely, duty free, 30-minute meal periods, failed to authorize and permit rest periods, failed to indemnify for business expenses, failed to timely pay wages, and related claims. I prepared “damages” estimates in advance of the mediation. True and correct copies of these spreadsheets are attached hereto as **Exhibit 6**. I determined Defendants’ maximum exposure for restitution and penalties to be approximately \$4,471,084.01 (consisting of \$1,290,206.33 in unpaid wages, \$882,102.86 in missed meal period premium wages, \$1,764,205.71 in missed rest break premium wages, and \$88,200.00 for waiting time penalties.). Plaintiffs calculated the damages based on the number employees provided by Defendants, Plaintiffs’ reports, and the sample data. Plaintiffs also considered the possibility that Defendants could launch a *Pick Up Stix* campaign and pursue individual release agreements from the Class Members. Defendants also represented that they had interviewed all of Defendants’ current employees regarding Plaintiffs’ claims, all of whom would provide declarations, under penalty of perjury, that were favorable to Defendants with respect to the relevant factual issues at issue in Plaintiffs’ action. Plaintiffs’ Counsel applied discounts to the maximum exposure to account for all other risks discussed below. While it is difficult to assign anything but crudely-determined percentages of risk to any of the claims, it is safe to say that the risk that a *Pick Up Stix* campaign would preclude recovery for such employees is substantial and alone justifies a significant discount because Defendants would likely by trial have gathered releases from the majority of the Class Members. A settlement for approximately 16.77% of the potential recovery is a proportion substantially in excess of recovery proportions sanctioned by existing case law.

25. My initial estimates do not realistically account for the risks outlined below or the risk that a class will not be certified. Therefore, I believe a class settlement for \$750,000.00 is fair and reasonable.

26. **Risks Associated with Unpaid Wages Claim.** There is a risk that Plaintiffs’ recovery for unpaid wages would be extremely limited at best, largely because Defendants required the employees to sign each of their time sheets and certify that they had accurately recorded their hours on their time sheets and had the opportunity to take all their rest and meal



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1 periods. Off-the-clock claims are difficult where a defendant requires that all hours worked be
2 reported on time sheets. *See Jong v. Kaiser Foundation Hospital* (2012) 226 Cal.App.4th 391
3 (employer must have notice of off-the-clock work for it to be compensable). *Id.* Moreover, while
4 Defendants dispute that off-the-clock work occurred, they contend that any time spent off the
5 clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal.
6 5th 829, 835 suggested that irregular and minute periods of time may still be subject to a *de*
7 *minimis* defense even if compensable (stating that “We do not decide whether there are
8 circumstances where compensable time is so minute or irregular that it is unreasonable to expect
9 the time to be recorded.”). Following *Troester*, Defendants contend that the *de minimis* doctrine
10 may apply here because the time spent off the clock were minute and insignificant. Accordingly,
11 a large award of penalties seems unlikely with respect to this claim. The difficulty inherent in
12 proving that off-the-clock work occurred poses a significant hurdle to Plaintiffs. Plaintiffs will
13 rely on declarations and witness statements to prove this claim. Generally, a court will not certify
14 a class unless it can determine an appropriate classwide methodology. *See, e.g., Duran v. U.S.*
15 *Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiffs may rely heavily on anecdotal evidence
16 to prove the off-the-clock work claim, especially given the lack of records indicating when such
17 off-the-clock work may have taken place. Individualized inquiries would need to be conducted
18 person-by-person, day-by-day, to determine if an individual in fact worked “minutes” off-the-
19 clock on a “regular” basis. Accordingly, there is a significant risk that the Court would consider
20 this evidentiary showing insufficient as a classwide methodology.

21 27. **Risks Associated with the Meal Period Claims.** There are risks to Plaintiffs’
22 meal period claim. Defendants contend that, to establish a violation for missed meal periods, a
23 plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004.
24 So long as an employer provides employees with a “reasonable opportunity” to take a duty-free
25 meal period, it has no further duty to “police meal breaks and ensure no work thereafter is
26 performed.” *Id.* at 1040-41. Instead, a plaintiff must show the employer impeded, discouraged, or
27 prohibited the employee from taking a proper break, or otherwise failed to release the employee
28 of all control. *Id.* “Thus, the crucial issue with regard to the meal break claim is the reason that a
particular employee may have failed to take a meal break.” *Washington v. Joe’s Crab Shack* (N.D.
Cal. 2010) 271 F.R.D. 629, 641.



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1 28. Defendants contend they did not impede or discourage Plaintiffs, or any other
2 employees, from taking their meal or rest periods. Further, as discussed above, Defendants
3 required employees to certify the fact that they received all their meal periods at the end of each
4 pay period. The time records that comprise the random sample Defendants produced to Plaintiffs
5 for purposes of mediation show that meal periods were taken the vast majority of the time. Of the
6 time records that show a late, short or no lunch, individualized evidence may be necessary to
7 determine whether they occurred due to conduct of the Defendants or each of the employees
8 concerned. Accordingly, there is a significant risk that the value of Plaintiffs' meal period claim
9 would be substantially reduced at trial.

10 29. **Risks Associated with the Rest Break Claims.** There are risks to Plaintiffs' rest
11 period claim. Employers are not required to record rest periods and such periods are paid. *Id.*
12 Defendants contend they provided non-exempt employees the opportunity to take rest periods in
13 accordance with California law. Further, as discussed above, Defendants required employees to
14 certify the fact that they received all their meal periods at the end of each pay period. Thus, unlike
15 meal periods, where there are often records showing whether an employee clocked out or not,
16 there is no such evidence to prove a missed rest period or that the employer refused to authorize
17 and permit one. Managing such claims at trial has become exceedingly difficult. Plaintiffs will
18 depend on sample witness testimony and surveys to prove the claims. While a victory with such
19 evidence is certainly possible, relevant caselaw makes such claims risky from a trial management
20 and due process perspective. *See Duran v. U.S. Bank National Assn.*, (2014) 59 Cal. 4th 1, 31
21 (explaining "[I]f sufficient common questions exist to support class certification, it may be
22 possible to manage individual issues through the use of surveys and statistical sampling."); *Tyson*
23 *Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133
24 S.Ct. 1426.

25 30. **Risks Associated with the Failure to Indemnify Claim.** There is a risk that the
26 Court may consider Plaintiffs' claims as to Defendants' alleged failure to indemnify for business
27 expenses to be individual in nature and thus decline to certify the class. Plaintiffs allege that
28 Defendants required Plaintiffs and the Class Members to use their personal items including
cellular phones, vehicles, and tools, and failed to indemnify them for these business expenses.
Defendants contend that they have supplied their employees with tools, equipment, and other



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1 supplies. As such, there is a risk that the Court may consider Plaintiffs' claims to be individual in
2 nature and unfit for class wide resolution.

3 31. **Risks Associated with The Waiting Time Penalties Claim.** Plaintiffs' claim for
4 untimely wages is predicated on Labor Code section 201 to 203. Plaintiffs must establish that the
5 late payments were willful. The evidence of good faith that Defendants could put forth will defeat
6 this claim.

7 32. **Risks Associated With A Pick-Up Stix Campaign.** An employer enjoys the right
8 to settle a putative class member's disputed wage claims individually, without the consent or
9 involvement of class counsel. See *Chindarah v. Pick Up Stix, Inc.* 171 Cal. App. 4th 796 (2009).
10 As discussed above, Defendants may launch a "pick off" settlement campaign to pursue
11 individual release agreements from the Class Members, thereby potentially narrowing the size of
12 the Class – 83 members - until it is no longer numerous enough for class certification. *Id.*
13 Plaintiffs, then, may not have sufficient number of employees to represent. This led to a
14 significant reduction of claim value in settlement negotiations.

15 33. While the evidence gathered through Plaintiffs' discovery supports the merits of
16 the claims asserted in this lawsuit, Plaintiffs and their counsel recognize that continued litigation
17 presents significant risks that support a downward departure from Defendants' estimated liability
18 exposure. In view of the risks, the Settlement reflects my estimate of the total amount of damages,
19 monetary penalties or other relief that the Class could reasonably expect to be awarded at trial,
20 taking into account the likelihood of prevailing and other attendant risks. It also represents a fair,
21 adequate, and reasonable compromise amount for these claims and warrants preliminary
22 approval. *Id.*, *Torrissi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376 (the financial
23 condition of defendant predominated in assessing the reasonableness of settlement); *Spann v. J.C.*
24 *Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty concerning defendant's
25 financial stability "strongly supports the reasonableness of the settlement"); *See Laguna v.*
26 *Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3.

Attorneys' Fees and Costs

27 34. I intend to request Class Counsel Attorneys' Fees of \$250,000.00 (one-third of the
28 GSA) and Class Counsel's litigation costs incurred in prosecuting this Action, which I currently
estimate to be approximately \$16,157.05 and will be no more than \$20,000.00 at the conclusion
of matters related to the Settlement. In view of my efforts and risks in pursuing this case these



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amounts are well within the range of reasonableness and thus warrant this Court's preliminary approval. In addition, based on my experience in wage and hour class action matters, fee awards of approximately one-third of the settlement fund are routinely approved as reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund in several recent wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles County Superior Court, Case No. BC439558 (one-third of fund); *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct., Case No. 37-2009-00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct., Case No. BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles Sup. Ct., Case No. BC456080 (one-third of fund); *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No. BC462917 (one-third of fund); *Hernandez, et al v. HSBC*, U.S. District Court, Central District of California, Case No. 10-CV-4753 (one-third of fund); *Sandoval, et al. v. Thrifty Payless, Inc.*, et al. Los Angeles Sup.Ct., Case No. BC431249 (one-third of fund); *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior Court, Case No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*, Tulare Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los Angeles Sup.Ct., Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc.*, Los Angeles Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Sup.Ct., Case No. 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Sup.Ct., Case No. BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Sup.Ct., Case No. CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District Court, Southern District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al. v. National Distribution Centers LP, et al.*, Riverside Sup.Ct., Case No. RIC1114952 (one-third of fund); *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District of Colorado, Case No. 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/ Colorado/ Florida/ Oregon, Inc.*, United States District Court, Eastern

1 District of California, Case No. EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v.*
2 *American Guard Services*, Los Angeles Superior Court, Case No. BC462681 (one-third of fund);
3 *Volney-Parris v. Southern California Edison Company*, Los Angeles Superior Court, Case No.
4 BC493038 (one-third of fund); *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No.
5 BC480808 (one-third of fund); *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case
6 No. S-1500-CV-282679 (one-third of fund); *Linder, et al. v. Warehouse Services, Inc.*, San
Bernardino Superior Court, Case No. CIVDS1500146 (one-third of fund).

7 35. The amount of fees and costs requested are commensurate with (1) the risk Class
8 Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the case,
9 (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel achieved,
10 (5) the value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel
11 turned down to devote time to this matter. Class Counsel also interviewed and obtained
12 information from putative class members, met and conferred with Defendants' counsel on
13 numerous occasions, reviewed and analyzed hundreds of pages of data and documents provided
14 by Defendants and obtained through other sources, researched applicable law, and estimates of
"damages" for purposes of settlement discussions, among other tasks.

15 36. Class Counsel have borne all the risks and costs of litigation and will receive no
16 compensation until recovery is obtained. Class Counsel are well-experienced in wage-and-hour
17 class action litigation and used that experience to obtain a fair result for the Class. Considering
18 the amount of the attorney fees requested, the work performed, and the risks incurred, the
19 requested fees and costs are reasonable and should be awarded.

20 ***Class Representative Service Payments***

21 37. The Settlement provides that each Plaintiff may seek a Class Representative
22 Service Payments of \$15,000.00. This amount is entirely reasonable given each Plaintiff's efforts
23 in this Action and the risks each Plaintiff undertook on behalf of Class Members. Here, each
24 Plaintiff has devoted many hours advancing the interests of the Settlement Class. Each Plaintiff
25 has done this by, among other things, retaining experienced counsel, providing them with
26 information about his work history with Defendants and Defendants' policies and practices with
27 respect to the wage and hour claims at issue, assisting counsel in identifying witnesses,
28 participating in mediation, and being actively involved in the settlement process to ensure a fair
result for the Settlement Class as a whole. In doing this, Each Plaintiff has been exposed to



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1 significant risks, including the risk of an order to pay Defendants' attorneys' fees and costs if this
2 action had been unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts and risks that each
3 Plaintiff undertook on behalf of the Settlement Class shows that the proposed Class
4 Representative Service Payments is fair, adequate, and reasonable, and thus warrant preliminary
5 approval.

Individual Class Payment

6 38. The Individual Class Payment will be paid to each Class Member based on his or
7 her eligible Paychecks compared to the total Paychecks. Settlement § 3.2.4. Because this method
8 compensates Class Members based on the extent of their potential injuries, in that Class Members
9 who worked for Defendants longer would have been subject to more alleged violations, it is fair,
10 adequate, and reasonable.

Notice By First Class U.S. Mail Only (No Email)

11 39. The Settlement requires distribution of the Notice by First Class U.S. mail only.
12 Settlement, § 4.4.1. Although there are current employee Class Members, it is uncertain whether
13 Defendants' records of their contact information include email addresses and Class Members,
14 who perform all of their work away from a desk, are not in a position to check their emails. As
15 such, notice by mail alone is fair, adequate, and reasonable. The Notice Packet (attached as
16 Exhibits A-C to the Settlement) provides Class Members with all pertinent information that they
17 need to fully evaluate their options and exercise their rights under the Settlement. Specifically, it
18 clearly and concisely explains, among other things: (1) what the Settlement is about; (2) who is a
19 Settlement Class Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion
20 request not to be bound by the Settlement; (5) how to object to the Settlement; (6) how the
21 Settlement will be allocated; (7) how payments to Class Members will be calculated; (8) how the
22 disputes will be resolved; and (9) the estimated Individual Settlement Payment for each Class
23 Member. Additionally, the Notice will include the number of Eligible Workweeks a Class
24 Member had during the Class Period. Accordingly, the Notice should be approved because it
25 describes the Settlement with sufficient clarity and specificity to explain to Class Members what
26 this action is about, their rights under the Settlement, and how to exercise those rights. As such,
27 the parties' proposed Notice fully complies with California Rules of Court 3.766(d) and 3.769(f)
28 and will allow Class Members to make informed responses to the proposed settlement.



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Settlement Administration Duties

40. The duties of the Settlement Administrator are spelled out in the Settlement and in the bid provided by ILYM Group, Inc. a true and correct copy of which is attached hereto as **Exhibit 7**.

Settlement Administration Costs

41. With regard to the settlement administration costs provision, it is reasonable. Before agreeing to ILYM Group, Inc. the Parties sought and reviewed bids from other reputable third-party administrators: (A) Phoenix Class Administration Solutions = \$6,000.00; (B) ILYM Group, Inc. = \$5,850.00; and C) CPT Group, Inc. = \$9,000.00. A true and correct copy of the bid from Phoenix Class Administration Solutions is attached hereto as **Exhibit 8**. A true and correct copy of the bid from CPT Group, Inc is attached hereto as **Exhibit 9**. The bid provided by ILYM Group, Inc. was comparable. Thus, settlement administration costs provision should be given preliminary approval.

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

Executed on Thursday, July 18, 2024 at New york, NY.



DAVID SPIVAK,
Declarant



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EXHIBIT 1

1 DAVID G. SPIVAK (SBN 179684)
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2 CAROLINE TAHMASSIAN (SBN 285680)
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3 THE SPIVAK LAW FIRM
4 8605 Santa Monica Bl
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5 West Hollywood, CA 90069
Telephone: (213) 725-9094
6 Facsimile: (213) 634-2485

7 Attorneys for Plaintiff(s),
8 JOSE FRAUSTO VILLEGAS, JOSE MANUEL BARRAGAN, and all others similarly situated
(Additional attorneys for parties on following page)

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF SANTA BARBARA**

11 **(UNLIMITED JURISDICTION)**

12
13 JOSE FRAUSTO VILLEGAS, on behalf of
14 himself, all others similarly situated, and the
15 general public,

16 *Plaintiff,*

17 vs.

18 DLP MANAGEMENT CO., INC., a California
19 corporation d/b/a DLP MANAGEMENT CO and
20 DLP MANAGEMENT INC.; and DOES 1–50,
inclusive,

21 *Defendants.*

Lead Case No.: 21CV04500
Consolidated with: 22CV01392
[Hon. Thomas P. Anderle, Department 3]

22 **CLASS ACTION SETTLEMENT**
23 **AGREEMENT AND CLASS NOTICE**

24 Action filed: November 12, 2021
25 Dept: 4, The Honorable Thomas
26 P. Anderle

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JOSE MANUEL BARRAGAN, on behalf of
himself, all others similarly situated, and
the general public,

Plaintiff,

vs.

DLP MANAGEMENT CO., INC., a
California corporation doing business in
California as DLP MANAGEMENT CO and
as DLP MANAGEMENT INC. and DLP
MANAGEMENT INC; DARIO L. PINI, an
individual; and DOES 1-50, inclusive,

Defendants.

Case No.: 22CV01392

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ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

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Attorneys for Defendant(s),
DLP MANAGEMENT CO., INC. and DARIO L. PINI

1 This Class Action Settlement Agreement (“Agreement”) is made by and between plaintiffs
2 Jose Frausto Villegas and Jose Manuel Barragan (collectively “Plaintiffs”) and defendants DLP
3 Management Co., Inc. and Dario L. Pini (collectively “Defendants”). The Agreement refers to
4 Plaintiffs and Defendants collectively as “Parties,” or individually as “Party.”

5 **1. DEFINITIONS.**

6 1.1. “Action” means the Plaintiffs’ consolidated lawsuits alleging wage and hour
7 violations against DLP Management Co., Inc. and Dario L. Pini captioned “Jose Frausto Villegas,
8 on behalf of himself, and all others similarly situated, *Plaintiff(s)*, vs. DLP Management Co., Inc.,
9 a California corporation, and DOES 1 through 50, inclusive, *Defendant(s)*,” Case No.
10 21CV04500 and Jose Manuel Barragan, on behalf of himself, and all others similarly situated,
11 *Plaintiff(s)*, vs. DLP Management Co., Inc., a California corporation, Dario L. Pini, a natural
12 person, and DOES 1 through 50, inclusive, *Defendant(s)*,” Case No. 22CV01392 initiated on
13 November 12, 2021 and pending in Superior Court of the State of California, County of Santa
Barbara.

14 1.2. “Administrator” means ILYM Group, Inc. the neutral entity the Parties have
15 agreed to appoint to administer the Settlement.

16 1.3. “Administration Expenses Payment” means the amount the Administrator will be
17 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
18 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
with Preliminary Approval of the Settlement.

19 1.4. “Class” means all persons employed by Defendants in California and classified as
20 a non-exempt employees paid on an hourly basis or by salary during the Class Period. The Parties
21 agree that the Class only consists of the 81 employees Defendants disclosed to the Administrator
22 as part of the *Belaire-West* process and the two individuals the Parties identified in the
Memorandum of Understanding that the Parties signed after the mediation.

23 1.5. “Class Counsel” means David G. Spivak of The Spivak Law Firm and Louis M.
24 Benowitz of Benowitz Law Corporation.

25 1.6. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
26 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
27 expenses, respectively, incurred to prosecute the Action.

1.7. “Class Data” means Class Member identifying information in Defendants’ possession including the Class Member’s name, last-known mailing address, Social Security number, dates worked during the Class Period and number of Class Period Paychecks.

1.8. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member.

1.9. “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.

1.10. “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 in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.11. “Class Period” means the period from November 12, 2017 to the date of preliminary Court approval of the Settlement.

1.12. “Class representatives” for the purposes of this Settlement only, means the named Plaintiffs in the operative complaints in the Action seeking Court approval to serve as Class Representatives.

1.13. “Class Representative Service Payments” means the payments to the Class Representatives for initiating the Action and providing services in support of the Action.

1.14. “Court” means the Superior Court of California, County of Santa Barbara.

1.15. “Defendants” means named Defendants DLP Management Co., Inc., and Dario L. Pini.

1.16. “Defense Counsel” means Paul R. Burns of Law Offices of Paul R. Burns, P.C.

1.17. “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.

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

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

1.20. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement. A proposed Final Judgment form is attached as Exhibit F.

1.21. “Gross Settlement Amount” means \$750,000.00 which is the total amount Defendants agree to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payments and the Administrator’s Expenses. Defendants’ share of any employer payroll taxes to be paid in connection with the Settlement (e.g., FICA, FUTA, payroll taxes, and/or any similar tax or charge – collectively “Employer Taxes”) shall be paid by Defendants from the Gross Settlement Amount.

1.22. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Paychecks received during the Class Period.

1.23. “Judgment” means the judgment entered by the Court based upon the Final Approval.

1.24. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Class Representative Service Payments, 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.

1.25. “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.

1.26. “Notice Packet” means the Class Notice (Exhibit A), the Election Not to Participate in Settlement form (Exhibit B), the Paycheck Dispute form (Exhibit C), and the Objection form (Exhibit D) in English with Spanish translations.

1.27. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.28. “Plaintiffs” means Jose Frausto Villegas, Jose Manuel Barragan, and the named

1 Plaintiffs in the Action.

2 1.29. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval
3 of the Settlement.

4 1.30. “Preliminary Approval Order” means the proposed Order Granting Preliminary
5 Approval. A proposed Preliminary Approval Order form is attached as Exhibit E.

6 1.31. “Released Class Claims” means the claims being released as described in
7 Paragraph 6.2 below.

8 1.32. “Released Parties” means: Defendants and any of their present and former parent
9 companies, subsidiaries, divisions, concepts, related or affiliated companies and its shareholders,
10 officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any
11 individual or entity that Defendant Dario Pini has any ownership interest in that could be liable
12 for any of the Released Claims, and Defendants’ counsel of record in the Action.

13 1.33. “Request for Exclusion” means a Class Member’s submission of a written request
14 to be excluded from the Class Settlement signed by the Class Member. An Election Not to
15 Participate in Settlement form is attached as Exhibit B.

16 1.34. “Response Deadline” means 60 days after the Administrator mails Notice to Class
17 Members, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests
18 for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement.
19 Class Members to whom Notice Packets are resent after having been returned undeliverable to
20 the Administrator shall have an additional 14 calendar days beyond the Response Deadline has
21 expired.

22 1.35. “Settlement” means the disposition of the Action effected by this Agreement and
23 the Judgment.

24 1.36. A Paycheck Dispute form is attached as Exhibit C.

22 **2. RECITALS.**

23 2.1. On November 12, 2021, Plaintiff Jose Frausto Villegas commenced this Action
24 by filing a Complaint alleging causes of action against Defendant DLP Management Co., Inc. for
25 failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods,
26 failure to indemnify for business expenses, failure to timely pay wages, and related claims. On
27 April 11, 2022, Plaintiff Jose Manuel Barragan filed a class action complaint alleging the same

1 violations against both Defendants. The two cases were consolidated on or about June 8, 2022. The
2 operative complaints in the Action are referred to as the “Operative Complaint.” Defendants
3 deny the allegations in the Operative Complaint, deny any failure to comply with the laws
4 identified in in the Operative Complaint and deny any and all liability for the causes of action
alleged.

5 2.2. On September 26, 2023, the Parties participated in an all-day mediation presided
6 over by Henry J Bongiovi, Esq. which led to this Agreement to settle the Action (describe
7 alternative means of negotiation.

8 2.3. Prior to mediation, Plaintiffs obtained, through formal and informal discovery,
9 the number of comparable employees, sample payroll records, and related information. Plaintiffs’
10 investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot*
11 *Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008)
12 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

13 2.4. The Court has not granted class certification.

14 2.5. The Plaintiffs and Class Counsel represent that they are not aware of any other
15 pending matter or action asserting claims that will be extinguished or affected by the Settlement
16 other than workers’ compensation claims.

17 3. MONETARY TERMS.

18 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below,
19 Defendants promise to pay \$750,000.00 and no more as the Gross Settlement Amount.
20 Defendants have no obligation to pay the Gross Settlement Amount prior to the deadline stated
21 in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement
22 Amount without asking or requiring Participating Class Members to submit any claim as a
condition of payment. None of the Gross Settlement Amount will revert to Defendants.

23 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
24 deduct the following payments from the Gross Settlement Amount, in the amounts specified by
the Court in the Final Approval:

25 3.2.1. To Plaintiffs: Subject to approval by the Court, Class Representative
26 Service Payments to the Class Representatives of not more than \$15,000.00 each (in addition to
27 any Individual Class Payments the Class Representatives are entitled to receive as Participating

1 Class Members). For the purposes of this Settlement only, the Parties agree to the designation of
2 Plaintiffs as “Class Representatives.” In consideration therefor, Plaintiffs give their general
3 release pursuant to California Civil Code section 1542 as discussed in paragraph 6.2 that includes
4 a release of all claims arising out of and relating to their employment with Defendants, as well as
5 Plaintiffs’ release of all known and unknown claims pursuant to California Civil Code section
6 1542 of all claims arising out of and relating to their employment with Defendants. Defendants
7 will not oppose Plaintiffs’ request for a Class Representative Service Payments that do not exceed
8 this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses
9 Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no
10 later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class
11 Representative Service Payment less than the amount requested, the Administrator will retain the
12 remainder in the Net Settlement Amount. The enhancement awards are to be part of, and to be
13 deducted from, the Gross Settlement Amount. The Administrator will pay the Class
14 Representative Service Payments using IRS Form 1099. Plaintiffs assume full responsibility and
15 liability for employee taxes owed on the Class Representative Service Payments.

16 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than
17 33.33%, which is currently estimated to be \$250,000.00 and a Class Counsel Litigation Expenses
18 Payment of not more than \$20,000.00. Defendants will not oppose requests for these payments
19 provided that do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for
20 Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days
21 prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or
22 a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator
23 will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability
24 to Class Counsel or any other Plaintiffs’ Counsel arising from any claim to any portion any Class
25 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator
26 will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more
27 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the
28 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
Defendants harmless, and indemnifies Defendants, 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

1 \$10,000.00 except for a showing of good cause and as approved by the Court. To the extent the
2 Administration Expenses are less or the Court approves payment less than \$10,000.00, the
3 Administrator will retain the remainder in the Net Settlement Amount.

4 3.2.4. To Each Participating Class Member: An Individual Class Payment
5 calculated by (a) dividing the Net Settlement Amount by the total number of Paychecks received
6 by all Participating Class Members during the Class Period and (b) multiplying the result by each
7 Participating Class Member's Paychecks.

8 3.2.4.1. Tax Allocation of Individual Class Payments. 33.33% of
9 each Participating Class Member's Individual Class Payment will be allocated to settlement of
10 wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be
11 reported on an IRS W-2 Form. The 66.67% of each Participating Class Member's Individual
12 Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage
13 Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on
14 IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any
15 employee taxes owed on their Individual Class Payment.

16 3.2.4.2. Employer-Side Payroll Taxes. Defendants' share of any
17 employer payroll taxes to be paid in connection with the Settlement (e.g., FICA, FUTA, payroll
18 taxes, and/or any similar tax or charge – collectively "Employer Taxes") shall be paid by
19 Defendants from the Gross Settlement Amount.

20 3.2.4.3. Effect of Non-Participating Class Members on
21 Calculation of Individual Class Payments. Non-Participating Class Members will not receive
22 any Individual Class Payments. The Administrator will retain amounts equal to their Individual
23 Class Payments in the Net Settlement Amount for distribution to Participating Class Members on
24 a pro rata basis.

25 **4. SETTLEMENT FUNDING AND PAYMENTS.**

26 4.1. Class Paychecks. Based on a review of their records to date, Defendants estimate
27 there are 83 Class Members who collectively worked a total of 9,163 pay periods.

28 4.2. Class Data. Not later than 21 days after the Court grants Preliminary Approval of
the Settlement, Defendants 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

1 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
2 employees who need access to the Class Data to effect and perform under this Agreement.
3 Defendants have a continuing duty to immediately notify Class Counsel if they discover that the
4 Class Data omitted class member identifying information and to provide corrected or updated
5 Class Data as soon as reasonably feasible. Without any extension of the deadline by which
6 Defendants must send the Class Data to the Administrator, the Parties and their counsel will
7 expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related
8 to missing or omitted Class Data.

8 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross
9 Settlement Amount by transmitting the funds to the Administrator no later than 60 days after the
10 Effective Date.

10 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendants
11 fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class
12 Payments, all the Administration Expenses Payment, the Class Counsel Fees Payment, the Class
13 Counsel Litigation Expenses Payment, and the Class Representative Service Payments.
14 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
15 Payment and the Class Representative Service Payments shall not precede disbursement of
16 Individual Class Payments.

16 4.4.1. The Administrator will issue checks for the Individual Class Payments and
17 send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each
18 check shall prominently state the date (not less than 180 days after the date of mailing) when the
19 check will be voided. The Administrator will cancel all checks not cashed by the void date. The
20 Administrator will send checks for Individual Settlement Payments to all Participating Class
21 Members (including those for whom Notice Packet was returned undelivered). Before mailing
22 any checks, the Administrator must update the recipients' mailing addresses using the National
23 Change of Address Database.

23 4.4.2. The Administrator must conduct a Class Member Address Search for all
24 other Class Members whose checks are returned undelivered without USPS forwarding address.
25 Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS
26 forwarding address provided or to an address ascertained through the Class Member Address
27 Search. The Administrator need not take further steps to deliver checks to Class Members whose

1 re-mailed checks are returned as undelivered. The Administrator shall promptly send a
2 replacement check to any Class Member whose original check was lost or misplaced, requested
3 by the Class Member prior to the void date.

4 4.4.3. For any Class Member whose Individual Class Payment check is uncashed
5 and cancelled after the void date, the Administrator shall transmit the funds represented by such
6 checks to the California Controller's Unclaimed Property Fund in the name of the Class Member
7 thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil
8 Procedure Section 384, subd. (b).

9 4.4.4. The payment of Individual Class Payments shall not obligate Defendants
10 to confer any additional benefits or make any additional payments to Class Members (such as
11 401(k) contributions or bonuses) beyond those specified in this Agreement.

12 **5. [OMITTED]**

13 **6. RELEASES OF CLAIMS.** Effective on the date when Defendants fully fund the entire
14 Gross Settlement Amount, Plaintiffs, Class Members, and Class Counsel will release claims
15 against all Released Parties as follows:

16 6.1. Release by Participating Class Members. The claims to be released by the
17 Participating Class Members are limited to any and all claims under state, federal, or local law,
18 whether statutory or common law arising out of the claims expressly pleaded the Actions and all
19 other claims, such as those under California Labor Code sections 201, 202, 203, 226.7, 510, 512,
20 558.1, 1182.12, 1194, 1197, 1198, and 2802, the Wage Orders, regulations, and/or other
21 provisions of law, that could have been pleaded based on the facts pleaded in the Actions for:
22 failure to pay employees all earned wages, including but not limited to overtime at one and one
23 half times regular wages and/ or overtime at two times regular wages if applicable, failure to
24 provide meal periods, failure to authorize and permit rest periods, failure to indemnify for
25 business expenses, failure to timely pay final wages, and unfair competition under Business &
26 Professions Code sections 17200, et seq.

27 6.2. Plaintiffs' Waiver of Rights Under California Civil Code Section 1542
28 against the Released Parties. The Released Parties are those persons described in section 1.32
above that includes a release of all claims arising out of and relating to their employment with
Defendants, as well as Plaintiffs' release of all known and unknown claims pursuant to California
Civil Code section 1542 of all claims arising out of and relating to their employment with

1 Defendants. Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any,
2 of section 1542 of the California Civil Code against the Released Parties. Section 1542 reads:

3
4 **A general release does not extend to claims that the creditor or releasing party does**
5 **not know or suspect to exist in his or her favor at the time of executing the release,**
6 **and that if known by him or her would have materially affected his or her settlement**
7 **with the debtor or Released Party.**

8 Plaintiff Jose Frausto Villegas will not be seeking a double recovery in his pending workers'
9 compensation claim.

10 **7. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and
11 file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with
12 the Court's current checklist for Preliminary Approvals. A Preliminary Approval Order form is
13 attached as Exhibit E.

14 7.1 Defendants' Declaration in Support of Preliminary Approval. Within ten (10)
15 days of the full execution of this Agreement, Defendants will prepare and deliver to Class Counsel
16 a signed Declaration from Defendants and Defense Counsel disclosing all facts relevant to any
17 actual or potential conflicts of interest with the Administrator.

18 7.2 Plaintiffs' Responsibilities. Plaintiffs will prepare and deliver to Defense
19 Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the
20 notice, and memorandum in support, of the Motion for Preliminary Approval that includes an
21 analysis of the Settlement under *Dunk/Kullar*; (ii) a draft proposed Order Granting Preliminary
22 Approval; (iii) a draft proposed Notice Packet; (iv) a signed declaration from the Administrator
23 attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness
24 to serve; competency; operative procedures for protecting the security of Class Data; amounts of
25 insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts
26 relevant to any actual or potential conflicts of interest with Class Members; and the nature and
27 extent of any financial relationship with Plaintiffs, Class Counsel or Defense Counsel; (v) a signed
28 declaration from Plaintiffs 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; (v) a signed declaration from each Class Counsel firm attesting to its competency
to represent the Class Members; (vi) a redlined version of the parties' Agreement showing all

1 modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts
2 relevant to any actual or potential conflict of interest with Class Members or the Administrator.
3 In their Declarations, Plaintiffs and Class Counsel Declaration shall aver that they are not aware
4 of any other pending matter or action asserting claims that will be extinguished or adversely
5 affected by the Settlement.

6 7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly
7 responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later
8 than 45 days after the full execution of this Agreement; obtaining a prompt hearing date for the
9 Motion for Preliminary Approval as permitted by the Court's schedule; and for appearing in Court
10 to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for
11 delivering the Court's Preliminary Approval to the Administrator.

12 7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion
13 for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
14 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person
15 or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant
16 Preliminary Approval or conditions Preliminary Approval on any material change to this
17 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of
18 the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and
19 otherwise satisfy the Court's concerns to the extent such modification is consistent with the MOU
20 executed on September 27th, 2023 by all parties .

21 **8. SETTLEMENT ADMINISTRATION.**

22 8.1 Selection of Administrator. The Parties have jointly selected ILYM Group, Inc.
23 to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc.
24 agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this
25 Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel
26 represent that they have no interest or relationship, financial or otherwise, with the Administrator
27 other than a professional relationship arising out of prior experiences administering settlements.

28 8.2 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.

1 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
2 that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury
3 Regulation section 468B-1.

4 8.4 Notice to Class Members.

5 8.4.1 No later than three (3) business days after receipt of the Class Data, the
6 Administrator shall notify Class Counsel that the list has been received and state the number of
7 Class Members, and Paychecks in the Class Data.

8 8.4.2 Using best efforts to perform as soon as possible, and in no event later than
9 14 days after receiving the Class Data, the Administrator will send to all Class Members identified
10 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet
11 with Spanish translation, if applicable substantially in the forms attached to this Agreement as
12 **Exhibits A, B, C, and D.** The first page of the Class Notice shall prominently estimate the dollar
13 amounts of any Individual Class Payment payable to the Class Member, and the number of
14 Paychecks used to calculate these amounts. Before mailing Notice Packets, the Administrator shall
15 update Class Member addresses using the National Change of Address database.

16 8.4.3 Not later than 3 business days after the Administrator’s receipt of any
17 Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice
18 Packet using any forwarding address provided by the USPS. If the USPS does not provide a
19 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail
20 the Notice Packet to the most current address obtained. The Administrator has no obligation to
21 make further attempts to locate or send Notice Packet to Class Members whose Notice Packet is
22 returned by the USPS a second time.

23 8.4.4 The deadlines for Class Members’ written objections, Challenges to
24 Paychecks (disputes), and Requests for Exclusion will be extended an additional 14 days beyond
25 the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-
26 mailed. The Administrator will inform the Class Member of the extended deadline with the re-
27 mailed Notice Packet.

28 8.4.5 If the Administrator, Defendants 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 Notice Packet, 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.

8.5 Requests for Exclusion (Opt-Outs).

8.5.1 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 Notice Packet (plus an additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her 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. An Election Not to Participate in Settlement form, attached as Exhibit B, may be used for this purpose but is not required.

8.5.2 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.

8.5.3 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 6.2 and 6.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

8.5.4 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.

1 8.6 Challenges to Calculation of Paychecks. Each Class Member shall have 60 days
2 after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members
3 whose Notice Packet is re-mailed) to challenge the number of Class Paychecks allocated to the
4 Class Member in the Class Notice. This is also known as a dispute. A Paycheck Dispute form,
5 attached as Exhibit C, may be used for this purpose but is not required. The Class Member may
6 challenge the allocation by communicating with the Administrator via fax, email or mail. The
7 Administrator must encourage the challenging Class Member to submit supporting
8 documentation. In the absence of any contrary documentation, the Administrator is entitled to
9 presume that the Paychecks contained in the Class Notice are correct so long as they are consistent
10 with the Class Data. The Administrator's determination of each Class Member's allocation of
11 Paychecks shall be final and not appealable or otherwise susceptible to challenge. The
12 Administrator shall promptly provide copies of all challenges to calculation of Paychecks to
13 Defense Counsel and Class Counsel and the Administrator's determination the challenges.

14 8.7 Objections to Settlement.

15 8.7.1 Only Participating Class Members may object to the class action
16 components of the Settlement and/or this Agreement, including contesting the fairness of the
17 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
18 Litigation Expenses Payment and/or Class Representative Service Payments.

19 8.7.2 Participating Class Members may send written objections to the
20 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear
21 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
22 Hearing. A Participating Class Member who elects to send a written objection to the
23 Administrator must do so not later than 60 days after the Administrator's mailing of the Notice
24 Packet (plus an additional 14 days for Class Members whose Notice Packet was re-mailed). An
25 The Objection form attached as Exhibit D may be used for this purpose but is not required.

26 8.7.3 Non-Participating Class Members have no right to object to any of the class
27 action components of the Settlement.

28 8.8 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.

 8.8.1 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 Notice Packet, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payments, 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.

8.8.2 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).

8.8.3 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: Notice Packets mailed or re-mailed, Notice Packets returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Paychecks received and/or resolved, and checks mailed for Individual Class 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.

8.8.4 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 Paychecks. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

8.8.5 Administrator’s Declaration. Not later than 14 days before the date by which Plaintiffs are 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 the Notice Packets, the Notice Packets returned as undelivered, the re-mailing of Notice Packets, attempts to locate Class Members, the

1 total number of Requests for Exclusion from Settlement it received (both valid or invalid), the
2 number of written objections and attach the Exclusion List. The Administrator will supplement
3 its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible
4 for filing the Administrator's declaration(s) in Court.

5 8.8.6 Final Report by Administrator. Within 10 days after the Administrator
6 disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel
7 and Defense Counsel with a final report detailing its disbursements by employee identification
8 number only of all payments made under this Agreement. At least 15 days before any deadline
9 set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense
10 Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all
11 payments required under this Agreement. Class Counsel is responsible for filing the
12 Administrator's declaration in Court.

13 **9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on their records,
14 Defendants estimate that, as of the date of this Settlement Agreement, (1) there are 83 Class
15 Members and 9,163 Total Paychecks during the Class period. If the Paychecks and/or Class
16 Members as of the date the Court approves the settlement exceeds the referenced 9,163 Paychecks
17 and/or 83 Class Members by more than 10.00%, the Gross Settlement Amount, including the
18 Class Counsel Fees Payment, and the Class Representative Service Payments, will increase
19 proportionally according to the number of additional Paychecks or Class Members, whichever
20 results in a higher increase in the Gross Settlement Amount.

21 **10. DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for
22 Exclusion identified in the Exclusion List exceeds 20.00% of the total of all Class Members,
23 Defendants may, but are not obligated, elect to withdraw from the Settlement. The Parties agree
24 that, if Defendants withdraw, the Settlement shall be void ab initio, have no force or effect
25 whatsoever, and that neither Party will have any further obligation to perform under this
26 Agreement; provided, however, Defendants will remain responsible for paying all Settlement
27 Administration Expenses incurred to that point. Defendants must notify Class Counsel and the
28 Court of their election to withdraw not later than 7 days after the Administrator sends the final
Exclusion List to Defense Counsel; late elections will have no effect.

11. MOTION FOR FINAL APPROVAL. Not later than 16 court days before the

1 calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the
2 Settlement, a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for
3 Final Approval”). Plaintiffs shall provide drafts of these documents to Defense Counsel not later
4 than 7 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel
5 will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any
disagreements concerning the Motion for Final Approval.

6 11.1 Response to Objections. Each Party retains the right to respond to any objection
7 raised by a Participating Class Member, including the right to file responsive documents in Court
8 no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted
9 by the Court.

10 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
11 Approval on any material change to the Settlement (including, but not limited to, the scope of
12 release to be granted by Class Members), the Parties will expeditiously work together in good
13 faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final
14 Approval. The Court’s decision to award less than the amounts requested for the Class
15 Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation
16 Expenses Payment and/or Administrator Expenses Payment shall not constitute a material
modification to the Agreement within the meaning of this paragraph.

17 11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of
18 Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
19 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.

20 11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
21 and conditions of this Agreement, specifically including the Class Counsel Fees Payment and
22 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
23 respective counsel, and all Participating Class Members who did not object to the Settlement as
24 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
25 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
26 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver
27 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

1 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
2 the amount of the Net Settlement Amount.

3 11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If
4 the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
5 material modification of this Agreement (including, but not limited to, the scope of release to be
6 granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
7 expeditiously work together in good faith to address the appellate court's concerns and to obtain
8 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
9 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
10 the Court's award of the Class Representative Service Payments or any payments to Class
11 Counsel shall not constitute a material modification of the Judgment within the meaning of this
12 paragraph, as long as the Gross Settlement Amount remains unchanged.

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

16 **13. ADDITIONAL PROVISIONS.**

17 13.1 No Admission of Liability, Class Certification or Representative Manageability
18 for Other Purposes. This Agreement represents a compromise and settlement of highly disputed
19 claims. Nothing in this Agreement is intended or should be construed as an admission by
20 Defendants that any of the allegations in the Operative Complaint have merit or that Defendants
21 have any liability for any claims asserted; nor should it be intended or construed as an admission
22 by Plaintiffs that Defendants' defenses in the Action have merit. The Parties agree that class
23 certification and representative treatment is for purposes of this Settlement only. If, for any reason
24 the Court does not grant Preliminary Approval, Final Approval or enter Judgment, Defendants
25 reserve the right to contest certification of any class for any reasons, and Defendants reserve all
26 available defenses to the claims in the Action, and Plaintiffs reserve the right to move for class
27 certification on any grounds available and to contest Defendants' defenses. The Settlement, this
28 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

1 Settlement and this Agreement).

2 13.2 Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel,
3 Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval
4 of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or
5 cause or permit another person to disclose, disseminate or publicize, any of the terms of the
6 Agreement directly or indirectly, specifically or generally, to any person, corporation, association,
7 government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses,
8 all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter;
9 (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a
10 court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
11 government agency.

12 Each Party agrees to immediately notify each other Party of any judicial or agency
13 order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel, Defendants and
14 Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other
15 communication, before the filing of the Motion for Preliminary Approval, any with third party
16 regarding this Agreement or the matters giving rise to this Agreement except to respond only that
17 "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's
18 communications with Class Members in accordance with Class Counsel's ethical obligations
19 owed to Class Members.

20 13.3 No Solicitation. The Parties separately agree that they and their respective
21 counsel and employees will not solicit any Class Member to opt out of or object to the Settlement,
22 or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
23 Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical
24 obligations owed to Class Members.

25 13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this
26 Agreement together with its attached exhibits shall constitute the entire agreement between the
27 Parties relating to the Settlement, superseding any and all oral representations, warranties,
28 covenants, or inducements made to or by any Party.

13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant
and represent that they are authorized by Plaintiffs and Defendants, respectively, to take all
appropriate action required or permitted to be taken by such Parties pursuant to this Agreement

1 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
2 terms of this Agreement including any amendments to this Agreement.

3 13.6 Cooperation. The Parties and their counsel will cooperate with each other and
4 use their best efforts, in good faith, to implement the Settlement by, among other things,
5 modifying the Settlement Agreement, submitting supplemental evidence and supplementing
6 points and authorities as requested by the Court. In the event the Parties are unable to agree upon
7 the form or content of any document necessary to implement the Settlement, or on any
8 modification of the Agreement that may become necessary to implement the Settlement, the
9 Parties will seek the assistance of a mediator and/or the Court for resolution.

10 13.7 No Prior Assignments. The Parties separately represent and warrant that they
11 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
12 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
13 action, or right released and discharged by the Party in this Settlement.

14 13.8 No Tax Advice. Neither Plaintiffs, Class Counsel, Defendants nor Defense
15 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
16 Settlement be relied upon as such within the meaning of United States Treasury Department
17 Circular 230 (31 CFR Part 10, as amended) or otherwise.

18 13.9 Modification of Agreement. This Agreement, and all parts of it, may be
19 amended, modified, changed, or waived only by an express written instrument signed by all
20 Parties or their representatives, and approved by the Court.

21 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and
22 inure to the benefit of, the successors of each of the Parties.

23 13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will
24 be governed by and interpreted according to the internal laws of the state of California, without
25 regard to conflict of law principles.

26 13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and
27 preparation of this Agreement. This Agreement will not be construed against any Party on the
28 basis that the Party was the drafter or participated in the drafting.

13.13 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.

1 13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant
2 to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class
3 Counsel by Defendants in connection with the mediation, other settlement negotiations, or in
4 connection with the Settlement, may be used only with respect to this Settlement, and no other
5 purpose, and may not be used in any way that violates any existing contractual agreement, statute,
6 or rule of court. Not later than 90 days after the date when the Court discharges the
7 Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement
8 funds, Plaintiffs shall destroy, all paper and electronic versions of Class Data received from
9 Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants
10 make a written request to Class Counsel for the return, rather than the destructions, of Class Data.

11 13.15 Headings. The descriptive heading of any section or paragraph of this Agreement
12 is inserted for convenience of reference only and does not constitute a part of this Agreement.

13 13.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
14 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
15 weekend or federal legal holiday, such date or deadline shall be on the first business day
16 thereafter.

17 13.17 Notice. All notices, demands or other communications between the Parties in
18 connection with this Agreement will be in writing and deemed to have been duly given as of the
19 third business day after mailing by United States mail, or the day sent by email or messenger,
20 addressed as follows:

21 To Plaintiff:
22 David G. Spivak, Esq.
23 The Spivak Law Firm
24 8605 Santa Monica Bl
25 PMB 42554
26 West Hollywood, CA 90069
27 david@spivaklaw.com

28 To Defendant:
 Paul R. Burns, Esq.
 Law Offices of Paul R. Burns, P.C.
 2700 Gibraltar Road
 Santa Barbara, CA 93105
 paulburnslaw@gmail.com

1 13.18 Execution in Counterparts. This Agreement may be executed in one or more
2 counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this
3 Agreement shall be accepted as an original. All executed counterparts and each of them will be
4 deemed to be one and the same instrument if counsel for the Parties will exchange between
5 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
6 the existence and contents of this Agreement.

7 13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement
8 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
9 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
10 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
11 process.

12 04 / 23 / 2024
13 Dated: October 3, 2023

J.V.

By: Jose A. Frausto
JOSE FRAUSTO VILLEGAS

14 Dated: October 3, 2023

By: _____
JOSE MANUEL BARRAGAN

16 Dated: October 3, 2023

By: _____
Dario L. Pini

18 Dated: October 3, 2023

By: _____
Dario L. Pini for DLP Management
Co., Inc.

20 THE SPIVAK LAW FIRM

22 Dated: October 3, 2023

By: _____
DAVID G. SPIVAK, Attorneys for
Plaintiff(s), JOSE FRAUSTO

1 13.18 Execution in Counterparts. This Agreement may be executed in one or more
2 counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this
3 Agreement shall be accepted as an original. All executed counterparts and each of them will be
4 deemed to be one and the same instrument if counsel for the Parties will exchange between
5 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
6 the existence and contents of this Agreement.

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8 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
9 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
10 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
11 process.

12 Dated: October 3, 2023

By:

JOSE FRAUSTO VILLEGAS

14 04 / 19 / 2024

J.M.BG

15 Dated: October 3, 2023

By:

JOSE MANUEL BARRAGAN

17 Dated: October 3, 2023

By:

Dario L. Pini

20 Dated: October 3, 2023

By:

Dario L. Pini for DLP Management
Co., Inc.

24 THE SPIVAK LAW FIRM

26 Dated: October 3, 2023

By:

DAVID G. SPIVAK, Attorneys for
Plaintiff(s), JOSE FRAUSTO

1 13.18 Execution in Counterparts. This Agreement may be executed in one or more
2 counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this
3 Agreement shall be accepted as an original. All executed counterparts and each of them will be
4 deemed to be one and the same instrument if counsel for the Parties will exchange between
5 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
6 the existence and contents of this Agreement.

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8 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
9 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
10 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
11 process.

12 Dated: October 3, 2023

By: _____

JOSE FRAUSTO VILLEGAS

14 Dated: October 3, 2023

By: _____

JOSE MANUEL BARRAGAN

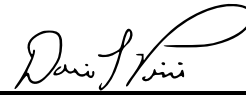
16 Dated: April 1st, 2024

By: _____

Dario L. Pini

18 Dated: April 1st, 2024

By: _____



Dario L. Pini for DLP Management
Co., Inc.

24 THE SPIVAK LAW FIRM

04 / 24 / 2024

26 Dated: October 3, 2023

By: _____


DAVID G. SPIVAK, Attorneys for
Plaintiff(s), JOSE FRAUSTO


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VILLEGAS, JOSE MANUEL
BARRAGAN, and all others similarly
situated

04 / 24 / 2024


Dated: October 3, 2023

BENOWITZ LAW CORPORATION

By: 
LOUIS M. BENOWITZ, Attorneys for
Plaintiff(s), JOSE FRAUSTO
VILLEGAS, JOSE MANUEL
BARRAGAN, and all others similarly
situated

LAW OFFICES OF PAUL R. BURNS, P.C.

Dated: April 1st, 2024

By: 
PAUL R. BURNS, Attorneys for
Defendant(s), DLP MANAGEMENT
CO., INC., AND DARIO L. PINI

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EXHIBIT A

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

(case name: Jose Frausto Villegas, et al. v. DLP Management Co., Inc. and number
21CV04500, 22CV01392)

***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 DLP Management Co., Inc. and Dario L. Pini (“Defendants”) for alleged violations of California’s labor laws. The Action was filed by Defendants’ employees Jose Frausto Villegas and Jose Manuel Barragan (“Plaintiffs”) and seek payment of wages and other relief for a class of 83 non-exempt, hourly employees (“Class Members”) Defendants employed during the Class Period (November 12, 2017 to the date of preliminary Court approval of the Settlement).

The proposed Settlement is a Class Settlement requiring Defendants to fund Individual Class Payments.

Based on Defendants’ records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$<<IndividualClassPaymentAmount>> (less withholding).** The estimated dollar value of a Paycheck is <<\$increment type value>>. The actual amount you may receive likely will be different and will depend on a number of factors. The individual payments amounts will vary. However, the average Individual Class Payment to a Class Member is estimated to be <<\$Average Individual Class Payment Amount>>. The highest Individual Class Payment to a Class Member is estimated to be <<\$Highest Individual Class Payment Amount>> and the lowest is estimated to be <<\$Lowest Individual Class Payment Amount>>.

The above estimates are based on Defendants’ records showing that **you received <<__>> Paychecks** during the Class Period. If you believe that you received more Paychecks 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. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the Final Approval Hearing. 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 Plaintiffs and Plaintiffs’ attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members to give up their rights to assert certain claims against Defendants.

If you worked for Defendants during the Class 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. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims against Defendants.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting a 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 claims for California labor law violations against Defendants.

Defendants 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

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment. In exchange, you will give up your right to assert the claims against Defendants that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement The Opt-out Deadline is <<RESPONSE DEADLINE>>	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. You can use the enclosed Election Not To Participate In Settlement form for this purpose. 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.
Participating Class Members Can Object to the Class Settlement Written Objections Must be Submitted by <<RESPONSE DEADLINE>>	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. You can use the enclosed Objection form for this purpose. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section 7 of this Notice.

<p>You Can Participate in the <<FinalApprovalHearingDate>> Final Approval Hearing</p>	<p>The Court’s Final Approval Hearing is scheduled to take place on <<FinalApprovalHearingDate>>. 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 whether or not they submitted a written objection. See Section 8 of this Notice.</p>
<p>You Can Challenge the Calculation of Your Paychecks</p> <p>Written Challenges Must be Submitted by <<RESPONSE DEADLINE>></p>	<p>The amount of your Individual Class Payment depends on how many pay periods in which you worked at least one day during the Class Period. The number Class Period Paychecks you received according to Defendants’ records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by <<RESPONSE DEADLINE>>. See Section 4 of this Notice. You can use the enclosed Paychecks Dispute form for this purpose.</p>

1. WHAT IS THE ACTION ABOUT?

Plaintiffs are former employees of Defendants. The Action accuses Defendants of violating California labor laws by failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to timely pay wages, and related violations of the Labor Code. Plaintiffs are represented by attorneys in the Action: David G. Spivak of The Spivak Law Firm and Louis M. Benowitz of Benowitz Law Corporation (“Class Counsel.”)

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with all applicable laws.

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

So far, the Court has made no determination whether Defendants or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and Defendants hired an experienced, neutral mediator 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, Plaintiffs and Defendants 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, Defendants do not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have 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. 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?

A. Gross Settlement Amount. Defendants Will Pay \$750,000.00 as the Gross Settlement Amount (Gross Settlement). Defendants have 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, Class Representative Service Payments, Class Counsel's attorney's fees and expenses, and the Administrator's expenses. Assuming the Court grants Final Approval, Defendants 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.

B. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiffs 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:

1. Attorney Fees and Costs. Up to \$250,000.00 (33.33% of the Gross Settlement to Class Counsel for attorneys' fees and up to \$20,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

2. Class Representative Service Payment. Up to \$15,000.00 as a Class Representative Service Payment to each Plaintiff for filing the Action, working with Class Counsel and representing the Class. A Class Representative Service Payment will be the only monies Plaintiffs will receive other than Plaintiffs' Individual Class Payments.

3. Administration Expenses. Up to \$10,000.00 to the Administrator for services administering the Settlement.

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

Based on their records, Defendants estimated that, as of the date of the Settlement, (1) there are 83 Class Members and 9,163 Total Paychecks during the Class period. If the Paychecks and/or Class Members as of the date the Court approves the settlement exceeds the referenced 9,163 Paychecks and/or 83 Class Members by more than 10.00%, the Gross Settlement Amount, including the Class Counsel Fees Payment, and the Class Representative Service Payments, will increase proportionally according to the number of additional Paychecks or Class Members, whichever results in a higher increase in the Gross Settlement Amount.

C. 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

1 Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class
2 Members based on their Class Period Paychecks.

3 D. Taxes Owed on Payments to Class Members. Plaintiffs and Defendants are asking
4 the Court to approve an allocation of 33.33% of each Individual Class Payment to taxable wages
5 (“Wage Portion”) and 66.67% to interest and penalties (“Non-Wage Portion.”). The Wage Portion
6 is subject to withholdings and will be reported on IRS W-2 Forms. The Administrator will report
7 the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms. Defendants’ share
8 of any employer payroll taxes to be paid in connection with the Settlement (e.g., FICA, FUTA,
9 payroll taxes, and/or any similar tax or charge – collectively “Employer Taxes”) shall be paid by
10 Defendants from the Gross Settlement Amount.

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

16 E. Need to Promptly Cash Payment Checks. The front of every check issued
17 for Individual Class Payments will show the date when the check expires (the void date). If you
18 don’t cash it by the void date, your check will be automatically cancelled, and the monies will be
19 deposited with the California Controller’s Unclaimed Property Fund
20 (https://www.sco.ca.gov/search_upd.html) in your name.

21 If the monies represented by your check is sent to the Controller’s Unclaimed Property Fund, you
22 should consult the rules of the Fund for instructions on how to retrieve your money. You can
23 contact the Unclaimed Property Fund at (800) 992-4647.

24 F. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated
25 as a Participating Class Member, participating fully in the Class Settlement, unless you notify the
26 Administrator in writing, not later than <<RESPONSE DEADLINE>>, that you wish to opt-out.
27 The easiest way to notify the Administrator is to email, fax, or mail a written and signed Request
28 for Exclusion by the <<RESPONSE DEADLINE>> Response Deadline. The Request for
Exclusion should be a letter from a Class Member or his/her representative setting forth a Class
Member’s name, present address, telephone number, and a simple statement electing to be
excluded from the Settlement. You may use the enclosed Election Not To Participate In
Settlement form for this purpose. Excluded Class Members (i.e., Non-Participating Class
Members) will not receive Individual Class Payments, but will preserve their rights to personally
pursue claims against Defendants for violations of California’s labor laws.

G. 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 Defendants have agreed that, in either case, the Settlement will be void: Defendants will not
pay any money and Class Members will not release any claims against Defendants.

1 H. Administrator. The Court has appointed a neutral company, ILYM Group, Inc.
2 (the “Administrator”) to send this Notice, calculate and make payments, and process Class
3 Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges
4 over Paychecks, mail and re-mail settlement checks and tax forms, and perform other tasks
5 necessary to administer the Settlement. The Administrator’s contact information is contained in
6 Section 9 of this Notice.

7 I. Participating Class Members’ Release. After the Judgment is final and Defendants
8 have fully funded the Gross Settlement, Participating Class Members will be legally barred from
9 asserting any of the claims released under the Settlement. This means that unless you opted out
10 by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be
11 part of any other lawsuit against Defendants or their officers, directors, employees, and agents for
12 wages based on the Class Period facts, as alleged in the Action and resolved by this Settlement.

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

14 The claims to be released by the Participating Class Members are limited to any
15 and all claims under state, federal, or local law, whether statutory or common law
16 arising out of the claims expressly pleaded the Actions and all other claims, such
17 as those under California Labor Code sections 201, 202, 203, 226.7, 510, 512,
18 558.1, 1182.12, 1194, 1197, 1198, and 2802, the Wage Orders, regulations, and/or
19 other provisions of law, that could have been pleaded based on the facts pleaded
20 in the Actions for: failure to pay employees all earned wages, including but not
21 limited to overtime at one and one half times regular wages and/ or overtime at
22 two times regular wages if applicable, failure to provide meal periods, failure to
23 authorize and permit rest periods, failure to indemnify for business expenses,
24 failure to timely pay final wages, and unfair competition under Business &
25 Professions Code sections 17200, et seq.

26 **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

27 A. Individual Class Payments. The Administrator will calculate Individual Class
28 Payments by (a) dividing the Net Settlement Amount by the total number of Paychecks received
by all Participating Class Members, and (b) multiplying the result by the number of Paychecks
received by each individual Participating Class Member.

B. Paycheck Challenges. The number of Paychecks you worked during the Class
Period, as recorded in Defendants’ records, are stated in the first page of this Notice. You have
until <<RESPONSE DEADLINE>> to challenge the number of Paychecks credited to you. You
can submit your challenge by signing and sending a letter to the Administrator by email, fax or
regular U.S. mail. You can use the enclosed Dispute form for this purpose. Section 9 of this Notice
has the Administrator’s contact information.

You need to support your challenge by submitting copies of pay stubs or other records.
The Administrator will accept Defendants’ calculation of Paychecks based on Defendants’

1 records as accurate unless you send copies of records containing contrary information. You
2 should send copies rather than originals because the documents will not be returned to you. The
3 Administrator will resolve Paycheck challenges based on your submission and on input from
4 Class Counsel (who will advocate on behalf of Participating Class Members) and Defendants’
Counsel. The Administrator’s decision is final. You can’t appeal or otherwise challenge its final
decision.

5 **5. HOW WILL I GET PAID?**

6 A. Participating Class Members. The Administrator will send, by U.S. mail, a single
7 check to every Participating Class Member (i.e., every Class Member who doesn’t opt-out).

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

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

12 Email, fax, or mail a written and signed letter with your name, present address, telephone
13 number, and a simple statement that you do not want to participate in the Settlement. You may
14 use the enclosed Election Not To Participate In Settlement form for this purpose. The
15 Administrator will exclude you based on any writing communicating your request be excluded.
16 Be sure to personally sign your request, identify the Action as *Jose Frausto Villegas, et al. vs.*
17 *DLP Management Co., Inc., et al.* Case Nos. 21CV04500, 22CV01392 and include your
18 identifying information (full name, address, telephone number, approximate dates of
19 employment, and social security number for verification purposes). You must make the request
20 yourself. If someone else makes the request for you, it will not be valid. You should send your
21 Request for Exclusion to the Administrator by email, fax, or send by regular U.S. mail. **The**
22 **Administrator must be sent your request to be excluded by <<RESPONSE DEADLINE>>, or it will be invalid.** Section 9 of the Notice has the Administrator’s contact information.

23 **7. HOW DO I OBJECT TO THE SETTLEMENT?**

24 Only Participating Class Members have the right to object to the Settlement. Before deciding
25 whether to object, you may wish to see what Plaintiffs and Defendants are asking the Court to
26 approve. At least 16 days before the Final Approval Hearing, Class Counsel and/or Plaintiffs will
27 file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why
28 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 Plaintiffs are requesting as a Class Representative Service Payment. 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 and the Settlement
Agreement on the Administrator’s Website <<ADMINISTRATOR WEBSITE>> or the Court’s
website <<COURT WEBSITE>>.

1 A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for
2 Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to
3 object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class
4 Counsel or Plaintiffs are too high or too low. **The deadline for sending written objections to
5 the Administrator is <<RESPONSE DEADLINE>>.** Be sure to tell the Administrator what
6 you object to, why you object, and any facts that support your objection. Make sure you identify
7 the Action, *Jose Frausto Villegas, et al. vs. DLP Management Co., Inc., et al.* Case Nos.
8 21CV04500, 22CV01392, and include your name, current address, telephone number, and
9 approximate dates of employment for Defendants and sign the objection. Section 9 of this Notice
10 has the Administrator's contact information. You may use the enclosed Objection form for this
11 purpose. You should send your objection to the Administrator by email, fax, or send by regular
12 U.S. mail.

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

18 **8. CAN I ATTEND THE FINAL APPROVAL HEARING?**

19 You can, but don't have to, attend the Final Approval Hearing on <<FINAL APPROVAL
20 HEARING DATE>> at <<FINAL APPROVAL HEARING TIME>> in Department 4 of the Santa
21 Barbara Superior Court, located at Anacapa Division, 1100 Anacapa Street, Santa Barbara, CA
22 93101. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement
23 and how much of the Gross Settlement will be paid to Class Counsel, Plaintiffs, and the
24 Administrator. The Court will invite comment from objectors, Class Counsel and Defense
25 Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally
26 or virtually by <<CourtConnect/CourtCall/MicrosoftTeams>>
27 (<https://www.<<CourtVirtualAppearanceLink>>>). Check the Court's website for the most current
28 information.

19 It's possible the Court will reschedule the Final Approval Hearing. You should check the
20 Administrator's website <<ADMINISTRATOR WEBSITE>> beforehand or contact Class Counsel
21 to verify the date and time of the Final Approval Hearing.

22 **9. HOW CAN I GET MORE INFORMATION?**

23 The Agreement sets forth everything Defendants and Plaintiffs have promised to do under the
24 proposed Settlement. The easiest way to read the Agreement, the Judgment or any other
25 Settlement documents is to go to the Administrator's website at <<CLERK OF COURT'S PHONE
26 NUMBER>>. You can also telephone or send an email to Class Counsel or the Administrator
27 using the contact information listed below, or consult the Superior Court website by going to
28 (<http://www.<<COURT'S WEBSITE>>.aspx>) and entering the Case Number for the Action, Case
No. 21CV04500. You can also make an appointment to personally review court documents in the
Clerk's Office at the Anacapa Division by calling <<CLERK OF COURT'S PHONE NUMBER>>.

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

Class Counsel:

Name of Attorney: David G. Spivak
Email Address: david@spivaklaw.com
Name of Firm: The Spivak Law Firm
Mailing Address: 8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
Telephone: (213) 725-9094

Administrator:

Name of Company: ILYM Group, Inc.
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 (https://www.sco.ca.gov/search_upd.html) for instructions on how to retrieve the funds. You can contact the Unclaimedx Property Fund at (800) 992-4647.

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.

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EXHIBIT B

1 *Jose Frausto Villegas, et al. vs. DLP Management Co., Inc., et al.*
2 **Superior Court of the State of California, County of Santa Barbara**
3 Case Nos. 21CV04500, 22CV01392

4 **ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM**

5 **IF YOU WANT TO BE INCLUDED IN THIS CLASS ACTION SETTLEMENT AND BE ELIGIBLE FOR**
6 **A SHARE OF THE SETTLEMENT PROCEEDS,**
7 **DO NOT FILL OUT THIS FORM.**

8 **IF YOU DO NOT WANT TO BE INCLUDED IN THE SETTLEMENT, YOU MUST COMPLETE AND**
9 **SIGN THIS DOCUMENT AND MAIL IT TO THE ADDRESS BELOW, EMAILED, FAXED, OR**
10 **POSTMARKED NOT LATER THAN <<RESPONSE DEADLINE>>:**

11 *Jose Frausto Villegas, et al. vs. DLP Management Co., Inc., et al. Class Action Administrator*
12 c/o ____
13 ____
14 ____

15 I declare as follows: I have received notice of the proposed settlement in this action and I wish to be
16 excluded from the class and ***not*** to participate in the proposed settlement. I understand this means that I will not be
17 bound by the Settlement and also will not share in the settlement proceeds.

18 (Typed or Printed Name)

19 (Address)

20 (City, State, Zip Code)

21 (Telephone Number, Including Area Code)

22 (Identification Number)

23 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and
24 correct and was executed on ____.

25 Dated: ____.
26 (Signature)

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EXHIBIT C

1 **PAYCHECK DISPUTE FORM**

2 Superior Court of The State of California

3 For The County of Santa Barbara

4 *Jose Frausto Villegas, et al. vs. DLP Management Co., Inc., et al.* Case Nos. 21CV04500,
5 22CV01392

6 Indicate Name/Address Changes, if any:

7 <<Name>> _____

8 <<Address>> _____

9 <<City>>, <<State>> <<Zip Code>> _____

10 XX - XX - _____

11 TO ALL OF DLP MANAGEMENT CO., INC. AND DARIO PINI'S NON-EXEMPT
12 CALIFORNIA EMPLOYEES PAID BY SALARY OR HOURLY FROM NOVEMBER 12,
13 2017 THROUGH THE DATE OF PRELIMINARY COURT APPROVAL OF THE
14 SETTLEMENT:

15 The amount of your estimated Settlement Award is based upon the number of Pay periods you
16 worked between November 12, 2017 and the date of preliminary Court approval of the Settlement
17 and Pay periods you worked between and the date of preliminary Court approval of the
18 Settlement. "Individual Class Paychecks" are defined as any Paycheck for a pay period in which
19 you worked at least one (1) day as a non-exempt employees paid on an hourly basis or by salary
20 of DLP Management Co., Inc., and Dario L. Pini ("Defendant") in California during the calendar
21 week. The number of Class Paychecks applicable to your claim are set forth below.

22 **YOUR ELIGIBLE PAYCHECKS**

23 Defendants' records indicate that you received <<number of Paychecks>> Paychecks between
24 November 12, 2017 and the date of preliminary Court approval of the Settlement and <<number
25 of Paychecks>> Paychecks between through the date of preliminary Court approval of the
26 Settlement.

27 **YOUR ESTIMATED SETTLEMENT AWARD AND DISPUTE PROCEDURE**

28 Under the terms of the Class Action Settlement, you are entitled to receive a settlement payment
in the approximate estimated amount of <<\$Settlement Share Amount>>, minus all applicable
payroll and tax deductions, after the Court approves the Settlement and it goes into effect. This
process may take six months or more. You will receive a Form W-2 reflecting the payment to
you. Your Settlement Share reflected on this Notice is only an estimate. The exact amount of the
payment could vary, up or down.

If you wish to dispute the number of November 12, 2017 credited to you, or anything else about
your employment status, you must complete and return this form by indicating what you believe
is incorrect on the blank lines below and return it on or before <<RESPONSE DEADLINE>> to

1 the Administrator by email, fax, or regular U.S. Mail with proof of the submission date (such as
2 a postmark or delivery service date stamp). You may use this Paychecks Dispute form for this
3 purpose. You must also send any documents or other information that you contend supports your
4 belief that the information set forth above is incorrect. The Administrator will resolve any dispute
5 based upon Defendants' records and any information you provide. Please be advised that the
6 information on this Paychecks Dispute Form is presumed to be correct unless the documents you
7 submit are company records from Defendants.

8 **UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF**
9 **PAYCHECKS, RECEIPT OF A SETTLEMENT PAYMENT, OR YOUR**
10 **EMPLOYMENT STATUS, YOU DO NOT NEED TO TAKE ANY ACTION**

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EXHIBIT D

1 **OBJECTION FORM**

2 ***Jose Frausto Villegas, et al. vs. DLP Management Co., Inc., et al.*** Superior Court of the
3 **State California, County of Santa Barbara**
4 **Case Nos. 21CV04500 and 22CV01392**

5 Please verify and/or complete any missing identifying information:

6 CPT ID: <<CPT ID>>

7 <<Name>>

8 <<Address1>>

9 <<Address2>>

<<City>>, <<State>> <<Zip>>

CORRECT NAME AND ADDRESS HERE:

Telephone Number (_____) _____ - _____

10 **THIS FORM IS TO BE USED ONLY IF YOU WANT TO PARTICIPATE IN THE**
11 **SETTLEMENT, BUT YOU OBJECT TO THE TERMS OF THE SETTLEMENT. IF**
12 **YOU OBJECT TO THE SETTLEMENT, YOU SHOULD SIGN AND COMPLETE THIS**
13 **FORM ACCURATELY AND IN ITS ENTIRETY (OR ONE LIKE IT), AND YOU**
14 **SHOULD EMAIL IT TO <<_____@_____.COM>>, FAX IT TO <<XXX-XXX-**
15 **XXXX>>, OR MAIL IT BY FIRST CLASS U.S. MAIL TO THE ADMINISTRATOR SO**
16 **THAT IT IS POSTMARKED ON OR BEFORE <<RESPONSE DEADLINE>>. THE**
17 **ADDRESS FOR THE ADMINISTRATOR IS NOTED ON PAGE TWO OF THIS FORM.**

18 **IF YOU DO NOT OBJECT TO THE SETTLEMENT, DO NOT SUBMIT THIS FORM.**
19 **THE ADMINISTRATOR WILL SEND THIS OBJECTION AND ANY SUPPORTING**
20 **DOCUMENTS TO THE ATTORNEYS FOR THE PARTIES. THE ATTORNEYS FOR**
21 **THE PARTIES WILL FILE THE OBJECTION WITH THE COURT.**

22 The Court will consider your objection at the Final Approval Hearing if you timely submit it.
23 Include any and all evidence and supporting papers (including, without limitation, all briefs,
24 written evidence, and declarations) that you would like the Court to consider. However, you may
25 speak to the Court at the final approval hearing whether or not you submit a timely objection.

26 [] I OBJECT to the *Jose Frausto Villegas, et al. v. DLP Management Co., Inc., et al.*
27 Settlement on the following grounds (if additional space necessary, please include additional
28 sheets of paper):

1
2 [] I am or will be represented by an attorney (provide name and address of attorney on lines
3 below if applicable):

4 _____
5 _____
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9
10 Executed on _____, 2023

(Signature)

<<Name>>

(Printed Name)

14
15 EMAIL TO THE ADMINISTRATOR: <<_____@_____.COM>>

16 FAX TO THE ADMINITRATOR: <<(XXX) XXX-XXXX>>

17 MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL
18 POSTMARKED NOT LATER THAN <<RESPONSE DEADLINE>>:

19 *Jose Frausto Villegas, et al. v. DLP Management Co., Inc., et al.*

Administrator

[ADDRESS]

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EXHIBIT E

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA
(UNLIMITED JURISDICTION)

JOSE FRAUSTO VILLEGAS, on behalf of
himself, all others similarly situated, and the
general public,

Plaintiff,

vs.

DLP MANAGEMENT CO., INC., a California
corporation d/b/a DLP MANAGEMENT CO and
DLP MANAGEMENT INC.; and DOES 1–50,
inclusive,

Defendants.

Lead Case No.: 21CV04500
Consolidated with: 22CV01392
[Hon. Thomas P. Anderle, Department 3]

[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT

Action filed: November 12, 2021
Dept: 4, The Honorable Thomas
P. Anderle

JOSE MANUEL BARRAGAN, on behalf of
himself, all others similarly situated, and
the general public,

Plaintiff,

vs.

DLP MANAGEMENT CO., INC., a
California: corporation doing business in
California as DLP MANAGEMENT CO and
as DLP MANAGEMENT INC. and DLP
MANAGEMENT INC; DARIO L. PINI, an
individual; and DOES 1-50, inclusive,

Defendants.

Case No.: 22CV01392

The Motion of Plaintiffs Jose Frausto Villegas and Jose Manuel Barragan (hereafter referred to as “Plaintiffs”) for Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court, The Honorable Thomas P. Anderle presiding. The Court having considered the Motion, the Class Action Settlement Agreement and Class Notice (“Settlement” or “Settlement Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

1. The Court grants preliminary approval of the Settlement and the Settlement Class based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the final hearing. The Court will make a determination at the hearing on the motion for final approval of class action settlement (the “Final Approval Hearing”) as to whether the Settlement is fair, adequate and reasonable to the Settlement Class.

2. For purposes of this Preliminary Approval Order, the “Settlement Class” means (collectively “Class Members”), who worked anytime during the Class Period. The “Class Period” shall mean the period of time from November 12, 2017, through the date of preliminary Court approval of the Settlement. The Parties agree that the Class only consists of the 81 employees Defendants disclosed to the Administrator as part of the *Belair-West* process and the two individuals the Parties identified in the Memorandum of Understanding that the Parties signed after the mediation.

3. Based on its records, Defendants estimate that, as of the date of the Settlement Agreement, (1) there are 83 Class Members and 9,163 Total Paychecks during the Class period. If the Paychecks and/or Class Members as of the date the Court approves the settlement exceeds the referenced 9,163 Paychecks and/or 83 Class Members by more than 10.00%, the Gross Settlement Amount, including the Class Counsel Fees Payment, and the Class Representative Service Payments, will increase proportionally according to the number of additional Paychecks or Class Members, whichever results in a higher increase in the Gross Settlement Amount.

4. “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.

5. This action is provisionally certified pursuant to section 382 of the California Code of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for

1 purposes of settlement only with respect to the proposed Settlement Class.

2 6. Not later than 21 days after the Court grants Preliminary Approval of the
3 Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the
4 form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
5 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
6 of the Settlement and for no other purpose, and restrict access to the Class Data to Administrator
7 employees who need access to the Class Data to effect and perform under the Settlement
8 Agreement. Defendants have a continuing duty to immediately notify Class Counsel if they
9 discover that the Class Data omitted class member identifying information and to provide
10 corrected or updated Class Data as soon as reasonably feasible. Without any extension of the
11 deadline by which Defendants must send the Class Data to the Administrator, the Parties and their
12 counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any
13 issues related to missing or omitted Class Data.
14

15 7. No later than three (3) business days after receipt of the Class Data, the
16 Administrator shall notify Class Counsel that the list has been received and state the number of
17 Class Members, Paychecks, and Pay Periods in the Class Data.
18

19 8. Using best efforts to perform as soon as possible, and in no event later than 21
20 days after receiving the Class Data, the Administrator will send to all Class Members identified
21 in the Class Data, via first-class United States Postal Service ("USPS") mail, the Notice Packet
22 with Spanish translation, if applicable substantially in the forms attached to this order as **Exhibits**
23 **A, B, C, and D.** The first page of the Class Notice shall prominently estimate the dollar amounts
24 of any Individual Class Payment payable to the Class Member, and the number of Paychecks used
25 to calculate these amounts. Before mailing Notice Packets, the Administrator shall update Class
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1 Member addresses using the National Change of Address database.

2 9. Not later than 3 business days after the Administrator's receipt of any Notice
3 Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice Packet
4 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding
5 address, the Administrator shall conduct a Class Member Address Search, and re-mail the Notice
6 Packet to the most current address obtained. The Administrator has no obligation to make further
7 attempts to locate or send Notice Packet to Class Members whose Notice Packet is returned by
8 the USPS a second time.
9

10 10. Class Counsel's contact information is David G. Spivak, Esq., The Spivak Law
11 Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069. Defense Counsel's
12 contact information is Paul R. Burns, Esq., Law Offices of Paul R. Burns, P.C., 2700 Gibraltar
13 Road, Santa Barbara, CA, 93105.
14

15 11. The deadlines for Class Members' written objections, Challenges to Paychecks
16 (disputes), and Requests for Exclusion will be extended an additional 14 days beyond the 60 days
17 otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The
18 Administrator will inform the Class Member of the extended deadline with the re-mailed Notice
19 Packet.
20

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

13. Requests for Exclusion. 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 Notice Packet (plus an additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her 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. An Election Not to Participate in Settlement form, attached as Exhibit B, may be used for this purpose but is not required.

14. 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.

15. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under the Settlement Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class

Members' Releases under Paragraphs 6.2 and 6.3 of the Settlement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

16. 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.

17. Challenges to Calculation of Paychecks. Each Class Member shall have 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members whose Notice Packet is re-mailed) to challenge the number of Class Paychecks allocated to the Class Member in the Class Notice. This is also known as a dispute. A Paycheck Dispute form, attached as Exhibit C, may be used for this purpose but is not required. 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 Paychecks 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 Paychecks shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Paychecks to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

18. Objections to Settlement. 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 Payments.

19. Participating Class Members may send written objections to the Administrator, by

1 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire
2 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
3 Participating Class Member who elects to send a written objection to the Administrator must do
4 so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional
5 14 days for Class Members whose Notice Packet was re-mailed). An The Objection form attached
6 as Exhibit D may be used for this purpose but is not required.

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

10 21. Not later than 14 days before the date by which Plaintiffs are required to file the
11 Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and
12 Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and
13 compliance with all of its obligations under the Settlement Agreement, including, but not limited
14 to, its mailing of the Notice Packets, the Notice Packets returned as undelivered, the re-mailing
15 of Notice Packets, attempts to locate Class Members, the total number of Requests for Exclusion
16 from Settlement it received (both valid or invalid), the number of written objections and attach
17 the Exclusion List. The Administrator will supplement its declaration as needed or requested by
18 the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's
19 declaration(s) in Court.

21 22. The Court approves, as to form and content, the Class Notice in substantially the
22 form attached as Exhibit A to this Order, the Election Not to Participate in Settlement form in
23 substantially the form attached as Exhibit B to this Order, the Paychecks Dispute form in
24 substantially the form attached as Exhibit C to this Order, and the Objection form in substantially
25 the form attached as Exhibit D to this Order.
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23. The Court approves, for settlement purposes only, David G. Spivak of The Spivak Law Firm and Louis M. Benowitz of Benowitz Law Corporation as Class Counsel.

24. The Court approves, for settlement purposes only, Jose Frausto Villegas and Jose Manuel Barragan as the Class Representatives.

25. The Court approves ILYM Group, Inc. as the Administrator.

26. The Court preliminarily approves Class Counsel's request for attorneys' fees and costs subject to final review by the Court.

27. The Court preliminarily approves the estimated Administrator costs payable to the Administrator subject to final review by the Court.

28. The Court preliminarily approves Plaintiffs' Class Representative Service Payments subject to final review by the Court.

29. A Final Approval Hearing shall be held on ____ at .m. in Department 4 of the Superior Court for the State of California, County of Santa Barbara, located at the Anacapa Division, 1100 Anacapa Street, Santa Barbara, CA 93101 to consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by this Preliminary Approval Order, and to consider the application of Class Counsel for attorneys' fees and costs and the Class Representative Service Payments to the Class Representatives. The notice of motion and all briefs and materials in support of the motion for final approval of class action settlement and motion for attorneys' fees and litigation costs shall be served and filed with this Court on or before ____.

Plaintiffs' counsel must give notice to any objecting party of any continuance of the hearing of the motion for final approval.

30. If for any reason the Court does not execute and file a Final Approval Order and judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the

1 proposed Settlement that is the subject of this order, and all evidence and proceedings had in
2 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the
3 litigation, as more specifically set forth in the Settlement.

4 31. The Court expressly reserves the right to adjourn or continue the Final Approval
5 Hearing from time to time without further notice to members of the Class. The Plaintiffs shall
6 give prompt notice of any continuance to Settlement Class Members who object to the Settlement.
7

8 **IT IS SO ORDERED.**

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11 **DATE**

11 **THE HONORABLE THOMAS P.**
12 **ANDERLE**
13 **SUPERIOR COURT JUDGE**
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA
(UNLIMITED JURISDICTION)

JOSE FRAUSTO VILLEGAS, on behalf of
himself, all others similarly situated, and the
general public,

Plaintiff,

vs.

DLP MANAGEMENT CO., INC., a California
corporation d/b/a DLP MANAGEMENT CO and
DLP MANAGEMENT INC.; and DOES 1–50,
inclusive,

Defendants.

Lead Case No.: 21CV04500
Consolidated with: 22CV01392
[Hon. Thomas P. Anderle, Department 3]

**[PROPOSED] FINAL ORDER AND
JUDGMENT APPROVING CLASS
ACTION SETTLEMENT**

Action filed: November 12, 2021
Dept: 4, The Honorable Thomas
P. Anderle

1 JOSE MANUEL BARRAGAN, on behalf of
2 himself, all others similarly situated, and
3 the general public,

4 Plaintiff,

5 vs.

6 DLP MANAGEMENT CO., INC., a
7 California: corporation doing business in
8 California as DLP MANAGEMENT CO and
9 as DLP MANAGEMENT INC. and DLP
10 MANAGEMENT INC; DARIO L. PINI, an
individual; and DOES 1-50, inclusive,

Defendants.

Case No.: 22CV01392

11 This matter came on for hearing on ____ at ____m. in Department 4 of the above-captioned
12 court on Plaintiffs' Motion for Final Approval of a Class Action Settlement pursuant to California
13 Rules of Court, Rule 3.769, as set forth in the Joint Stipulation of Class Action Settlement and
14 Release of Claims (the "Settlement") filed herewith which provides for a Gross Settlement
15 Amount ("GSA") of up to \$750,000.00 in compromise of all disputed claims on behalf of during
16 the period of November 12, 2017 to the date of preliminary Court approval of the Settlement
17 ("Settlement Class Period"). All capitalized terms used herein shall have the same meaning as
18 defined in the Settlement.
19

20 In accordance with the Court's prior Order Granting Preliminary Approval of Class
21 Action Settlement, Class Members have been given notice of the terms of the Settlement and the
22 opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its
23 terms. Having received and considered the Settlement, the supporting papers filed by the Parties,
24 and the evidence and argument received by the Court in conjunction with the motions for
25 preliminary and final approval of the Settlement, the Court grants final approval of the Settlement
26 and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING
27

1 DETERMINATIONS¹:

2 1. The Court has jurisdiction over the subject matter of the Action and over all Parties
3 to the Action, including all Class Members. Pursuant to this Court's Order Granting Preliminary
4 Approval of Class Action Settlement of ___, the Notice Packet was sent to each Class Member
5 by First Class U.S. mail. The Notice Packet informed Class Members of the terms of the
6 Settlement, their right to receive their proportional share of the Settlement, their right to request
7 exclusion, their right to comment upon or object to the Settlement, and their right to appear in
8 person or by counsel at the final approval hearing and be heard regarding final approval of the
9 Settlement. Adequate periods of time were provided by each of these procedures. No member of
10 the Settlement Class presented written objections to the proposed Settlement as part of this notice
11 process, stated an intention to appear, or actually appeared at the final approval hearing.
12

13 2. For purposes of this Final Order and Judgment, the Class Members are during the
14 Class Period. at any time during the period of November 12, 2017 to the date of preliminary Court
15 approval of the Settlement ("Settlement Class Period").
16

17 3. The Court finds and determines that the notice procedure afforded adequate
18 protections to Class Members and provides the basis for the Court to make an informed decision
19 regarding final approval of the Settlement based on the responses of Class Members. The Court
20 finds and determines that the notice provided in this case was the best notice practicable, which
21 satisfied the requirements of law and due process as to all persons entitled to such notice.
22

23 **Release by Plaintiffs and Class Members.** The Parties agree that it is their intent that the
24

25
26 ¹ A true and correct copy of the Court's ruling on the Motion for Final Approval of Class Action
27 Settlement entered on [REDACTED] is attached hereto as **Exhibit A** and incorporated by reference. A true
28 and correct copy of the Court's Minute Order dated [REDACTED] is attached hereto as **Exhibit B** and
incorporated by reference.

1 resolution set forth in this Settlement will release and discharge the Released Claims by way of
2 any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action
3 of any kind by each and all of the Settlement Class Members (including participation to any extent
4 in any representative or collective action) against the Released Parties. This release will not take
5 effect until Defendants have paid the Gross Settlement Amount in full per this Settlement
6 Agreement.

7
8 **“Released Claims”** shall mean all claims any and all claims under state, federal, or local
9 law, whether statutory or common law arising out of the claims expressly pleaded the Actions
10 and all other claims, such as those under California Labor Code sections 201, 202, 203, 226.7,
11 510, 512, 558.1, 1182.12, 1194, 1197, 1198, and 2802, the Wage Orders, regulations, and/or other
12 provisions of law, that could have been pleaded based on the facts pleaded in the Actions for:
13 failure to pay employees all earned wages, including but not limited to overtime at one and one
14 half times regular wages and/ or overtime at two times regular wages if applicable, failure to
15 provide meal periods, failure to authorize and permit rest periods, failure to indemnify for
16 business expenses, failure to timely pay final wages, and unfair competition under Business &
17 Professions Code sections 17200, et seq.

18
19 **“Released Parties”** shall mean Defendants and any of their present and former parent
20 companies, subsidiaries, divisions, concepts, related or affiliated companies and its shareholders,
21 officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any
22 individual or entity that Defendant Dario Pini has any ownership interest in that could be liable
23 for any of the Released Claims, and Defendants’ counsel of record in the Actions.

24
25 2. The Court further finds and determines that the terms of the Settlement are fair,
26 reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and
27

1 provisions of the Settlement, including the release of claims contained therein, should be and
2 hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement
3 according to its terms. As of the Effective Date of Settlement, and for the duration of the
4 Settlement Class Period, all Class Members are hereby deemed to have waived and released all
5 Released Claims and are forever barred and enjoined from prosecuting the Released Claims
6 against the Released Parties as fully set forth in the Settlement. No objections were received by
7 the Parties or the Court through the date of this Final Order and Judgment. The Court finds ____
8 Class Member(s) - ____ - submitted a request for exclusion from the Settlement as determined by
9 the Administrator and therefore is/are not in the Settlement Class.

11 3. The Court finds and determines that the Settlement Shares to be paid to
12 Participating Class Members as provided for by the Settlement are fair and reasonable. The Court
13 hereby grants final approval to, and orders the payment of, those amounts be made to the
14 Participating Class Members in accordance with the terms of the Settlement.

16 4. The Court further grants final approval to and orders that the following payments
17 be made in accordance with the terms of the Settlement:

18 a. Class Counsel fees & costs of \$250,000.00 in attorneys' fees and
19 \$20,000.00 in litigation costs to Class Counsel;

20 b. \$15,000.00 as a Class Representative Service Payment award payable to
21 each Plaintiff for their services as Class Representatives; and

22 c. \$10,000.00 in costs of the Administrator payable to ILYM Group, Inc. for
23 its services as the Administrator.

25 7. The settlement shall proceed as directed in the Settlement, and no payments
26 pursuant to the Settlement shall be distributed until after the Effective Date of Settlement. Without
27

1 affecting the finality of this Final Order and Judgment in any way, the Court retains jurisdiction
2 of all matters relating to the interpretation, administration, implementation, effectuation and
3 enforcement of this Final Order and Judgment and the Settlement pursuant to California Rule of
4 Court 3.769(h).

5
6 8. Within 60 calendar days of the Effective Date of Settlement, Defendants shall
7 deposit the Settlement proceeds in an account designated by the Administrator: (i) the total
8 amount of all Individual Class Payments to Participating Class Members, (ii) the Court approved
9 Class Counsel fees & costs, (iii) the Court-approved Class Representative Service Payments, and
10 (iv) the Court-approved costs of the Administrator.

11 9. Defendants' payment of such sums shall be the sole financial obligation of
12 Defendants under the Settlement, and shall be in full satisfaction of all claims released herein,
13 including, without limitation, all claims for wages, penalties, interest, attorneys' fees, costs and
14 expenses.
15

16 10. Pursuant to CCP 384 and the Settlement, Participating Class Members shall have
17 one hundred and eighty (180) days from the date of the check's issuance to cash their Settlement
18 Share check. After the expiration of the 180-day period, on Defendants' behalf, the Administrator
19 shall remit any amounts from voided settlement checks and otherwise unclaimed, plus interest on
20 the Residue at the legal rate of interest from the date of entry of the initial judgement to the
21 California Unclaimed Property Fund.
22

23 11. The Parties shall file a final accounting report by _____. A non-appearance case
24 review re submission of a final report is scheduled for _____ at _____.m. in **Department 4**. The
25 Parties shall also prepare and file a stipulation and proposed order and proposed Amended Final
26 Order and Judgment by _____ which includes the amount of distribution of unpaid cash Residue,
27
28

1 and unclaimed or abandoned funds to the non-party, the accrued interest on that sum. The
2 stipulation shall be signed by counsel for the class and defense counsel in accord with the
3 proposed Amended Final Order and Judgment. If there are objections by any party or non-party,
4 class counsel shall immediately notify the Court and the matter will be set for further hearing. A
5 non-appearance hearing for the lodging of the stipulation and proposed order and separate
6 amended judgment is scheduled for ____ at ____m. in Department 4.

8 12. Nothing in this Final Order and Judgment shall preclude any action to enforce the
9 Parties' obligations under the Settlement or hereunder, including the requirement that Defendants
10 deposit funds for distribution by the Administrator to Participating Class Members in accordance
11 with the Settlement.

12 13. The Court hereby enters final judgment in this case in accordance with the terms
13 of the Settlement, Order Granting Preliminary Approval of Class Action Settlement, and this Final
14 Order and Judgment.

15 14. The Parties are hereby ordered to comply with the terms of the Settlement.

16 15. The Parties shall bear their own costs and attorneys' fees except as otherwise
17 provided by the Settlement and this Final Order and Judgment.

18 16. The Settlement is not an admission by Defendants nor is this Final Order and
19 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by
20 Defendants. Furthermore, the Settlement is not a concession by Defendants and shall not be used
21 as an admission of any fault, omission, or wrongdoing by Defendants. Neither this Final Order
22 and Judgment, the Settlement, any document referred to herein, any exhibit to any document
23 referred to herein, any action taken to carry out the Settlement, nor any negotiations or
24 proceedings related to the Settlement are to be construed as, or deemed to be evidence of, or an
25
26
27

1 admission or concession with regard to, the denials or defenses of Defendants, and shall not be
2 offered in evidence in any proceeding against the Parties hereto in any Court, administrative
3 agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of this
4 Final Order and Judgment. This Final Order and Judgment, the Settlement and exhibits thereto,
5 and any other papers and records on file in the Action may be filed in this Court or in any other
6 litigation as evidence of the settlement by Defendants to support a defense of res judicata,
7 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to
8 the Released Claims.
9

10 17. This document shall constitute a Judgment for purposes of California Rule of
11 Court 3.769(h).

12 **IT IS SO ORDERED, ADJUDGED AND DECREED.**
13
14

15 _____
16 **DATE**

17 **THE HONORABLE THOMAS P.**
18 **ANDERLE**
19 **SUPERIOR COURT JUDGE**
20
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26
27

EXHIBIT 2

ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
11/12/2021 9:49 AM
By: Narzralli Baksh, Deputy

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12 Attorneys for Plaintiff,

JOSE FRAUSTO VILLEGAS and all others similarly situated

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF SANTA BARBARA**

15 **(UNLIMITED JURISDICTION)**

16 JOSE FRAUSTO VILLEGAS, on behalf of
17 himself, all others similarly situated, and the
18 general public,

19 *Plaintiff,*

20 vs.

21 DLP MANAGEMENT CO., INC., a
22 California corporation d/b/a DLP
23 MANAGEMENT CO and DLP
24 MANAGEMENT INC.; and DOES 1–50,
inclusive,

25 *Defendants.*

Case No.: 21CV04500

CLASS ACTION

COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1182.12, 1194, 1197, and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 226.7 and 1198);
3. Failure to provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Failure to Reimburse for Expenses (Lab. Code §§ 1198 and 2802);
5. Waiting Time Penalties (Lab. Code §§ 201, 202, and 203; and
6. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*).

JURY TRIAL DEMANDED



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1 Plaintiff, JOSE FRAUSTO VILLEGAS (hereafter "Plaintiff"), on behalf of himself and
2 all others similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against Defendant DLP MANAGEMENT CO.,
5 INC., a California corporation d/b/a DLP MANAGEMENT CO and DLP MANAGEMENT
6 INC.; and DOES 1–50, inclusive (collectively "Defendants") for alleged violations of the
7 California Labor Code, Industrial Welfare Commission Order No. 5–2001 (hereafter "the Wage
8 Order"), and the Business and Professions Code.

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him and other similarly situated current and former employees in California for unpaid wages and
11 other related relief. These claims are based on Defendants' failures to: (1) Pay all wages earned
12 for all hours worked; (2) Provide all meal periods; (3) Authorize and permit all rest periods; (4)
13 Indemnify for all expenses; (5) Timely pay all wages upon termination of employment; and (6)
14 Fairly compete. Accordingly, Plaintiff now seeks to recover unpaid wages, statutory penalties,
15 interest, and related relief through this class action.

16 **JURISDICTION AND VENUE**

17 3. This court has subject matter jurisdiction because the aggregate claims of Plaintiff,
18 inclusive of all relief, place more than \$25,000 in controversy.

19 4. There is no basis for federal question subject matter jurisdiction in this case.
20 Specifically, Plaintiff asserts claims that solely arise under California law, rather than federal law.

21 5. There is also no basis for federal diversity jurisdiction in this case.

22 6. Venue is proper in Santa Barbara County pursuant to California Code of Civil
23 Procedure § 395(a) and § 395.5 in that liability arose in Santa Barbara County because at least
24 some of the transactions that are the subject matter of this Complaint occurred therein and/or
25 because each defendant is found, maintains offices, transacts business, and/or has an agent
26 therein.

27 **PARTIES**

28 7. Plaintiff JOSE FRAUSTO VILLEGAS is a resident of California.

8. Defendant DLP MANAGEMENT CO., INC. d/b/a DLP MANAGEMENT CO
and DLP MANAGEMENT INC. is a corporation organized and existing under the laws of
California and also a citizen of California based on Plaintiff's information and belief.



or “Class Members”).

15. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definition with greater specificity, by further division into subclasses and/or by limitation to particular issues.

16. **Numerosity:** The Class Members are so numerous that the individual joinder of each individual Class Member is impractical. While Plaintiff does not currently know the exact number of Class Members, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California laws.

17. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class Members. These questions include, but are not limited to:

A. Whether Defendants paid the Class Members at least the minimum wage for all hours worked;

B. Whether Defendants paid the Class Members at the correct overtime and doubletime rate for all overtime hours worked;

C. Whether Defendants failed to provide the Class Members with all rest periods in compliance with California law;

D. Whether Defendants failed to provide the Class Members with all meal periods in compliance with California law;

E. Whether Defendants failed to reimburse the Class Members for necessary business expenses;

F. Whether Defendants willfully failed to provide the Class Members with timely final wages upon termination of employment;

G. Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code §§ 17200, et seq., with respect to the Class Members; and

H. Whether the Class Members are entitled to restitution of money or property that Defendants may have acquired from them through alleged Labor Code violations.

18. **Typicality:** Plaintiff’s claims are typical of the other Class Members’ claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor Code, the Wage Order, and the Business and Professions Code.



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19. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class Members.

20. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent Class Members.

21. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of Class Members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual Class Members are likely to be relatively small and would thus make it difficult, if not impossible, for individual Class Members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting Class Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

STATEMENT OF FACTS

22. In or around 2009, Plaintiff began working for Defendants as a maintenance worker at Defendants' various properties in Santa Maria. Defendants continuously employed him from that time in that capacity until in or around January 2020, when the employment relationship ended.

23. At all relevant times, Defendants issued wages to Plaintiff and the other Class Members on a bi-weekly basis and paid them a flat salary regardless of whether he worked more than eight hours in a day, 40 hours in a week, or every day in the same work week. At all relevant times, Defendants classified Plaintiff and the Class Members as non-exempt employees entitled to the protections of the Labor Code and the Wage Order. Plaintiff and the Class Members were also entitled to the protections of both the Labor Code and the Wage Order.



1 24. Plaintiff and the Class Members were required to start their work about an hour
2 before their official start time. Plaintiff and the Class Members were also expected to continue
3 working after their scheduled end time to respond to tenant maintenance requests and complete
4 building maintenance assignments. At all relevant times, Plaintiff and the Class Members worked
5 over 8 hours per day or over forty in a week, but Defendants failed to compensate Plaintiff and
6 the Class Members for all hours worked beyond eight in a day, or forty in a week at premium
7 rates. Furthermore, Plaintiff and the Class Members frequently worked seven consecutive days in
8 a workweek, but Defendants failed to pay Plaintiff and the Class Members any overtime premium
9 rates for the first eight hours worked on the seventh consecutive day of work. Plaintiff and the
10 Class Members also frequently worked over twelve hours per day, but Defendants failed to
11 compensate Plaintiff and the Class Members for all hours worked beyond twelve in a day, or forty
12 in a week at doubletime premium rates.

13 25. Defendants failed to properly compensate Plaintiff and the Class Members with
14 the correct overtime and doubletime premium rates because Defendants paid Plaintiff and the
15 Class Members a flat salary regardless of whether they worked beyond eight or twelve hours in a
16 day, or forty hours in a week. Defendants also failed to pay at least the minimum wage of all
17 hours worked beyond eight or twelve in a day, forty in a week because Defendants paid Plaintiff
18 and the Class Members a flat salary.

19 26. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
20 with all timely meal periods. Defendants failed to provide timely 30-minute, off-duty meal
21 periods to Plaintiff and the Class Members by requiring them to work through their off-the clock
22 meal periods to respond to tenant maintenance requests and complete building maintenance
23 assignments. Defendants failed to pay premium wages for days on which they failed to provide
24 Plaintiff and the Class Members with meal periods as required by law.

25 27. Moreover, Defendants failed to authorize and permit rest periods to Plaintiff and
26 the Class Members in violation of California law. Defendants required Plaintiff and the Class
27 Members to respond to tenant maintenance requests and complete building maintenance
28 assignments, and failed to authorize and permit Plaintiff and the Class Members to take ten-
minute, paid, duty-free rest periods every four hours worked or major fraction thereof. Defendants
did not seek an exemption from the rest period protections of the Wage Order from the California
Divisions of Labor Standards Enforcement.



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28. Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class Members with timely meal periods. Defendants also failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class Members with timely rest periods.

29. At all relevant times, Defendants required Plaintiff and the Class Members to incur certain business expenses in the course of performing their duties. Defendants required Plaintiff and the Class Members to supply their own mobile phones, tools, supplies, equipment and materials to perform their job duties. The list of tools that Defendant required Plaintiff and the Class Members to supply themselves included, but is not limited to, screw drivers, pliers, and personal mobile phones. Defendants failed to provide these items or reimburse Plaintiff and the Class Members for purchasing these items. Defendants also failed to reimburse Plaintiff for personal cell phone usage. Furthermore, Defendants required Plaintiff and the Class Members to travel to various properties with their personal vehicles. During the relevant time period, Defendants failed to reimburse Plaintiff and the Class Members for the mileage they incurred on Defendants' behalf, nor did they provide Plaintiff and the Class Members with transportation.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED

(Lab. Code §§ 510, 1182.12, 1194, 1197, and 1198)

(By Plaintiff and the Class against Defendants)

30. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

31. At all relevant times, Plaintiff and the other Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 510, 1182.12, 1194, 1197, and 1198 and the Wage Order.

32. Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

33. Section 2 of the Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

34. Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions



(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

35. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

36. Labor Code § 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this § requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.



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37. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

38. Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

39. Section 1182.12 of the Labor Code establishes the hourly minimum wage rate for non-exempt employees. This rate is as follows:

Effective Date	Employers Who Employ 26+ Employees	Employers Who Employ 25≤ Employees
Jan. 1, 2017, to Dec. 31, 2017	\$10.50	\$10.00
Jan. 1, 2018, to Dec. 31, 2018	\$11.00	\$10.50
Jan. 1, 2019, to Dec. 31, 2019	\$12.00	\$11.00
Jan. 1, 2020, to Dec. 31, 2020	\$13.00	\$12.00
Jan 1, 2021, to Dec. 31, 2021	\$14.00	\$13.00

40. Pursuant to Labor Code §515(d)(2), salary provides compensation only for an “employee’s regular, non-overtime hours, notwithstanding any private agreement to the contrary.” Thus, the salary Defendants paid Plaintiff and the Class Members only compensated them for 8 hours of work per day, or 40 hours per week. Defendants failed to pay Plaintiff and the Class Members at least the minimum wage or overtime and doubletime premium wages, for all hours worked because Defendants paid Plaintiff and the Class Members a flat salary and did not compensate Plaintiff and the Class Members for the hours worked beyond 8 hours in a day, or 40 in a week.

41. In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

42. At all relevant times during the applicable limitations period, at Defendants’ direction, Plaintiff and the Class Members have worked over 8 hours per day, or over 40 hours per week, without pay.

43. Plaintiff is informed and believes and thereon alleges that, at all relevant times,



1 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
2 failure to compensate Plaintiff and the other Class Members for all hours worked as required by
3 California law.

4 44. As a result of Defendants' unlawful conduct, Plaintiff and the other Class
5 Members have suffered damages, in an amount subject to proof, to the extent they were not paid
6 the full amount of wages earned during each pay period during the applicable limitations period,
7 including minimum and overtime wages.

8 45. Pursuant to Labor Code § 1194, Plaintiff, on behalf of himself and Class Members,
9 seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid
10 wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject
11 to proof.

12 **SECOND CAUSE OF ACTION**

13 **FAILURE TO PROVIDE REST PERIODS**

14 **(Lab. Code §§ 226.7 and 1198)**

15 **(By Plaintiff and the Class against all Defendants)**

16 46. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

17 47. At all relevant times during the applicable limitations period, Plaintiff and the
18 Class Members have been employees of Defendants and entitled to the benefits and protections
19 of California Labor Code §§ 226.7, 1198, and the Wage Order.

20 48. In relevant part, California Labor Code § 1198 states:

21 The maximum hours of work and the standard conditions of labor
22 fixed by the commission shall be the maximum hours of work and
23 the standard conditions of labor for employees. The employment
24 of any employee for longer hours than those fixed by the order or
25 under conditions of labor prohibited by the order is unlawful.

26 49. In relevant part, § 12 of the Wage Order states:

27 **Rest Periods**

28 (A) "Every employer shall authorize and permit all employees
to take rest periods, which insofar as practicable shall be in the
middle of each work period. The authorized rest period time shall
be based on the total hours worked daily at the rate of ten (10)
minutes net rest time per four (4) hours or major fraction thereof.
However, a rest period need not be authorized for employees



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1 whose total daily work time is less than three and one-half (3 1/2)
2 hours. Authorized rest period time shall be counted as hours
worked for which there shall be no deduction from wages.”

3 (B) If an employer fails to provide an employee a rest period in
4 accordance with the applicable provisions of this Order, the
5 employer shall pay the employee one (1) hour of pay at the
6 employee’s regular rate of compensation for each work day that
the rest period is not provided.”

7 50. In relevant part, California Labor Code § 226.7 states:

8 (b) An employer shall not require an employee to work during
9 a meal or rest period mandated pursuant to an applicable statute,
10 or applicable regulation, standard, or order of the Industrial
11 Welfare Commission, the Occupational Safety and Health
Standards Board, or the Division of Occupational Safety and
Health.

12 (c) If an employer fails to provide an employee a meal period
13 or rest period in accordance with a state law, including, but not
14 limited to, an applicable statute or applicable regulation, standard,
15 or order of the Industrial Welfare Commission, the Occupational
16 Safety and Health Standards Board, or the Division of
17 Occupational Safety and Health, the employer shall pay the
employee one additional hour of pay at the employee’s regular rate
of compensation for each work day that the meal or rest period is
not provided.

18
19 51. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
20 provided with net rest breaks of at least ten minutes for each four-hour period of work, or major
fraction thereof.

21 52. Defendants intentionally failed to provide Plaintiff and the Class Members with
22 all required 10-minute rest periods free from any work duties in accordance with the Wage Order.

23 53. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
24 Class Members to take 10-minute rest periods every four hours worked or major fraction thereof
25 as required by the Wage Order. Furthermore, Defendants failed to pay premium wages for days
26 on which they failed to provide Plaintiff and the Class Members with timely rest periods.

27 54. Plaintiff is informed and believes and thereon alleges that, at all relevant times
28 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy



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1 which resulted in Defendants not providing the Class with all off-duty rest periods required by
2 California law.

3 55. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
4 suffered damages in an amount, subject to proof, to the extent they were not paid additional wages
5 owed for all rest periods not provided to them.

6 56. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and
7 the Class Members are entitled to premium wages for workdays in which one or more rest breaks
8 were not provided to them.

9 **THIRD CAUSE OF ACTION**

10 **FAILURE TO PROVIDE MEAL PERIODS**

11 **(Lab. Code §§ 226.7, 512, and 1198)**

12 **(By Plaintiff and the Class against all Defendants)**

13 57. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

14 58. At all relevant times during the applicable limitations period, Plaintiff and the
15 Class Members have been employees of Defendants and entitled to the benefits and protections
16 of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

17 59. In relevant part, California Labor Code § 1198 states:

18 The maximum hours of work and the standard conditions of labor
19 fixed by the commission shall be the maximum hours of work and
20 the standard conditions of labor for employees. The employment
21 of any employee for longer hours than those fixed by the order or
22 under conditions of labor prohibited by the order is unlawful.

23 60. In relevant part, California Labor Code § 512 states:

24 An employer shall not employ an employee for a work period of
25 more than five hours per day without providing the employee with
26 a meal period of not less than 30 minutes, except that if the total
27 work period per day of the employee is no more than six hours, the
28 meal period may be waived by mutual consent of both the
29 employer and employee.

30 An employer shall not employ an employee for a work period of
31 more than 10 hours per day without providing the employee with
32 a second meal period of not less than 30 minutes, except that if the
33 total hours worked is no more than 12 hours, the second meal



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period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

61. In relevant part, § 11 of the Wage Order states:

Meal Periods

(A) “No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employee and the employer. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the meal period is not provided.”

62. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.



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63. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

64. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty-free meal periods.

65. At all relevant times, Defendants failed to provide Plaintiff and the Class Members with all timely 30-minute duty-free meal periods within the first five hours of work. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the Class Members with timely meal periods.

66. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class with all off-duty meal periods required by California law.

67. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid additional wages owed for all meal periods not provided to them.

68. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more off-duty meal periods were not provided to them, and for workdays in which one or more meal periods were not provided to them.

FOURTH CAUSE OF ACTION
FAILURE TO REIMBURSE FOR EXPENSES
(Lab. Code §§ 1198 and 2802)
(By Plaintiff and the Class against Defendants)

69. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

70. At all relevant times, Plaintiff and the other Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 1198 and 2802 and the Wage Order.

71. In pertinent part, California Labor Code § 2802(a) states, "[a]n employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct



consequence of the discharge of his or her duties.”

72. Under §9(B) of the Wage Order, when an employer requires employees to have tools or equipment or when such items are necessary to perform the job, the employer shall provide and maintain the tools and equipment. The Wage Order’s applicable exceptions are for entities providing beauty care or when employees are paid wages that are twice the minimum wage rate.

73. California Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

74. At all relevant times during the applicable limitations period, Defendants required Plaintiff and the Class Members to supply their own mobile phones, tools, supplies, equipment and materials to perform their job duties, but Defendants did not provide these items or even reimburse Plaintiff and the Class Members for these items. Defendants failed to reimburse Plaintiff and the Class Members for cell phone usage. Defendants required Plaintiff and the Class Members to travel to various properties with their personal vehicles. Defendants failed to reimburse Plaintiff and the Class Members for the and mileage they incurred on Defendants’ behalf.

75. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’ failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred during the course of performing their duties.

76. Therefore, pursuant to California Labor Code § 2802(b), Plaintiff and the Class Members are entitled to reimbursement for all necessary expenditures and losses and interest thereon, due and owing to them within four years of the date of the filing of the Complaint until the entry of judgment.

77. Accordingly, with respect to this cause of action, on behalf of himself and the Class Members, Plaintiff prays for the above stated relief, costs, and all reasonable attorneys’ fees pursuant to Labor Code § 2802(c) and as otherwise permitted by law.

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FIFTH CAUSE OF ACTION
WAITING TIME PENALTIES
(Lab. Code §§ 201, 202, and 203)

(By Plaintiff and the Class against all Defendants)

78. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

79. At all relevant times during the applicable limitations period, Plaintiff and the Class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 201–203, and the Wage Order.

80. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

81. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

82. By failing to pay earned minimum and premium wages to Plaintiff and the Class, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

83. Plaintiff is informed and believes that Defendants' failures to timely pay all final wages to him and the Class Members have been willful in that Defendants have the ability to pay final wages in accordance with Labor Code §§ 201, and 202 but have intentionally adopted policies or practices that are incompatible with those requirements.

84. Labor Code § 203 provides that the wages of an employee continue on a daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and unpaid wages to the employee in accordance with Labor Code § 201, or § 202.

85. Defendants failed to pay Plaintiff and the Class Members whose employment ended all of the earned, but unpaid wages described above by the conclusion of their employment. In addition, Defendants failed to issue to Plaintiff and the Class Members whose employment ended their final paychecks until the next regular pay day following the termination.

86. Plaintiff is informed and believes that Defendants' failures to weekly and timely pay Plaintiff and the Class all of their earned and unpaid wages have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the



requirements of the Labor Code and the Wage Order, even though at all relevant times, they have had the ability to comply with those legal requirements.

87. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of himself and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties for each Class Member.

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, et seq.)

(By Plaintiff and the Class against all Defendants)

88. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

89. At all relevant times during the applicable limitations period, Plaintiff and the other Class Members have been employees of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, et seq.

90. The unlawful conduct of Defendants alleged herein amounts to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, et seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to, among other things, reimburse for expenses, pay their employees premium wages for workdays in which they did not provide employees with one or more meal and rest periods, and pay them all earned wages for all regular and overtime hours worked. Defendants' unfair competitive advantage also includes the financial gains that resulted from failing to compensate Plaintiff and the Class Members for all hours worked, failing to provided meal and rest periods, failing to compensate Plaintiff and the Class Members for missed rest and meal periods, and failing to reimburse Plaintiff and the Class Members for necessary business expenses.

91. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the other Class Members have suffered injuries in fact and lost money or property. Defendants deprived Plaintiff and the other Class Members of minimum, overtime, off-the-clock, and premium wages that Plaintiff and the other Class Members incurred during the course of performing their duties.

92. Pursuant to California Business & Professions Code § 17203, Plaintiff and the



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1 other Class Members are entitled to restitution of all monies rightfully belonging to them that
2 Defendants did not pay them, or that Defendants otherwise retained by means of their unlawful
3 and unfair business practices.

4 93. Plaintiff and the other Class Members are entitled to reasonable attorneys' fees in
5 connection with their unfair competition claims pursuant to California Code of Civil Procedure
6 § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for
9 relief and judgment against Defendants as follows:

- 10 A. An order that the action be certified as a class action;
- 11 B. An order that Plaintiff be appointed class representative;
- 12 C. An order that counsel for Plaintiff be appointed class counsel;
- 13 D. Unpaid Wages;
- 14 E. Actual Damages;
- 15 F. Statutory Damages;
- 16 G. Liquidated Damages;
- 17 H. Restitution;
- 18 I. Declaratory and injunctive relief;
- 19 J. Equitable relief;
- 20 K. Pre-judgment interest;
- 21 L. Statutory penalties;
- 22 M. Costs of suit;
- 23 N. Interest;
- 24 O. Reasonable attorneys' fees; and
- 25 P. Such other relief as the Court deems just and proper.

26 ///

27 ///

28 ///



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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: November 10, 2021

By 

DAVID SPIVAK,
SARA BROWN,
Attorneys for Plaintiff, JOSE FRAUSTO
VILLEGAS, and all others similarly situated



EXHIBIT 3

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17 Attorneys for Plaintiff,
18 JOSE MANUEL BARRAGAN and all others similarly situated

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **FOR THE COUNTY OF SANTA BARBARA**
21 **(UNLIMITED JURISDICTION)**

22 JOSE MANUEL BARRAGAN, on behalf of
23 himself, all others similarly situated, and the
24 general public,

25 *Plaintiff,*

26 vs.

27 DLP MANAGEMENT CO., INC., a
28 California corporation doing business in
California as DLP MANAGEMENT CO and
as DLP MANAGEMENT INC; DARIO L. PINI, an
individual; and DOES 1-50, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
4/11/2022 7:59 PM
By: Yuliana Razo, Deputy

Case No.: 22CV01392

CLASS ACTION

COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 558.1, 1182.12, 1194, 1197, and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 226.7, 558.1, and 1198);
3. Failure to provide Meal Periods (Lab. Code §§ 226.7, 512, 558.1, and 1198);
4. Failure to Reimburse for Expenses (Lab. Code §§ 1198, 558.1, and 2802);
5. Waiting Time Penalties (Lab. Code §§ 201, 202, and 203; and
6. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*).

JURY TRIAL DEMANDED



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1 Plaintiff, JOSE MANUEL BARRAGAN (hereafter "Plaintiff"), on behalf of himself and
2 all others similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against Defendants DLP MANAGEMENT CO.,
5 INC., a California corporation, doing business in California as DLP MANAGEMENT CO and as
6 DLP MANAGEMENT INC. and as DLP MANAGEMENT INC, DARIO L. PINI, and DOES 1–
7 50, inclusive (collectively "Defendants") for alleged violations of the California Labor Code,
8 Industrial Welfare Commission Order No. 5–2001 (hereafter "the Wage Order"), and the Business
9 and Professions Code.

10 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
11 him and other similarly situated current and former employees in California for unpaid wages and
12 other related relief. These claims are based on Defendants' failures to: (1) Pay all wages earned
13 for all hours worked; (2) Provide all timely meal periods; (3) Authorize and permit all rest periods;
14 (4) Indemnify for all expenses; (5) Timely pay all wages upon termination of employment; and
15 (6) Fairly compete. Accordingly, Plaintiff now seeks to recover unpaid wages, statutory penalties,
16 interest, and related relief through this class action.

17 **JURISDICTION AND VENUE**

18 3. This court has subject matter jurisdiction because the aggregate claims of Plaintiff,
19 inclusive of all relief, place more than \$25,000 in controversy.

20 4. There is no basis for federal question subject matter jurisdiction in this case.
21 Specifically, Plaintiff asserts claims that solely arise under California law, rather than federal law.

22 5. There is also no basis for federal diversity jurisdiction in this case.

23 6. Venue is proper in Santa Barbara County pursuant to California Code of Civil
24 Procedure § 395(a) and § 395.5 in that liability arose in Santa Barbara County because at least
25 some of the transactions that are the subject matter of this Complaint occurred therein and/or
26 because each defendant is found, maintains offices, transacts business, and/or has an agent
27 therein.

28 **PARTIES**

7. Plaintiff JOSE MANUEL BARRAGAN is a resident of California.

8. Defendant DLP MANAGEMENT CO., INC., doing business in California as DLP
MANAGEMENT CO and as DLP MANAGEMENT INC. and as DLP MANAGEMENT INC,



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1 is a property management corporation organized and existing under the laws of California and
2 also a citizen of California based on Plaintiff's information and belief.

3 9. Defendant DARIO L. PINI is an individual and a citizen of California based on
4 Plaintiff's information and belief.

5 10. In relevant part, California Labor Code § 558.1 states:

6 (a) Any employer or other person acting on behalf of an employer, who violates,
7 or causes to be violated, any provision regulating minimum wages or hours and
8 days of work in any order of the Industrial Welfare Commission, or violates, or
9 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
10 liable as the employer for such violation.

11 (b) For purposes of this section, the term "other person acting on behalf of an
12 employer" is limited to a natural person who is an owner, director, officer, or
13 managing agent of the employer, and the term "managing agent" has the same
14 meaning as in subdivision (b) of § 3294 of the Civil Code.

15 11. Based on Plaintiff's information and belief, Defendant DARIO L. PINI is natural
16 person and an owner, director, officer, and/or managing agent of Defendant DLP
17 MANAGEMENT CO., INC., who directly or indirectly, or through an agent or any other person,
18 employed or exercised control over the wages, hours, or working conditions of Plaintiff and the
19 Class. Therefore, he is liable to Plaintiff and the Class for his violations of, or causing Defendants
20 to violate the Labor Code and the Wage Order pursuant to Labor Code section 558.1.

21 12. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
22 participation in the conduct alleged herein of the Defendants sued as DOES 1–50, inclusive, but
23 is informed and believes and thereon alleges that said Defendants are legally responsible for the
24 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
25 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
26 when ascertained.

27 13. Plaintiff is informed and believes and thereon alleges that, at all relevant times
28 herein, all Defendants were the agents, employees, servants, masters, and/or employers of the
remaining Defendants, and, in doing the things hereinafter alleged, were acting within the course
and scope of such agency or employment and with the approval and ratification of each of the
other Defendants.

14. At all relevant times, in perpetrating the acts and omissions alleged herein,



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Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-described class in accordance with applicable laws as alleged herein.

15. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein was performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

CLASS ALLEGATIONS

16. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

17. **Class Definition:** The Class is defined as follows: All individuals currently and formerly employed in California as non-exempt employees paid on an hourly basis or by salary, including maintenance workers, and handymen, individuals performing work comparable to the aforementioned, and individuals in similar positions at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

18. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definition with greater specificity, by further division into subclasses and/or by limitation to particular issues.

19. **Numerosity:** The Class Members are so numerous that the individual joinder of each individual Class Member is impractical. While Plaintiff does not currently know the exact number of Class Members, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California laws.

20. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class Members. These questions include, but are not limited to:

A. Whether Defendants paid the Class Members at least the minimum wage



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1 for all hours worked;

2 B. Whether Defendants paid the Class Members at the correct overtime and
3 doubletime rates for all overtime and doubletime hours worked;

4 C. Whether Defendants failed to provide the Class Members with all rest
5 breaks in compliance with California law;

6 D. Whether Defendants failed to provide the Class Members with all meal
7 periods in compliance with California law;

8 E. Whether Defendants failed to reimburse the Class Members for all
9 necessary business expenses;

10 F. Whether Defendants willfully failed to provide the Class Members with
11 timely final wages upon termination of employment;

12 G. Whether Defendants engaged in unfair competition within the meaning of
13 Business and Professions Code §§ 17200, et seq., with respect to the Class Members; and

14 H. Whether the Class Members are entitled to restitution of money or property
15 that Defendants may have acquired from them through alleged Labor Code violations.

16 21. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
17 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
18 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
19 Code, the Wage Order, and the Business and Professions Code.

20 22. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
21 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
22 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
23 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
24 Members.

25 23. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
26 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
27 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
28 Plaintiff and absent Class Members.

29 24. **Superiority:** A class action is vastly superior to other available means for fair and
30 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
31 Court. Class action treatment will allow a number of similarly situated persons to simultaneously



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1 and efficiently prosecute their common claims in a single forum without the unnecessary
2 duplication of effort and expense that numerous individual actions would entail. In addition, the
3 monetary amounts due to many individual Class Members are likely to be relatively small and
4 would thus make it difficult, if not impossible, for individual Class Members to both seek and
5 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
6 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
7 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

8 STATEMENT OF FACTS

9 25. Plaintiff began working for Defendants in 2008 as a maintenance worker at
10 Defendants' various properties in Santa Maria. Defendants continuously employed him from that
11 time in that capacity until on or around April 13, 2019, when the employment relationship ended.

12 26. At all relevant times, Defendants issued wages to Plaintiff and the other Class
13 Members on a semi-monthly basis. Defendant paid Plaintiff and Class Members on an hourly
14 basis. At all relevant times, Defendants classified Plaintiff and the Class Members as non-exempt
15 employees entitled to the protections of the Labor Code and the Wage Order. Plaintiff and the
16 Class Members were also entitled to the protections of both the Labor Code and the Wage Order.

17 27. Defendants often required Plaintiff and the Class Members to work more than
18 Eight (8) hours in a workday. Plaintiff and the Class Members were required to start their work
19 about several minutes before their scheduled official start time. Plaintiff and the Class Members
20 were also expected to continue working after their scheduled end time to respond to tenant
21 maintenance requests and complete building maintenance assignments. Defendants, however,
22 required Plaintiff and Class Members to only report eight (8) hours on their time records, or
23 alternatively rounded their hours down to show only eight (8) hours, and failed to compensate
24 Plaintiff and the Class Members for all hours worked beyond eight hours in a day if the daily
25 overtime worked was less than 30 minutes in total. If Plaintiff and Class Members worked 30
26 minutes or more of overtime hours in a workday, Defendants compensated them for such overtime
27 hours at their straight hourly rate of pay and failed to pay them the overtime premium wages.

28 28. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
with all timely meal periods. Due to their workload and maintenance emergencies, Defendants
sometimes provided Plaintiff and Class Members with a meal period after they had already
worked more than five (5) hours in a workday. Defendants also failed to provide Plaintiff and



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Class Members with a second meal period when they worked more than 10 hours in a workday. Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the Class Members with meal periods as required by law.

29. Moreover, Defendants failed to authorize and permit rest periods to Plaintiff and the Class Members in violation of California law. Defendants required Plaintiff and the Class Members to respond to tenant maintenance requests and complete building maintenance assignments, and failed to authorize and permit Plaintiff and the Class Members to take ten-minute, paid, duty-free rest periods every four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest period protections of the Wage Order from the California Divisions of Labor Standards Enforcement. Defendants also failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class Members with timely rest periods.

30. At all relevant times, Defendants required Plaintiff and the Class Members to incur certain business expenses in the course of performing their duties. Defendants required Plaintiff and the Class Members to supply their own mobile phones to communicate with their supervisors, Defendants' office employees, or the tenants. Defendants failed to reimburse Plaintiff or Class Members for personal cell phone usage. Defendants also required Plaintiff and Class Members to provide their own tools to perform their job duties. The list of tools that Defendants required Plaintiff and the Class Members to supply themselves included, but is not limited to, wire cutters, hammers, saws and tree trimmers, tile cutters, and screw drivers. Defendants failed to provide these items or reimburse Plaintiff and the Class Members for purchasing these items. Furthermore, Defendants required Plaintiff and the Class Members to travel to various properties with their personal vehicles. During the relevant time period, Defendants failed to reimburse Plaintiff and the Class Members for the mileage they incurred on Defendants' behalf, nor did they provide Plaintiff and the Class Members with transportation.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED

(Lab. Code §§ 510, 558.1, 1182.12, 1194, 1197, and 1198)

(By Plaintiff and the Class against Defendants)

31. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

32. At all relevant times, Plaintiff and the other Class Members have been non-exempt



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employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 510, 558.1, 1182.12, 1194, 1197, and 1198 and the Wage Order.

33. Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

34. Section 2 of the Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

35. Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee’s regular hourly salary as one-fortieth (1/40) of the employee’s weekly salary.

36. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

37. Labor Code § 510 states:



Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this § requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

38. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

39. Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

40. Section 1182.12 of the Labor Code establishes the hourly minimum wage rate for non-exempt employees. This rate is as follows:

Effective Date	Employers Who Employ 26+ Employees	Employers Who Employ 25≤ Employees
Jan. 1, 2017, to Dec. 31, 2017	\$10.50	\$10.00
Jan. 1, 2018, to Dec. 31, 2018	\$11.00	\$10.50
Jan. 1, 2019, to Dec. 31, 2019	\$12.00	\$11.00
Jan. 1, 2020, to Dec. 31, 2020	\$13.00	\$12.00
Jan 1, 2021, to Dec. 31, 2021	\$14.00	\$13.00

41. In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

42. At all relevant times during the applicable limitations period, at Defendants' direction, Plaintiff and the Class Members have worked over eight (8) hours per day, or over 40 hours per week, without pay.



1 43. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
2 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
3 failure to compensate Plaintiff and the other Class Members for all hours worked as required by
4 California law.

5 44. In relevant part, California Labor Code § 558.1 states:

6 (a) Any employer or other person acting on behalf of an employer, who violates,
7 or causes to be violated, any provision regulating minimum wages or hours and
8 days of work in any order of the Industrial Welfare Commission, or violates, or
9 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
10 liable as the employer for such violation.

11 (b) For purposes of this section, the term "other person acting on behalf of an
12 employer" is limited to a natural person who is an owner, director, officer, or
13 managing agent of the employer, and the term "managing agent" has the same
14 meaning as in subdivision (b) of § 3294 of the Civil Code.

15 45. At all relevant times herein, DARIO L. PINI and DOE Defendants 6-10 were
16 employers of Plaintiff and Class Members, and/or "owners," "managing agents," and/or
17 "officers" of DLP MANAGEMENT CO., INC. and the other employers identified above.
18 DARIO L. PINI and DOE Defendants 6-10 directly or indirectly, or through an agent or other
19 person, employed and exercised control over the wages, hours, and/or working conditions of the
20 Plaintiff and Class Members, and caused the violations to the Labor Code and the Wage Order
21 described above.

22 46. At all relevant times, Plaintiff and the Class Members were employees of DARIO
23 L. PINI and DOE Defendants 6-10. DARIO L. PINI and DOE Defendants 6-10 engaged, and
24 suffered and permitted, Plaintiff and the Class Members to work. DARIO L. PINI and DOE
25 Defendants 6-10 were clearly aware that Plaintiff and the Class Members worked for the company
26 and had the power to prevent them from working. DARIO L. PINI and DOE Defendants 6-10
27 also exercised control over Plaintiff and the Class Members' wages, hours, and working
28 conditions. Further, DARIO L. PINI and DOE Defendants 6-10 had the right to control and
exercised such control over the manner in which Plaintiff and the Class Members performed their
work for DARIO L. PINI and DOE Defendants 6-10.

 47. As a result of Defendants' unlawful conduct, Plaintiff and the other Class
Members have suffered damages, in an amount subject to proof, to the extent they were not paid



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the full amount of wages earned during each pay period during the applicable limitations period, including minimum and overtime wages.

48. Pursuant to Labor Code § 1194, Plaintiff, on behalf of himself and Class Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject to proof.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS
(Lab. Code §§ 226.7, 558.1, and 1198)

(By Plaintiff and the Class against all Defendants)

49. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

50. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 1198, and the Wage Order.

51. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

52. In relevant part, § 12 of the Wage Order states:

Rest Periods

(A) "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the



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employee's regular rate of compensation for each work day that the rest period is not provided."

53. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

54. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

55. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 10-minute rest periods free from any work duties in accordance with the Wage Order.

56. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take 10-minute rest periods every four hours worked or major fraction thereof as required by the Wage Order. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the Class Members with timely rest periods.

57. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class with all off-duty rest periods required by California law.

58. In relevant part, California Labor Code § 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and



1 days of work in any order of the Industrial Welfare Commission, or violates, or
2 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
liable as the employer for such violation.

3 (b) For purposes of this section, the term “other person acting on behalf of an
4 employer” is limited to a natural person who is an owner, director, officer, or
5 managing agent of the employer, and the term “managing agent” has the same
meaning as in subdivision (b) of § 3294 of the Civil Code.

6 59. At all relevant times herein, DARIO L. PINI and DOE Defendants 6-10 were
7 employers of Plaintiff and Class Members, and/or “owners,” “managing agents,” and/or
8 “officers” of DLP MANAGEMENT CO., INC. and the other employers identified above.
9 DARIO L. PINI and DOE Defendants 6-10 directly or indirectly, or through an agent or other
10 person, employed and exercised control over the wages, hours, and/or working conditions of the
11 Plaintiff and Class Members, and caused the violations to the Labor Code and the Wage Order
described above.

12 60. At all relevant times, Plaintiff and the Class Members were employees of DARIO
13 L. PINI and DOE Defendants 6-10. DARIO L. PINI and DOE Defendants 6-10 engaged, and
14 suffered and permitted, Plaintiff and the Class Members to work. DARIO L. PINI and DOE
15 Defendants 6-10 were clearly aware that Plaintiff and the Class Members worked for the company
16 and had the power to prevent them from working. DARIO L. PINI and DOE Defendants 6-10
17 also exercised control over Plaintiff and the Class Members’ wages, hours, and working
18 conditions. Further, DARIO L. PINI and DOE Defendants 6-10 had the right to control and
19 exercised such control over the manner in which Plaintiff and the Class Members performed their
20 work for DARIO L. PINI and DOE Defendants 6-10.

21 61. As a result of Defendants’ unlawful conduct, Plaintiff and the Class Members have
22 suffered damages in an amount, subject to proof, to the extent they were not paid additional wages
owed for all rest periods not provided to them.

23 62. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and
24 the Class Members are entitled to premium wages for workdays in which one or more rest breaks
25 were not provided to them.

26 ///

27 ///

28 ///



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THIRD CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS
(Lab. Code §§ 226.7, 512, 558.1, and 1198)

(By Plaintiff and the Class against all Defendants)

63. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

64. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

65. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

66. In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

67. In relevant part, § 11 of the Wage Order states:

Meal Periods

(A) “No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employee and the employer. Unless the employee is relieved of all duty during a 30-minute



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meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time."

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided."

68. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

69. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

70. Defendants intentionally failed to provide Plaintiff and the Class Members with all required timely, 30-minute duty-free meal periods.

71. At all relevant times, Defendants failed to provide Plaintiff and the Class Members with all timely 30-minute duty-free meal periods within the first five hours of work or with a second meal period when they worked more than 10 hours in a workday. Furthermore, Defendants



1 failed to pay premium wages for days on which they failed to provide Plaintiff and the Class
2 Members with timely meal periods.

3 72. Plaintiff is informed and believes and thereon alleges that, at all relevant times
4 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
5 which resulted in Defendants not providing the Class with all off-duty meal periods required by
6 California law.

7 73. In relevant part, California Labor Code § 558.1 states:

8 (a) Any employer or other person acting on behalf of an employer, who violates,
9 or causes to be violated, any provision regulating minimum wages or hours and
10 days of work in any order of the Industrial Welfare Commission, or violates, or
11 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
12 liable as the employer for such violation.

13 (b) For purposes of this section, the term “other person acting on behalf of an
14 employer” is limited to a natural person who is an owner, director, officer, or
15 managing agent of the employer, and the term “managing agent” has the same
16 meaning as in subdivision (b) of § 3294 of the Civil Code.

17 74. At all relevant times herein, DARIO L. PINI and DOE Defendants 6-10 were
18 employers of Plaintiff and Class Members, and/or “owners,” “managing agents,” and/or
19 “officers” of DLP MANAGEMENT CO., INC. and the other employers identified above.
20 DARIO L. PINI and DOE Defendants 6-10 directly or indirectly, or through an agent or other
21 person, employed and exercised control over the wages, hours, and/or working conditions of the
22 Plaintiff and Class Members, and caused the violations to the Labor Code and the Wage Order
23 described above.

24 75. At all relevant times, Plaintiff and the Class Members were employees of DARIO
25 L. PINI and DOE Defendants 6-10. DARIO L. PINI and DOE Defendants 6-10 engaged, and
26 suffered and permitted, Plaintiff and the Class Members to work. DARIO L. PINI and DOE
27 Defendants 6-10 were clearly aware that Plaintiff and the Class Members worked for the company
28 and had the power to prevent them from working. DARIO L. PINI and DOE Defendants 6-10
also exercised control over Plaintiff and the Class Members’ wages, hours, and working
conditions. Further, DARIO L. PINI and DOE Defendants 6-10 had the right to control and
exercised such control over the manner in which Plaintiff and the Class Members performed their
work for DARIO L. PINI and DOE Defendants 6-10.



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1 76. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
2 suffered damages in an amount, subject to proof, to the extent they were not paid additional wages
3 owed for all meal periods not provided to them.

4 77. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and
5 the Class Members are entitled to premium wages for workdays in which one or more off-duty
6 meal periods were not provided to them, and for workdays in which one or more meal periods
7 were not provided to them.

8 **FOURTH CAUSE OF ACTION**
9 **FAILURE TO REIMBURSE FOR EXPENSES**
10 **(Lab. Code §§ 558.1, 1198 and 2802)**
11 **(By Plaintiff and the Class against Defendants)**

12 78. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

13 79. At all relevant times, Plaintiff and the other Class Members have been non-exempt
14 employees of Defendants and entitled to the benefits and protections of California Labor Code
15 §§ 1198 and 2802 and the Wage Order.

16 80. In pertinent part, California Labor Code § 2802(a) states, "[a]n employer shall
17 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct
18 consequence of the discharge of his or her duties."

19 81. Under §9(B) of the Wage Order, when an employer requires employees to have
20 tools or equipment or when such items are necessary to perform the job, the employer shall
21 provide and maintain the tools and equipment. The Wage Order's applicable exceptions are for
22 entities providing beauty care or when employees are paid wages that are twice the minimum
23 wage rate.

24 82. California Labor Code § 1198 prohibits employers from employing their
25 employees under conditions prohibited by the Wage Order.

26 83. At all relevant times during the applicable limitations period, Defendants required
27 Plaintiff and the Class Members to supply their own mobile phones and tools to perform their job
28 duties, but Defendants did not provide these items or even reimburse Plaintiff and the Class
Members for these items. Defendants required Plaintiff and the Class Members to travel to various
properties with their personal vehicles. Defendants failed to reimburse Plaintiff and the Class
Members for the and mileage they incurred on Defendants' behalf.



1 84. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
2 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
3 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
4 during the course of performing their duties.

5 85. In relevant part, California Labor Code § 558.1 states:

6 (a) Any employer or other person acting on behalf of an employer, who violates,
7 or causes to be violated, any provision regulating minimum wages or hours and
8 days of work in any order of the Industrial Welfare Commission, or violates, or
9 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
10 liable as the employer for such violation.

11 (b) For purposes of this section, the term "other person acting on behalf of an
12 employer" is limited to a natural person who is an owner, director, officer, or
13 managing agent of the employer, and the term "managing agent" has the same
14 meaning as in subdivision (b) of § 3294 of the Civil Code.

15 86. At all relevant times herein, DARIO L. PINI and DOE Defendants 6-10 were
16 employers of Plaintiff and Class Members, and/or "owners," "managing agents," and/or
17 "officers" of DLP MANAGEMENT CO., INC. and the other employers identified above.
18 DARIO L. PINI and DOE Defendants 6-10 directly or indirectly, or through an agent or other
19 person, employed and exercised control over the wages, hours, and/or working conditions of the
20 Plaintiff and Class Members, and caused the violations to the Labor Code and the Wage Order
21 described above.

22 87. At all relevant times, Plaintiff and the Class Members were employees of DARIO
23 L. PINI and DOE Defendants 6-10. DARIO L. PINI and DOE Defendants 6-10 engaged, and
24 suffered and permitted, Plaintiff and the Class Members to work. DARIO L. PINI and DOE
25 Defendants 6-10 were clearly aware that Plaintiff and the Class Members worked for the company
26 and had the power to prevent them from working. DARIO L. PINI and DOE Defendants 6-10
27 also exercised control over Plaintiff and the Class Members' wages, hours, and working
28 conditions. Further, DARIO L. PINI and DOE Defendants 6-10 had the right to control and
exercised such control over the manner in which Plaintiff and the Class Members performed their
work for DARIO L. PINI and DOE Defendants 6-10.

 88. Therefore, pursuant to California Labor Code § 2802(b), Plaintiff and the Class
Members are entitled to reimbursement for all necessary expenditures and losses and interest



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thereon, due and owing to them within four years of the date of the filing of the Complaint until the entry of judgment.

89. Accordingly, with respect to this cause of action, on behalf of himself and the Class Members, Plaintiff prays for the above stated relief, costs, and all reasonable attorneys' fees pursuant to Labor Code § 2802(c) and as otherwise permitted by law.

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Lab. Code §§ 201, 202, 203, and 558.1)

(By Plaintiff and the Class against all Defendants)

90. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

91. At all relevant times during the applicable limitations period, Plaintiff and the Class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 201–203, and the Wage Order.

92. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

93. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

94. By failing to pay earned minimum, overtime, and premium wages to Plaintiff and the Class, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

95. Plaintiff is informed and believes that Defendants' failures to timely pay all final wages to him and the Class Members have been willful in that Defendants have the ability to pay final wages in accordance with Labor Code §§ 201, and 202 but have intentionally adopted policies or practices that are incompatible with those requirements.

96. Labor Code § 203 provides that the wages of an employee continue on a daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and unpaid wages to the employee in accordance with Labor Code § 201, or § 202.

97. Defendants failed to pay Plaintiff and the Class Members whose employment ended all of the earned, but unpaid wages described above by the conclusion of their employment.



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1 In addition, Defendants failed to issue to Plaintiff and the Class Members whose employment
2 ended their final paychecks until the next regular pay day following the termination.

3 98. Plaintiff is informed and believes that Defendants' failures to weekly and timely
4 pay Plaintiff and the Class all of their earned and unpaid wages have been willful in that, at all
5 relevant times, Defendants have deliberately maintained policies and practices that violate the
6 requirements of the Labor Code and the Wage Order, even though at all relevant times, they have
7 had the ability to comply with those legal requirements.

8 99. In relevant part, California Labor Code § 558.1 states:

9 (a) Any employer or other person acting on behalf of an employer, who violates,
10 or causes to be violated, any provision regulating minimum wages or hours and
11 days of work in any order of the Industrial Welfare Commission, or violates, or
12 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
13 liable as the employer for such violation.

14 (b) For purposes of this section, the term "other person acting on behalf of an
15 employer" is limited to a natural person who is an owner, director, officer, or
16 managing agent of the employer, and the term "managing agent" has the same
17 meaning as in subdivision (b) of § 3294 of the Civil Code.

18 100. At all relevant times herein, DARIO L. PINI and DOE Defendants 6-10 were
19 employers of Plaintiff and Class Members, and/or "owners," "managing agents," and/or
20 "officers" of DLP MANAGEMENT CO., INC. and the other employers identified above.
21 DARIO L. PINI and DOE Defendants 6-10 directly or indirectly, or through an agent or other
22 person, employed and exercised control over the wages, hours, and/or working conditions of the
23 Plaintiff and Class Members, and caused the violations to the Labor Code and the Wage Order
24 described above.

25 101. At all relevant times, Plaintiff and the Class Members were employees of DARIO
26 L. PINI and DOE Defendants 6-10. DARIO L. PINI and DOE Defendants 6-10 engaged, and
27 suffered and permitted, Plaintiff and the Class Members to work. DARIO L. PINI and DOE
28 Defendants 6-10 were clearly aware that Plaintiff and the Class Members worked for the company
and had the power to prevent them from working. DARIO L. PINI and DOE Defendants 6-10
also exercised control over Plaintiff and the Class Members' wages, hours, and working
conditions. Further, DARIO L. PINI and DOE Defendants 6-10 had the right to control and
exercised such control over the manner in which Plaintiff and the Class Members performed their



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work for DARIO L. PINI and DOE Defendants 6-10.

102. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of himself and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties for each Class Member.

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, et seq.)

(By Plaintiff and the Class against all Defendants)

103. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

104. At all relevant times during the applicable limitations period, Plaintiff and the other Class Members have been employees of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, et seq.

105. The unlawful conduct of Defendants alleged herein amounts to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, et seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to, among other things, reimburse for expenses, pay their employees premium wages for workdays in which they did not provide employees with one or more meal and rest periods, and pay them all earned wages for all regular and overtime hours worked. Defendants' unfair competitive advantage also includes the financial gains that resulted from failing to compensate Plaintiff and the Class Members for all hours worked, failing to provided meal and rest periods, failing to compensate Plaintiff and the Class Members for missed rest and meal periods, and failing to reimburse Plaintiff and the Class Members for necessary business expenses.

106. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the other Class Members have suffered injuries in fact and lost money or property. Defendants deprived Plaintiff and the other Class Members of minimum, overtime, off-the-clock, and premium wages that Plaintiff and the other Class Members incurred during the course of performing their duties.

107. Pursuant to California Business & Professions Code § 17203, Plaintiff and the other Class Members are entitled to restitution of all monies rightfully belonging to them that



SPIVAK LAW
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8605 Santa Monica Bl
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Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 Defendants did not pay them, or that Defendants otherwise retained by means of their unlawful
2 and unfair business practices.

3 108. Plaintiff and the other Class Members are entitled to reasonable attorneys' fees in
4 connection with their unfair competition claims pursuant to California Code of Civil Procedure
5 § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for
8 relief and judgment against Defendants as follows:

- 9 A. An order that the action be certified as a class action;
10 B. An order that Plaintiff be appointed class representative;
11 C. An order that counsel for Plaintiff be appointed class counsel;
12 D. Unpaid Wages;
13 E. Actual Damages;
14 F. Statutory Damages;
15 G. Liquidated Damages;
16 H. Restitution;
17 I. Declaratory and injunctive relief;
18 J. Equitable relief;
19 K. Pre-judgment interest;
20 L. Statutory penalties;
21 M. Costs of suit;
22 N. Interest;
23 O. Reasonable attorneys' fees; and
24 P. Such other relief as the Court deems just and proper.

25 ///

26 ///

27 ///

28 ///



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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: April 11, 2022

By



DAVID SPIVAK

CAROLINE TAHMASSIAN

Attorneys for Plaintiff, JOSE MANUEL

BARRAGAN, and all others similarly situated



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EXHIBIT 4

MEMORANDUM OF UNDERSTANDING

On September 26, 2023, Plaintiffs Jose Angel Frausto Villegas and Jose Manuel Barragan (collectively, "Plaintiffs") participated in mediation with Defendants DLP Management Co., Inc. (doing business in California as DLP Management Inc. and DLP Management INC) and Dario L. Pini (collectively, "Defendants") (together, Plaintiffs and Defendants are "the Parties") before mediator Henry J. Bongiovi regarding claims made in class action complaints originally filed on November 12, 2021 and April 11, 2022 and entitled *Jose Angel Frausto Villegas v. DLP Management Co., Inc.*, Santa Barbara County Superior Court No. 21CV04500 (Villegas) and *Jose Manuel Barragan v. DLP Management Co., Inc., et al.*, Santa Barbara County Superior Court No. 22CV01392 (Barragan) (collectively the "Actions").

The Parties reached the following class action settlement ("Settlement"), subject to Court approval, which is intended to be a full and final resolution of Plaintiffs' claims as well as all Released Claims:

1. No Admission. The Parties agree the Settlement is not an admission of any liability or wrongdoing. Defendants deny any liability or wrongdoing of any kind and further denies that, for any purpose other than settling the Actions, this Actions is or would be appropriate for representative treatment. Defendants maintain, among other things, that they have complied with California law in all aspects, and continue to do so. Nothing in the MOU or Settlement negotiations, approval of Settlement, orders related to Settlement or any other aspect of the Settlement will be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants.
2. Settlement Class and Class Period. The Settlement Class will include all current and former non-exempt employees paid on an hourly basis or by salary of Defendants in California at any time from November 12, 2017 through Preliminary Court-approval of settlement (the "Class Period"). The Parties agree that the Class only consists of the 81 employees Defendants disclosed to Phoenix Class Administrators, Alexis Flores, and Anthony Montenegro.
3. Gross Settlement Amount. Defendants agree to pay, on an all-in and non-reversionary basis, a total of \$750,000.00 inclusive of all amounts to be paid to Class Members, attorney fees, costs, enhancement awards to the named Plaintiffs, and Settlement Administration expenses. With the exception of the Escalator Clause below, under no circumstances will Defendants' settlement payment exceed the Gross Settlement Amount.
4. Escalator Clause. Defendants estimated for purposes of mediation that there are 9,163 paychecks paid to 83 Class Members for the period of November 12, 2017 through September 26, 2023. The Settlement Administrator will advise Plaintiffs' counsel of Defendants' report of the total number of paychecks paid and Class Members. If the paychecks paid and/or Class Members as of the date the Court approves the settlement exceeds the referenced 9,163 paychecks paid and/or 83 Class Members by more than

1 *QAR B J. V. J. M. B. G*
LMB DS DP

10%, the Gross Settlement Amount will increase proportionally according to the number of additional paychecks paid or Class Members.

5. Released Claims. The claims to be released by the Settlement Class are limited to any and all claims under state, federal, or local law, whether statutory or common law arising out of the claims expressly pleaded the Actions and all other claims, such as those under California Labor Code sections 201, 202, 203, 226.7, 510, 512, 558.1, 1182.12, 1194, 1197, 1198, and 2802, the Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts pleaded in the Actions for: failure to pay employees all earned wages, including but not limited to overtime at one and one half times regular wages and/ or overtime at two times regular wages if applicable, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to timely pay final wages, and unfair competition under Business & Professions Code sections 17200, *et seq.*
6. Released Parties. Released Parties as referenced herein and as released in this Settlement are Defendants and any of their present and former parent companies, subsidiaries, divisions, concepts, related or affiliated companies and its shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity that Defendant has any ownership interest in that could be liable for any of the Released Claims, and Defendants' counsel of record in the Actions.
7. Denial of other pending claims. Defendants are unaware of any pending claims that will be affected by the "Released Claims" provision above except for a workers compensation claim currently pending before the Workers' Compensation Appeals Board brought by named Plaintiff, Jose Frausto Villegas. Mr. Frausto Villegas does not release his workers compensation claim.
8. Net Settlement Amount. The Net Settlement Amount will be calculated by deducting all attorneys' fees, costs, the enhancement award to the named Plaintiffs, and Settlement Administration expenses from the Gross Settlement Amount.
9. Employer-Side Payroll Taxes. Defendants' share of any employer payroll taxes to be paid in connection with the Settlement (*e.g.*, FICA, FUTA, payroll taxes, and/or any similar tax or charge – collectively "Employer Taxes") shall be paid by Defendants from the Gross Settlement Amount.
10. Class Certification for Settlement Purposes. The Parties agree to stipulate to class certification for purposes of Settlement only as to the Settlement Class and related to the Released Claims.
11. Tax Allocation. Individual settlement awards from the Net Settlement Amount payable to eligible Class Members will be allocated as follows: 33.33% as payment for alleged unpaid wages, 33.33% as alleged unpaid interest, and 33.34% as alleged unpaid civil and statutory penalties. IRS Forms W-2 will be issued for alleged unpaid wages and

2 *QRB J.V. J.M. JG*
LPB DS DP

IRS Forms 1099 will be issued for alleged unpaid interest and unpaid civil penalties. Defendants will be permitted to deduct such payments from their business tax returns to the extent permissible under law.

12. Settlement Administrator. The Settlement Administrator will be a company mutually agreed to by the Parties.
13. Calculation of Individual Settlement Payments. The Settlement Administrator will calculate the paychecks paid by the Class Members during the Class Period, the amount to paid *pro rata*, and the individual settlement payments to eligible Class Members. Defendants' data will be presumed to be correct, unless a particular Class Member proves otherwise to the Settlement Administrator by credible evidence. All disputes as to paychecks paid will be resolved and decided by the Settlement Administrator and the Settlement Administrator's decision on all disputes as to paychecks paid will be final and non-appealable.
14. Class Information. The Parties agree that Defendants will provide to the Settlement Administrator the Class Members' full names, last known addresses, telephone numbers and/or e-mails to the extent they are available, and social security numbers and dates worked during the Class Period as within twenty-one (21) calendar days of the Court's preliminary approval of the Settlement. Within twenty- one (21) calendar days of receipt of the contact information, the Settlement Administrator will mail the notice to the Class Members.
15. No Claim Form. There will not be a claims process requirement, and as such, Class Members will not be required to submit a claim form to receive their individual settlements.
16. Response Period. Class Members shall have 60 days from the date the Settlement Administrator mails the notice to them within which they must either postmark and send written notice to the Settlement Administrator of their decision to opt-out from the Settlement or postmark and send written notice to the Court of their decision to object to the Settlement.
17. Payment of Gross Settlement Amount. Defendants will pay the Gross Settlement Amount to the Settlement Administrator for Class Members who do not opt-out. Any amount attributed to the share of class members who opt-out shall be redistributed to participating class members on a pro-rata basis, and the Settlement Administrator will then be responsible for making appropriate deductions, reporting obligations, and issuing the individual settlement awards.
18. Uncashed Checks. The expiration date on the settlement checks will be one hundred and eighty (180) days from the date the settlement checks are issued. The Settlement Administrator will pay those funds represented by uncashed checks to the California Unclaimed Property Fund in the name of the class members concerned.

3 C.R.B.J.V.J.M.B.G.
L.M.B. D.S. D.P.

19. Approval of Settlement Documents. The Stipulation of Settlement, Notice of Class Action Settlement to be sent to the Class Members, preliminary approval order, and final approval order are to be mutually agreed upon by the Parties - and will incorporate the terms of this MOU - before it is presented for approval by the Court.
20. Class Counsel. The Parties agree to the designation of David Spivak of The Spivak Law Firm and Louis Benowitz of Benowitz Law Corporation as counsel for the Settlement Class for all purposes in the Actions.
21. Class Counsel Fees and Costs. Defendants shall not oppose Class Counsel's request for fees of up to thirty-three and one third percent (33 and 1/3%) of the Gross Settlement Amount to Class Counsel, or \$250,000.00, subject to approval by the Court. Defendants shall not oppose reasonable attorney costs, not to exceed \$20,000.00, subject to approval by the Court. The Court-approved attorney fees and costs are part of, and to be deducted from, the Gross Settlement Amount. Any portion of the Class Counsel fees and costs not awarded by the Court shall be added to the Net Settlement Amount.
22. Class Representative Enhancement Awards. For the purposes of this Settlement only, the Parties agree to the designation of Plaintiffs as "Class Representatives." As the Class Representatives, Plaintiffs shall receive enhancement awards at no additional cost to Defendants, subject to approval by the Court. Plaintiffs agree that they will sign general releases that include a release of all claims arising out of and relating to their employment with Defendants, as well as all known and unknown claims pursuant to California Civil Code section 1542. Defendants shall not oppose enhancement awards to the Class Representatives in an amount not to exceed \$15,000.00 each, subject to approval by the Court. The enhancement awards are to be part of, and to be deducted from, the Gross Settlement Amount. IRS Forms 1099 shall issue for the enhancement awards. Any portion of the enhancement awards not awarded to the Class Representatives shall be added to the Net Settlement Amount.
23. Confidentiality. The Class Representatives and Class Counsel will keep all terms of this settlement confidential and will not make any public disclosure or social media postings of the Dispute, the Settlement or this Memorandum of Understanding except for what is necessary to obtain preliminary or final approval of this Settlement from the Court. If comment or information is requested by the media, the Class Representatives and Class Counsel will provide no information other than direct the media to the public records of the action on file with the Court. Class Counsel will take all steps necessary to ensure Class Representatives are aware of, and will encourage them to adhere to, the restriction against public disclosure and media comment on the Settlement and its terms. Class Counsel and the Class Representatives agree that this Confidentiality term is a material term and that breach of this provision shall be deemed a material breach of this Settlement. The Parties agree that breach of this term shall cause irreparable harm to Defendants.

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24. Blow-Up Provision. Defendants have the right in their sole and exclusive discretion to terminate and withdraw from the Settlement at any time prior to date the Court enters final approval of this Settlement if 20% or more than of Class Members timely and validly opt out of the Settlement or if the Court fails to approve material terms of the settlement, including the scope of the release. Defendants must make such election within 10 business days of being notified by the Settlement Administrator 20% or greater opt-out rate or the Court's denial of the settlement with prejudice.
25. Mutual Cooperation. The Parties agree to cooperate fully with each other to accomplish the terms of the Settlement by entering into a long-form Stipulation of Settlement which encompasses this MOU, to use their best efforts to finalize the Settlement, and to use any other efforts that may become necessary by order of the Court, or otherwise, to effectuate the Settlement. Class Counsel agrees to prepare and circulate the initial draft Stipulation of Settlement and Notice of Class Action Settlement for Defendants' review. If there are any outstanding issues will be submitted to the Parties' mediator, Henry J. Bongiovi.
26. Authority to Execute. Counsel for the Parties agree they have authority to execute this Confidential Memorandum of Understanding for and on behalf of the Parties.
27. Enforceability. The Parties intend this MOU to be enforceable and admissible in evidence. The Parties intend to enter into a long form settlement agreement which will contain terms that are not inconsistent with this MOU, but if no such further agreement is entered into this MOU will be enforceable, subject to Court approval under CA Code Civ. Proc. § 664.6.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Memorandum of Understanding as of the dates set forth below:

09 / 26 / 2023

Date

Jose A. Frausto

Jose Angel Frausto Villegas

09 / 26 / 2023

Date

Jose Manuel Barragan

Jose Manuel Barragan

Date

Dario Pini
President

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LMB DS DP

Defendant DLP Management Co., Inc.

9-27-23

Date



Dario Pini
Defendant

AGREED AS TO FORM

09 / 26 / 2023

Date



Louis Benowitz
Benowitz Law Corporation
Attorneys for Plaintiffs

09 / 26 / 2023

Date



David G. Spivak
The Spivak Law Firm
Attorneys for Plaintiffs

09 / 26 / 2023

Date



Paul Burns, Esq.
LAW OFFICES OF PAUL R. BURNS, P.C.
Attorneys for Defendants, DLP Management
Co., Inc. and Dario Pini

**EXHIBIT OMITTED BY
PLAINTIFF**

EXHIBIT 6

EXHIBIT 6: DAMAGES SPREADSHEETS

Case title:	Jose Frausto Villegas, et al. v. DLP Management, Inc., et al.
Case no.:	21CV04500 (Villegas)/22CV01392 (Barragan)
Court:	Santa Barbara
Judge:	Hon. Thomas P. Anderle
Page subject:	Data

Important Dates

Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins:	Sunday, November 12, 2017
Lab.Code § 203 (waiting time penalties) period begins:	Tuesday, November 13, 2018
Lawsuit:	Friday, November 12, 2021
Mediation:	Tuesday, September 26, 2023
Anticipated Settlement Period end date:	Wednesday, January 24, 2024

Classes / Groups sizes

UCL Class Members:	81
# of PCMs per day	60
UCL Workweeks:	18,327
UCL Pay Periods:	9,163
UCL Workdays:	110,263
UCL Calendar Days:	2,144
UCL Calendar Months:	70.49
UCL Calendar Workweeks:	305.45
UCL Calendar Pay Periods:	152.72
Waiting Time Penalties Class Members:	21

Averages

Average Hourly Rate:	\$	16.00
Average Overtime Rate:	\$	24.00
Average Work Hours Per Day:		8.50
Average Work Hours Per Week:		51.00
Average Workdays Per Week:		6.00
Workdays to Calendar Days (%):		85.71%
Paycycle:		semi-monthly
Paychecks Per Year:		24

EXHIBIT 6: DAMAGES SPREADSHEETS

Case title: Jose Frausto Villegas, et al. v. DLP Management, Inc., et al.
Case no.: 21CV04500 (Villegas)/22CV01392 (Barragan)
Court: Santa Barbara
Judge: Hon. Thomas P. Anderle
Page subject: **Unpaid wages**
Authority: Lab.Code §§ 510, 1194, 1194.2, and 1198

Average Hourly Rate:	\$	16.00
Unpaid hours per pay week:	min 30 minutes per day	3.00
Actionable workweeks:		18,327
Interest:		10%
Unpaid off-the-clock/shaved wages:	\$	967,654.75

Average Hourly Rate:	\$	16.00
Average overtime hours paid at straight time per pay week:		2.00
Actionable workweeks:		18,327
Interest:		10%
Unpaid overtime premium wages:	\$	322,551.58

EXHIBIT 6: DAMAGES SPREADSHEETS

Case title:	Jose Frausto Villegas, et al. v. DLP Management, Inc., et al.	
Case no.:	21CV04500 (Villegas)/22CV01392 (Barragan)	
Court:	Santa Barbara	
Judge:	Hon. Thomas P. Anderle	
Page subject:	Unprovided Meal Periods	
Authority:	Lab.Code §§ 226.7, 512, and 1198	
Average Hourly Rate:	\$	16.00
Actionable workdays:		110,263
>>Percentage qualifying for meal periods:		100.00%
Violation rate (%)		50.00%
Meal period premium wages:	\$	882,102.86

EXHIBIT 6: DAMAGES SPREADSHEETS

Case title:	Jose Frausto Villegas, et al. v. DLP Management, Inc., et al.	
Case no.:	21CV04500 (Villegas)/22CV01392 (Barragan)	
Court:	Santa Barbara	
Judge:	Hon. Thomas P. Anderle	
Page subject:	Unprovided Rest Periods	
Authority:	Lab.Code §§ 226.7 and 1198	
Average Hourly Rate:	\$	16.00
Actionable workdays:		110,263
>>Percentage qualifying for rest periods:		100.00%
Violation rate (%)		100.00%
Rest period premium wages:	\$	1,764,205.71

EXHIBIT 6: DAMAGES SPREADSHEETS

Case title:	Jose Frausto Villegas, et al. v. DLP Management, Inc., et al.
Case no.:	21CV04500 (Villegas)/22CV01392 (Barragan)
Court:	Santa Barbara
Judge:	Hon. Thomas P. Anderle
Page subject:	Unreimbursed expenses
Authority:	Lab.Code § 2802

Mileage

IRS Mileage Rate:	\$	0.560
Miles Per Workweek:		30.00
UCL Workweeks:		18,327
Interest rate:		10%
Unreimbursed mileage	\$	338,679.16

Cellphone

UCL Pay Periods:		9,163
Average Semi-Monthly Cellphone Bill:	\$	30.00
Percentage attributable to work:		30%
Interest rate:		10%
Unreimbursed cellphone costs:	\$	83,389.95

Tools

UCL Class Members:	\$	81.00
Average tolls cost per employees:	\$	300.00
Unreimbursed tools costs:	\$	24,300.00

Total unreimbursed expenses:	\$	446,369.11
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EXHIBIT 6: DAMAGES SPREADSHEETS

Case title:	Jose Frausto Villegas, et al. v. DLP Management, Inc., et al.
Case no.:	21CV04500 (Villegas)/22CV01392 (Barragan)
Court:	Santa Barbara
Judge:	Hon. Thomas P. Anderle
Page subject:	Waiting Time / Final Wages
Authority:	Lab.Code § 203

Waiting Time Penalties Class Members:		21
Days waiting:		30
Average Hourly Rate:	\$	16.00
Average Overtime Rate:	\$	24.00
Average Work Hours Per Day:		8.50
Regular Hours Per Day:		8.00
Waiting time penalties:	\$	88,200.00

EXHIBIT 6: DAMAGES SPREADSHEETS

Case title:	Jose Frausto Villegas, et al. v. DLP Management, Inc., et al.
Case no.:	21CV04500 (Villegas)/22CV01392 (Barragan)
Court:	Santa Barbara
Judge:	Hon. Thomas P. Anderle
Page subject:	Totals
Authority:	Various

Restitution		Reduction		Demand	
Unpaid Wages:	\$ 1,290,206.33	5%	\$	1,225,696.02	
Meal period premium wages:	\$ 882,102.86	5%	\$	837,997.71	
Rest period premium wages:	\$ 1,764,205.71	5%	\$	1,675,995.43	
Total unreimbursed expenses:	\$ 446,369.11	5%	\$	424,050.65	
Restitution subtotal:	\$ 4,382,884.01		\$	4,163,739.81	
Penalties					
Waiting time penalties:	\$ 88,200.00	5%	\$	83,790.00	
Penalties subtotal:	\$ 88,200.00		\$	83,790.00	
Grand total:	\$ 4,471,084.01		\$	4,247,529.81	

EXHIBIT 7

Case Name: Frausto Villegas v. DLP Management Co., Inc.

Wednesday, September 27, 2023

Requesting Law Firm
Contact
E-Mail
ILYM Contact
E-Mail
Contact Number

The Spivak Law Firm
Thalia Higgins
thalia@spivaklaw.com
Lisa Mullins
Lisa@ilymgroup.com
714.878.8836

ESTIMATE FOR ADMINISTRATION SOLUTIONS

ASSUMPTIONS	
Total Number of Class Members	89
Estimated Percentage of Undeliverable Mail	20%
NCOA	Yes
ILYM Group Static Website	Yes
Certified Spanish Translations	Yes

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	1	\$150.00
Programming of Class Database	Hourly	\$175.00	1	\$175.00

**ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

Subtotal \$325.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	1	\$120.00
Staff Hours for Processing Opt-Outs, Disputes & Objections	Hourly	\$70.00	1	\$70.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	1	\$70.00
Report Processing	Hourly	\$70.00	1	\$70.00
NCOA	Per Piece	\$50.00	1	\$50.00
Toll-Free Call Center	Flat Fee	\$150.00	1	\$150.00
ILYM Group Static Website, Includes Hosting	Flat Fee	\$750.00	1	\$750.00
Certified Spanish Translations	Flat Fee	\$1,250.00	1	\$1,250.00
Weekly Reports	Flat Fee	\$500.00	1	Waived

Subtotal \$2,530.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING				
Fulfillment of Notice, English and Spanish	Per Piece	\$1.50	89	\$133.50
USPS First Class Postage	Per Piece	\$0.83	89	\$73.87
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	18	\$35.60
Storage, Photocopies, Deliveries	Flat Fee	\$55.91	1	\$55.91

Subtotal \$298.88

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	2	\$250.00
Check, Print & Mail (Including W2/1099 Stub & Release)**	Per Check	\$1.00	89	\$89.00
USPS First Class 1oz Postage	Per Piece	\$0.63	89	\$56.07
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$1.50	9	\$13.35
Fulfillment of Reminder Postcard	Per Piece	\$0.85	27	\$22.70
Preparation of Taxes	Hourly	\$120.00	1	\$120.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

***Additional Bank fees may apply*

Subtotal \$2,351.12

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Project Manager Final Reporting	Hourly	\$120.00	1	\$120.00
Declaration	Hourly	\$125.00	1	\$125.00

Subtotal \$345.00

Total Case Estimate: \$5,850.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT 8



October 2, 2023

CASE ASSUMPTIONS

Class Members	83
Opt Out Rate	1%
Opt Outs Received	1
Total Class Claimants	82
Subtotal Admin Only	\$7,005.68

Flat Fee Total \$6,000.00

For 83 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Language Translation, Printing & Mailing Included

Case: Villegas v. DLP Management Co., Inc., Opt-Out Administration

Phoenix Contact: Michael E. Moore

Contact Number: 949.331.0131

Email: mike@phoenixclassaction.com

Requesting Attorney: Thalia Higgins

Firm: The Spivak Law Firm

Contact Number: (818) 582-3172

Email: thalia@spivaklaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.

Estimate is based on **83** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$150.00	1		\$150.00
Call Center & Long Distance	\$2.00	10		\$20.00
NCOA (USPS)	\$15.00	1		\$15.00
Total				\$585.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Language Translation / Website

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Language Translation	\$1,000.00	1		\$1,000.00
Data Merge & Duplication Scrub	\$0.10	83		\$8.30
Notice Packet & Opt-Out Form	\$1.35	83		\$112.05
Estimated Postage (up to 2 oz.)*	\$0.87	83		\$72.21
Static Website	\$200.00	1		\$200.00
Check Cashing Reminder Postcard	\$0.60	17		\$10.33
Postage Included				
Total				\$1,602.89

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	2		\$110.00
Skip Tracing Undeliverables	\$1.00	17		\$16.60
Remail Notice Packets	\$0.75	14		\$10.20
Estimated Postage	\$0.87	14		\$11.83
Programming Undeliverables	\$50.00	1		\$50.00
			Total	\$198.63

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Database	\$150.00	2		\$300.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	2		\$110.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	4		\$40.00
Case Manager	\$85.00	2		\$170.00
			Total	\$820.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	1		\$135.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	2		\$190.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	2		\$270.00
Mail Class Checks *	\$0.90	82		\$73.80
Estimated Postage	\$0.64	82		\$52.48
			Total	\$991.28

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing & Instructions for downloading tax forms from PHX secure portal



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	2		\$230.00
Remail Checks (Postage Included)	\$1.70	16		\$27.88
Case Associate	\$55.00	3		\$165.00
Reconcile Uncashed Checks	\$85.00	3		\$255.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	3		\$255.00
Final Reporting & Declarations	\$115.00	3		\$345.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$1,000.00	1		\$1,000.00
Check to Cy-Pres	\$150.00	1		Included
Uncashed Checks to the State of California Controllers Office Estimated <u>14</u> Total Class Members	\$300.00	1		\$300.00
Total				\$2,807.88

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$7,005.68



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT 9

CASE NAME: VILLEGAS V. DLP MANAGEMENT CO., INC.

Date: May 29, 2024

All-In Settlement

Requesting Attorney: Thalia Higgins

Class Size: 83

Plaintiff or Defense: Plaintiff

Opt-Out Rate: 1.5%

Firm Name: The Spivak Law Firm

No. of Checks Issued: 82

Telephone: (818) 582-3172

Postage Total: \$375.06

Email: thalia@spivaklaw.com

Grand Total: \$12,992.62

DISCOUNTED FLAT FEE: \$9,000.00

The services and numbers reflected herein are an estimate provided by counsel. If the actual services and number are different, our cost estimate will change accordingly.

The attached Terms and Conditions are included as part of our cost proposal. By accepting our costs proposal for this matter, you are thereby agreeing to the Terms and Conditions.

CASE SETUP

Upon Intake of the Data, CPT will Scrub all Records to a Useable Format to Reduce Duplicates, Anomalies and Increase the Success Rate of Deliverability of the Class Notice. Class Members will be Assigned a Unique Mailing ID which will be Used Throughout Administration. The Notice Packet will be Translated into Spanish. All Pertinent Documents will be Posted on a Case Specific Website.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	\$95.00	1	\$95.00
Programming: Data Base Setup	\$150.00	1	\$150.00
Spanish Translation	\$1,200.00	1	\$1,200.00
Static Website	\$500.00	1	\$500.00
TOTAL			\$1,945.00

DIRECT MAIL NOTICE

To Ensure Mailing to the Most Current Address Possible, CPT will Perform an Address Update via NCOA and Further Skip Trace if Necessary. CPT will Mail a Full-Length Notice, 1-Page Exclusion Form, 1-Page Objection Form & 1-Page Dispute Form in Both English and Spanish.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Format Documents	\$95.00	2	\$190.00
National Change of Address Search (NCOA)	\$135.00	1	\$135.00
XML Lex ID Skip Trace	\$0.85	8	\$6.80
Print & Mail Notice Packets	\$3.00	83	\$249.00
First-Class Postage (up to 3.5 oz.)*	\$3.00	83	\$249.00
TOTAL			\$829.80

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

PROCESS RETURNED UNDELIVERABLE MAIL

Based On CPT's Historical Data, 5% of the Notices will be Returned Undeliverable. Upon Receipt, CPT will Perform a Skip Trace in an Attempt to Obtain a Current Address; Thus, 70% of the Undeliverable Notice Packets are Remaild.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Clerical Staff	\$60.00	1	\$60.00
Update Undeliverable Mail Database	\$0.50	4	\$2.00
Skip Trace for Best Address	\$1.00	4	\$4.00
Print & Remail Notice Packets	\$3.00	3	\$9.00
First-Class Postage (up to 3.5 oz.)	\$3.00	3	\$9.00
TOTAL			\$84.00

OPT-OUT PROCESSING

CPT will Process and Validate all Opt-Outs and Other Responses from Class Members. Deficient Opt-Outs will Receive a Deficiency Notice by Mail and Provide an Opportunity to Cure. CPT will Scrub the Filed Opt-Outs to Eliminate Duplicates, Fraudulent, and Otherwise Invalid.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: De-duplication/Scrubbing	\$150.00	1	\$150.00
Project Manager: Validate Opt-Out Requests	\$95.00	1	\$95.00
Clerical Staff	\$60.00	1	\$60.00
Opt-Out & Change of Address Processing	\$2.00	1	\$2.49
Print & Mail Deficiency/Dispute Notices	\$1.50	1	\$1.50
First-Class Postage (up to 1 oz.)	\$0.68	1	\$0.68
Review & Process Deficiency Responses	\$10.00	1	\$10.00
		TOTAL	\$319.67

TELEPHONE SUPPORT

CPT will Maintain a Toll-Free Phone Number with IVR Capabilities and Live Class Member Support Representatives During Normal Business Hours, Monday-Friday, 9:00 AM - 5:30 PM, PT. The Dedicated Case Phone Number will Remain Active Up to 120 Days After Disbursement.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Toll-Free Number Establish/Setup	\$150.00	2	\$300.00
Live Call Center Support Reps.	\$3.00	17	\$51.00
		TOTAL	\$351.00

SSN VERIFICATION

Verify SSN for Validity with IRS / IRS Backup Withholdings

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	\$150.00	1	\$150.00
Department Manager: Analysis & Reporting	\$95.00	3	\$285.00
IRS SSN Verification	\$0.10	82	\$8.18
		TOTAL	\$443.18

DISTRIBUTION SERVICES

CPT will Establish and Manage the Qualified Settlement Fund (QSF) for up to One Year After Disbursement. Upon Approval, CPT will Perform all Necessary Calculations and Disburse Funds. CPT will Mail an 8.5"x11" MICR Check to Valid Class Members. CPT Uses a Payee Positive Pay System to Reconcile Checks Cashied and Conducts Monthly Account Reconciliations for the QSF. A Check Reminder Postcard will be Sent to All Class Members Who do not Cash Their Check.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	3	\$450.00
Project Manager: Correspondence w/Parties	\$95.00	2	\$190.00
Programming: Setup & Printing of Checks	\$150.00	3	\$450.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Print & Mail Notice, Checks & W2/1099	\$2.50	82	\$204.39
First-Class Postage (up to 1 oz.)*	\$0.68	82	\$55.59
Check Reminder Postcard	\$0.40	65	\$26.16
Postage for Check Reminder Postcard	\$0.53	65	\$34.66
		TOTAL	\$2,310.81

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

POST-DISTRIBUTION & TAX REPORTING

Any Check Returned Undeliverable is Skip Traced to Locate a Current Address and Remailed Accordingly. CPT will Process Requests for Check Reissues Continuously. CPT Prepares Annual Tax Reporting on Behalf of the QSF and Federal and State Taxes in Accordance with Current State and Federal Regulations. Upon the Conclusion of the Settlement, a Final Report and Declaration will be Provided to all Parties.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Supervisor: Account Reconciliation	\$150.00	10	\$1,500.00
Update Undeliverable Checks Database	\$0.50	7	\$3.50
Skip Trace for Best Address	\$1.00	7	\$7.00
Remail Undeliverable Checks	\$2.50	6	\$15.00
First-Class Postage (up to 1 oz.)	\$0.68	6	\$4.08
Re-Issue Checks as Required	\$5.00	5	\$25.00
First-Class Postage (up to 1 oz.)	\$0.68	5	\$3.40
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly & Final Reports	\$150.00	2	\$300.00
Project Supervisor: Final Declaration	\$150.00	2	\$300.00
Project Manager: Account Files Sent to Atty	\$95.00	2	\$190.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
TOTAL			\$4,597.98

*CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

SCO ESCHEATMENT PROCESSING

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%			
ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
UPEnterprise Reporting Services	\$0.15	17	\$2.55
Project Manager: SCO Fall Reporting	\$95.00	2	\$190.00
Project Supervisor: Review of SCO Reports	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.64	1	\$8.64
Check Reissues for Winter/Spring QTR	\$5.00	2	\$10.00
First-Class Postage (up to 1 oz.)	\$0.68	2	\$1.36
Project Supervisor: June Remittance	\$150.00	1	\$150.00
Project Manager: June Remittance	\$95.00	2	\$190.00
Certified Mail Report to SCO	\$8.64	1	\$8.64
Add'l Account Recons	\$150.00	6	\$900.00
Add'l QSF Annual Tax Reporting	\$500.00	1	\$500.00
TOTAL			\$2,111.19

GRAND TOTAL **\$12,992.62**

TERMS AND CONDITIONS

These Terms and Conditions are made a part of, and incorporated by reference into, any cost proposal or Bid presented by CPT Group, Inc. to Client

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with another party.
 - b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation.
 - c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
 - d) **"Claims Administrator"** means CPT Group, Inc., a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
 - e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
 - f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, and objections, which contain Client Data.
 - g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
 - h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
 - i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
 - j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
 - k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
 - l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
 - m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
 - n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
 - o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
 - p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
 - q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
 - r) **"Products"** means any and all CPT Services, and work products resulting from Services.
 - s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.
 - t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
 - w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
 - x) **"Term"** means the term of the Agreement, as set forth in the Order.
 - y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
 - z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. Client Obligations. Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. Security. The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement and shall promptly inform the other Parties of such breaches.
4. CPT Obligations. Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.
5. Mutual Obligations.
- a) Resources. Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service.

- If there is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.
- b) **Incident Notification.** Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. **Qualified Settlement Fund Account.** At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. **Fees and Payment.** Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and /or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. **Term and Termination.**
- a) **Term.** The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
- b) **Termination for Cause.** Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
- c) **Bankruptcy Events.** A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
- d) **Effect of Termination.** Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
- e) **Final Payment.** If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.
- Confidentiality.** Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.
- a) **Compelled Disclosure.** If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.
- b) **Remedies.** If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. **Intellectual Property.** As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.
11. **Indemnification.** Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. **Warranties.** Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
13. **Liability.**
- a) **Liability Cap.** EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
- b) **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. **Communications.** CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.

15. Miscellaneous Provisions.

- a) Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.
- b) Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c) Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d) Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e) Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f) Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g) No Third-Party Beneficiaries. The representations, warranties, and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns and shall not be construed as conferring any rights on any other persons.
- h) Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third-party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.
- i) Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j) Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k) Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l) Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m) Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n) Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret, or construe its meaning, scope or intent.
- o) Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power, or remedy.
- p) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.