

Lilit Tunyan (SBN 329351)
ltunyan@tunyanlaw.com
 Artur Tunyan (SBN 349174)
atunyan@tunyanlaw.com
TUNYAN LAW, APC
 535 N. Brand Blvd., Suite 285
 Glendale, California 91203
 Telephone: (323) 410-5050

Attorneys for Plaintiff SCOTT ALLEN ATHEY

Richard D. Marca (SBN 127365)
Richard.Marca@varnerbrandt.com
 Alisha Maline (SBN 345697)
Alisha.Maline@varnerbrandt.com
VARNER & BRANDT LLP
 3750 University Avenue, Floor 6
 Riverside, CA 92501
 Telephone: (951) 274 -7777
 Facsimile: (951) 274- 7770

Attorneys for Defendant WALKER EVANS ENTERPRISES

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF RIVERSIDE**

SCOTT ALLEN ATHEY, as an individual and on
 behalf of all employees similarly situated,

Plaintiff,

v.

WALKER EVANS ENTERPRISES, a California
 Corporation; and DOES 1 through 50, inclusive,

Defendants

Case No.: CVRI2301534

[Assigned for all purposes to Hon. Harold W.
 Hopp, Dept. 1]

**AMENDED JOINT STIPULATION OF
 CLASS AND PAGA REPRESENTATIVE
 ACTION SETTLEMENT**

Action Filed: March 27, 2023
 Trial: Not Set

**AMENDED JOINT STIPULATION OF CLASS AND PAGA REPRESENTATIVE ACTION
SETTLEMENT**

This Amended Joint Stipulation of Class and PAGA Representative Action Settlement (“Joint Stipulation of Settlement” or “Settlement” or “Agreement”) is made and entered into by and between Plaintiff SCOTT ALLEN ATHEY, individually, and on behalf of all others similarly situated, (“Plaintiff” or “Class Representatives”), and Defendant WALKER EVANS ENTERPRISES (“Defendant”). Plaintiff and Defendant are collectively referred to herein as “the Parties.”

THE PARTIES STIPULATE AND AGREE as follows:

DEFINITIONS

1. For purposes of this Settlement, “Complaint” refers to the operative complaint, which is the First Amended Complaint.

2. For purposes of this Settlement, this matter, entitled *Athey v. Walker Evans Enterprises*, Case No. CVRI2301534, is referred to herein as the “Action.”

3. For purposes of this Settlement, the “Class Period” is September 22, 2021 to August 31, 2023.

4. For purposes of this Settlement, the “Class” or “Class Members” consist of: All non-exempt employees of Defendant who worked in California during the Class Period. “Settlement Class Members” are those Class Members who do not submit timely exclusion requests to the Settlement Administrator. Defendant’s best estimate is that the Class included approximately 194 individuals.

5. For purposes of this Settlement, “Class Counsel” means TUNYAN LAW, APC.

6. For purposes of this Settlement, “Covered Workweeks” means the number of weeks a Class Member worked at Defendant’s locations in California during the Class Period.

7. For purposes of this Settlement, “Response Deadline” means forty-five (45) days after the Settlement Administrator initially mails the Notice to Settlement Class Members and the last date on which Settlement Class Members may submit a request for exclusion or written objection to the Settlement. In the case of a re-mailed Notice, the Response Deadline will be the later of forty-five (45) calendar days after initial mailing or 14 calendar days from re-mailing. The Response Deadline may be

1 extended only as expressly described herein.

2 8. For purposes of the Settlement, “Defendant’s Counsel” means VARNER & BRANDT
3 LLP.

4 9. For purposes of this Settlement, “PAGA Allocation” means the amount that the Parties
5 have agreed to allocate to resolution of the claim for violation of the Labor Code Private Attorneys
6 General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”). The Parties have agreed that the PAGA
7 Allocation will be \$10,000.00 from the Gross Settlement Amount. Pursuant to PAGA, Seventy Five
8 Percent (75%), or \$7,500.00, of the PAGA Allocation will be paid to the LWDA (“PAGA Penalty
9 Payment”), and Twenty Five Percent (25%), or \$2,500.00, of the PAGA Allocation will be included in the
10 Net Settlement Amount for PAGA Employees (“PAGA Settlement Payment”).

11 10. For purposes of this Settlement, “PAGA Period” means the period between March 27,
12 2022 to August 31, 2023.

13 11. For purposes of this Settlement, “PAGA Employee” means all Class Members that worked
14 at any time during the PAGA Period. It is stipulated by the Parties that, for purposes of this Settlement, all
15 PAGA Employees are “aggrieved employees” as defined pursuant to PAGA. PAGA Employees cannot
16 opt out of the settlement of the PAGA claim.

17 12. For purposes of this Settlement, “PAGA Pay Periods” means the number of pay periods
18 each PAGA Employee worked during the PAGA Period.

19 13. For purposes of this Settlement, “PAGA Representatives” means Plaintiff.

20 14. For purposes of this Settlement, “Released PAGA Claims” means all claims asserted
21 through California Labor Code §§ 2698, *et seq.*, that were identified by the PAGA Representatives in the
22 Notice to the LWDA and are alleged in the Complaint. Plaintiff’s Notice to the LWDA is attached hereto
23 as **Exhibit “A”**.

24 15. For purposes of this Settlement, “Released PAGA Claims Period” means the period
25 between March 27, 2022 through August 31, 2023.

26 16. For purposes of this Settlement, “Settlement Payments” means all of the payments to
27 Settlement Class Members (the “Settlement Class Payments”) and all of the payments to the PAGA
28 Employees (the “PAGA Settlement Payment”).

STIPULATED BACKGROUND

17. On March 27, 2023, Plaintiff filed a putative Class Action alleging the following labelled causes of action: (1) failure to pay all wages (Lab. Code §§ 204, 510, 1194, 1998); (2) failure to provide meal periods (Lab. Code §§ 226.7, 512 and Wage Order); (3) failure to provide rest periods (Lab. Code §§ 226.7 and Wage Order); (3); (4) failure to maintain and provide accurate itemized wage statements (Lab. Code §§ 226(a) and 1174); (5) failure to indemnify necessary business expenses (Lab. Code § 2802); (6) failure to timely pay all wages and final wages (Lab. Code §§ 201, 202, 203, 204 and 210); (7) Unfair Business Practices in violation of Bus. & Prof. Code § 17200 et seq. On May 30, 2023, Plaintiff filed his First Amended Complaint adding the eighth case of action for civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] (“PAGA”) and limiting class period to start from September 22, 2021. (The “Action.”).

18. The parties agree that Plaintiff satisfied the administrative exhaustion requirement that is a prerequisite to filing a claim for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] (“PAGA”) by submission of the notice to the LWDA and Defendant on March 24, 2023.

19. Solely for purposes of settling this case, the Parties and their respective counsel stipulate and agree that the requisites for establishing class certification with respect to the Class Members have been met and are met. More specifically, the Parties stipulate and agree that:

- (a) The Class is ascertainable and so numerous as to make it impracticable to join all Class Members.
- (b) There are common questions of law and fact including, but not limited to, the following:
 - 1) Whether or not Defendant paid proper wages to the Class;
 - 2) Whether or not Defendant provided meal periods to the Class;
 - 3) Whether or not Defendant provided rest periods to the Class;
 - 4) Whether or not Defendant paid compensation timely upon separation of employment to former Class Members;
 - 5) Whether or not Defendant paid compensation timely throughout Class

Members' employment;

- 6) Whether or not Defendant provided accurate itemized statements to the Class;
- 7) Whether or not waiting-time penalties are available to the Class for violation of California Labor Code § 203;
- 8) Whether or not Defendant maintained requisite records;
- 9) Whether or not Defendant paid proper meal period pay or rest period pay to the Class; and,
- 10) Whether or not Defendant engaged in unlawful or unfair business practices affecting the Class in violation of California Business and Professions Code §§ 17200-17208.

- (c) Plaintiff's claims are typical of the claims of the Class Members.
- (d) Plaintiff and Class Counsel will fairly and adequately protect the interests of the Class.
- (e) The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct.
- (f) With respect to the Class, questions of law and fact common to the members of the Class predominate over any questions affecting any individual member in such Class, and that a class action is superior to other available means for the fair and efficient adjudication of the controversy.

20. Should, for whatever reason, the Settlement not become effective, class certification as part of the Settlement shall have no bearing on and shall not be admissible in connection with whether the Class Members and/or the class claims should be certified in a non-settlement context in this Action or in any other lawsuit. Defendant expressly reserves its right to oppose class certification in this or any other action should this Settlement not become effective.

21. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the claims alleged in the Complaint, and Defendant further denies that, for any purpose other than settling this

lawsuit, the action is appropriate for class or representative treatment. With respect to Plaintiff's claims, Defendant contends, among other things, that it has complied at all times with the California Labor Code and the applicable Wage Orders of the Industrial Welfare Commission. Furthermore, with respect to all claims, Defendant contends that it has complied at all times with the California Business and Professions Code.

22. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or related to the Complaint.

23. Class Counsel has conducted a thorough investigation into the facts of this Action, including an extensive review of relevant documents, and has diligently pursued an investigation of the claims of the Class and PAGA claims against Defendant. Based on its own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set forth in this Joint Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of the Class and PAGA employees in light of all known facts and circumstances, including the risk of significant delay, the risk the Class will not be certified by the Court, defenses asserted by Defendant, and numerous potential appellate issues.

24. The Parties agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this Settlement.

25. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.

PRIMARY TERMS OF SETTLEMENT

26. NOW THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

- (a) It is agreed by and among the Settlement Class, PAGA Employees, and Defendant that this case and any claims, damages, or causes of action arising out of the disputes which are the subject of this case, be settled and compromised as between the Settlement Class, PAGA Employees, and Defendant, subject to the terms and conditions set forth in this Settlement and the approval of the Court.

- (b) Effective Date: The "Effective Date" of the Settlement will be the last to occur of the following: (a) if there are no objections to the settlement, then the date of final approval by the Court; (b) if there are objections to the settlement, and if an appeal, review or writ is not sought from the order granting final approval of the settlement, the 31st day after service of notice of entry of the order; or (c) if an appeal, review or writ is sought from the order, the day after the order is affirmed or the appeal, review or writ is dismissed or denied, and the order is no longer subject to further judicial review. Prior to the Effective Date of the settlement, Defendant will not be required to fund this settlement, in whole or in part, through the claims administrator or any third party.
- (c) Gross Settlement Amount: Defendant's maximum total payment under the Settlement, including all attorney's fees and costs, the Service Payment to the named Plaintiff, the costs of settlement administration, the PAGA Allocation, and any other payments provided by this Settlement, is One Hundred and Seventy-Five Thousand Dollars and Zero Cents (\$175,000.00) ("Gross Settlement Amount"), subject to the Escalator Clause and except that, to the extent that any portions of the Class Members' Settlement Payments constitute wages, Defendant will be separately responsible for any employer payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions.
- (d) Escalator Clause: The Gross Settlement Amount is based on Defendant's approximations referenced in Paragraph 26 (c) above and an extrapolation that the Class Members worked a total of approximately 10,469 workweeks for 194 employees (i.e., estimated through August 31, 2023.) Should the qualifying Workweeks worked by the Class Members during the Class Period ultimately increase by more than 10% (i.e., by more than 1,047 Workweeks), Defendant shall have the option to either: (1) increase the Gross Settlement Amount on a pro-rata basis equal to the percentage increase in the number of Workweeks worked by the

1 Class Members above 10%; or (2) choose to have the Release Period end on the
2 date on which the qualifying Workweeks worked by the Class Members during the
3 class period reached 11,516, whichever is sooner (the "Escalator Clause").

4 (e) Non-reversionary Settlement: No portion of the Gross Settlement Amount will
5 revert to Defendant.

6 (f) No Claims Required: Class Members will not be required to submit a claim to
7 receive their Settlement payment.

8 (g) Net Settlement Amount: The Net Settlement Amount shall be calculated by
9 deducting from the Gross Settlement Amount (\$175,000.00) the following sums,
10 subject to approval by the Court: (1) attorney's fees (not to exceed 33 and 1/3% of
11 the Gross Settlement Amount, or \$58,333.33); (2) reasonable litigation costs (not to
12 exceed \$22,000.00); (3) the Service Payment to Plaintiff in the amount of
13 \$10,000.00; (4) the PAGA Penalty Payment in the amount of \$10,000.00 (which is
14 75% of the PAGA Allocation); and (5) costs of settlement administration
15 (estimated not to exceed \$15,000). Settlement Payments to the Class Members and
16 PAGA Employees will be calculated by the Settlement Administrator and paid out
17 of the Net Settlement Amount as set forth below.

18 (h) Payroll Taxes and Required Withholdings: To the extent that any portions of the
19 Settlement Class Members' Settlement Payments constitute wages, Defendant will
20 be separately responsible for any **employer** payroll taxes required by law,
21 including the employer FICA, FUTA, and SDI contributions. Except for any
22 employer payroll taxes, it is understood and agreed that Defendant's maximum
23 total liability under this Settlement shall not exceed the Gross Settlement Amount.
24 The Settlement Administrator will calculate and submit the Defendant's employer
25 share of payroll taxes after advising Defendant of the total amount owed, in
26 aggregate, as employer-side payroll taxes and receiving a lump sum payment from
27 Defendant in that amount when the Gross Settlement Amount is delivered to the
28 Settlement Administrator.

(i) Settlement Class Payments (Excludes PAGA Payments): Settlement Class Payments will be paid out of the Net Settlement Amount. Each Settlement Class Member (i.e., those Class Members who do not opt out of the Class Settlement, as defined above) will be paid a pro-rata share of the Net Settlement Amount, less the PAGA Settlement Payments totalling \$2,500, as calculated by the Settlement Administrator. The pro-rata share will be determined by comparing the individual Settlement Class Member's Covered Workweeks employed during the Class Period in California to the total Covered Workweeks of all the Settlement Class Members during the Class Period as follows:
$$\frac{[\text{Workweeks worked by a Settlement Class Member}]}{[\text{Sum of all Covered Workweeks worked by all Settlement Class Members}]} \times [\text{Net Settlement Amount} - \text{all PAGA Settlement Payments}] =$$
 individual Settlement Payment for a Settlement Class Member. Settlement Class Payments in the appropriate amounts will be distributed by the Settlement Administrator by mail to the Settlement Class Members.

(j) PAGA Payments: PAGA Settlement Payments will be paid out of the Net Settlement Amount. Each PAGA Employee will be paid a pro-rata share of the PAGA Employees' PAGA Settlement Payment, as calculated by the Settlement Administrator. Class Members will not be permitted to exclude themselves from this portion of the Settlement. The pro-rata share will be determined by comparing the individual PAGA Employees' PAGA Pay Periods during the PAGA Period to the total PAGA Pay Periods of all the PAGA Employees during the PAGA Period as follows:
$$\frac{[\text{PAGA Pay Periods worked by a PAGA Employee}]}{[\text{Sum of all PAGA Pay Periods worked by all PAGA Employees}]} \times [\text{PAGA Settlement Payment to Employees, i.e. \$2,500.00}] =$$
 individual PAGA Employee's portion of the PAGA Settlement Payment. PAGA Settlement Payments to PAGA Employees in the appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA

1 Employees at the same time Settlement Class Payments issue to the
2 Settlement Class. The LWDA's PAGA Penalty Payment will issue to
3 the LWDA at the same time Settlement Payments issue to the Settlement
4 Class.

5 (k) Allocation of Settlement Payments: The Parties have agreed that Settlement Class
6 Payments will be allocated as follows: 20% to wages, 40% to penalties and 40% to
7 interest. The PAGA Settlement Payment shares to PAGA Employees will be
8 entirely allocated to penalties. Appropriate federal, state and local withholding
9 taxes will be taken out of the wage allocations, and each Class Member will
10 receive an IRS Form W-2 with respect to this portion of the Settlement Payment.
11 The employer's share of payroll taxes and other required withholdings will be paid
12 as set forth above, including but not limited to the Defendant's FICA and FUTA
13 contributions, based on the payment of claims to the Class Members. IRS Forms
14 1099 will be issued to each Class Member reflecting the payments for penalties and
15 interest. Class Members are responsible to pay appropriate taxes due on the
16 Settlement Payments they receive. To the extent required by law, IRS Forms 1099
17 and W-2 will be issued to each Class Member with respect to such payments. All
18 PAGA Settlement Payments will be allocated as 100% penalties.

19 (l) Settlement Payments Do Not Give Rise to Additional Benefits: All Settlement
20 Payments to individual Class Members shall be deemed to be paid to such Class
21 Member solely in the year in which such payments actually are received by the
22 Class Member. It is expressly understood and agreed that the receipt of such
23 Settlement Payments will not entitle any Class Member to additional compensation
24 or benefits under any company bonus, contest or other compensation or benefit
25 plan or agreement in place during the period covered by the Settlement, nor will it
26 entitle any Class Member to any increased retirement, 401(k) benefits or matching
27 benefits or deferred compensation benefits. It is the intent that the Settlement
28 Payments provided for in this Settlement are the sole payments to be made by

1 Defendant to the Class Members, and that the Class Members are not entitled to
2 any new or additional compensation or benefits as a result of having received the
3 Settlement Payments (notwithstanding any contrary language or agreement in any
4 benefit or compensation plan document that might have been in effect during the
5 period covered by this Settlement).

6 (m) Attorney's Fees and Costs: Subject to approval by the Court, Defendant will not
7 object to Class Counsel's application for attorney's fees not to exceed 33 and 1/3%
8 of the Gross Settlement Amount (\$58,333.33) and reimbursement of litigation
9 costs and expenses not to exceed \$22,000.00. Approved attorney's fees and
10 litigation costs shall be paid at the same time Settlement Payments issue to the
11 Settlement Class.

12 (n) Service Payment: Subject to Court approval, and in exchange for a general release,
13 Defendant will not object to Class Counsel's application for a payment of
14 \$10,000.00 to Plaintiff for service as a Class Representative ("Service Payment").
15 It is understood that the Service Payment is in addition to the individual Settlement
16 Payment to which a Class Representative is entitled to along with the other Class
17 Members. In exchange, Plaintiff have agreed to release all claims, demands,
18 rights, liabilities and causes of action of every nature and description
19 whatsoever, known or unknown, asserted or that might have been asserted,
20 whether in tort, contract, or for violation of any state or federal statute, rule or
21 regulation arising out of, relating to, or in connection with any act or omission
22 by or on the part of any of the Released Parties committed or omitted prior to
23 the execution hereof ("Plaintiff's Released Claims"). Plaintiff and Defendant
24 both stipulate and agree that each of them have expressly waived and
25 relinquished, to the fullest extent permitted by law, the provisions, rights and
26 benefits of Section 1542 of the California Civil Code, or any other provision
27 under federal or state law, which provides:

28 A general release does not extend to claims which the creditor or releasing party

1 does not know or suspect to exist in his or her favor at the time of executing the
2 release, which if known by him or her must have materially affected his or her
3 settlement with the debtor or released party.

4 The Parties understand that the General Release does not release any claims that
5 they cannot lawfully release. It is also understood and agreed by Defendant that
6 by this release Plaintiff is not waiving unemployment and/or any state disability
7 insurance benefits pursuant to the terms of applicable state law, workers'
8 compensation claims, any rights which are not subject to waiver as a matter of
9 law.

10 (o) Defendant or the Settlement Administrator will issue an IRS Form 1099 for the
11 Service Payment to the Plaintiff. The Plaintiff will be individually responsible for
12 correctly characterizing this compensation on personal income tax returns for tax
13 purposes and for paying any taxes on the amounts received. Plaintiff agrees not to
14 opt out or object to the Service Payment as the Class Representative.

15 (p) Settlement Administrator: The Settlement Administrator will be ILYM Group,
16 Inc. Settlement Administration Costs are estimated not to exceed \$15,000. ILYM
17 Group, Inc.'s low bid for settlement administration services in the amount of
18 \$ 6,950 was selected as the lowest bid from a competitive bidding process.

19 (q) Funding of Settlement Account: Defendant will fund the settlement
20 account and distribute Gross Settlement Amount to the Settlement
21 Administrator within twenty-one (21) days of the Effective Date.

22 (r) Distribution and Mailing of Settlement Payments: The Settlement
23 Administrator shall mail the Settlement Payments to the Class Members within
24 fourteen (14) calendar days of receipt of the Gross Settlement Amount from
25 Defendant, provided that the Settlement Administrator has delivered to the
26 Parties an accounting of the amounts to be paid by Defendant pursuant to the
27 terms of this Settlement.

28 (s) Notice of Settlement: Each Class Member will be mailed a notice setting forth the

1 material terms of the proposed Settlement, along with instructions about how to
2 object or request exclusion from the proposed class action Settlement (“Notice”).
3 For each Class Member, there will be pre-printed information on the mailed
4 Notice, based on Defendant’s records, stating the Class Member’s Covered
5 Workweeks during the Class Period and the estimated total Settlement Payment
6 under the Settlement, including the Settlement Class Payment and the PAGA
7 Settlement Payment that will be distributed irrespective of any exclusion request.
8 The pre-printed information based on Defendant’s records shall be presumed to be
9 correct. A Class Member may dispute the pre-printed information on the Notice as
10 to his or her Covered Workweeks during the Class Period. Class Members must
11 submit any dispute regarding the information on the Notice as to his or her
12 Covered Workweeks within the Response Deadline.

13 (t) Settlement Notice Language: The Notice will issue in English and Spanish.

14 (u) Class Members Cannot Exclude Themselves from the Released PAGA Claims:
15 Class Members submitting a request for exclusion will nevertheless receive their
16 pro-rata share of the PAGA Settlement Payment. If the Court approves the
17 compromise of the PAGA Claim, all Class Members are bound by the Court’s
18 resolution of the PAGA Claim. Plaintiff shall serve a notice of settlement on the
19 California Labor and Workforce Development Agency at or before the time
20 Plaintiff files the motion for preliminary approval.

21 (v) Resolution of Workweek Disputes: If a Class Member disputes the accuracy of
22 Defendant’s records used to calculate Covered Workweeks, the Parties’ counsel
23 and the Settlement Administrator will review Defendant’s records and any
24 information or documents submitted by the Class Member in an attempt to resolve
25 the dispute informally. If the dispute cannot be resolved informally by the Parties’
26 counsel and the Settlement Administrator, the dispute, and all documents
27 pertaining to the dispute, will be submitted to the Court for final resolution. The
28 Class Member must submit information or documents supporting his or her

1 position to the Settlement Administrator prior to the expiration of the Response
2 Deadline. Information or documents submitted after the expiration of the
3 Response Deadline will not be considered by the Settlement Administrator, unless
4 otherwise agreed to by the Parties.

5 (w) Right of Class Member to Request Exclusion from the Settlement: Any
6 Class Member may request to be excluded from the Class by returning a
7 request for exclusion to the Settlement Administrator within the
8 Response Deadline. The form of Request for Exclusion that will accompany
9 the Notice is attached hereto as **Exhibit "C."** The Request for Exclusion form
10 accompanying the Notice will be pre-printed with the Class Member's name
11 and address to facilitate identification by the Settlement Administrator. The
12 Class Member must sign the Request for Exclusion Notice and include the last
13 four digits of their social security number to confirm identity or Employee ID.
14 If the Class Member does not have a social security number and Employee ID,
15 the Class Member must contact the Settlement Administrator to arrange for an
16 alternative method of verifying identity. The Notice will advise Class Members
17 of these requirements. Any Class Member who timely requests exclusion in
18 compliance with these requirements (i) shall not have any rights under this
19 Settlement other than a right to receive a pro-rata share of the portion of the
20 PAGA payment allocated to the Class Members if the Class Member is also
21 PAGA Employee; (ii) shall not be entitled to receive any Settlement Payments
22 under this Settlement other than as stated in (i) in this paragraph; and (iii) shall
23 not be bound by this Settlement or the Court's Order and Final Judgment other
24 than as it applies to the PAGA Claim.

25 (x) Right of Settlement Class Member to Object to The Settlement: Any Class
26 Member may object to the Settlement. To object, the Class Member may (1)
27 appear in person (including through an audio or video call appearance as allowed
28 by the Court) at the Final Approval Hearing to explain any objection, (2) have an

1 attorney object for the Class Member, or (3) submit a simple written brief or
2 statement of objection to the Settlement Administrator in the form attached hereto
3 as **Exhibit “D”**. If any Class Member chooses to submit a written objection not in
4 the form attached hereto as **Exhibit “D”**, the written objection should contain
5 sufficient information to confirm the identity of the objector and the basis of the
6 objection, including (1) the full name of the Settlement Class Member; (2) the
7 signature of the Settlement Class Member; (3) the grounds for the objection; and
8 (4) be postmarked within the Response Deadline to permit adequate time for
9 processing and review by the Parties of the written statement or objection. Class
10 Counsel shall ensure that any written objections are transmitted to the Court for the
11 Court’s review (either by Class Counsel or as an attachment to declaration from the
12 Settlement Administrator). Regardless of the form, an objection alone will not
13 satisfy the requirement that a Settlement Class Member must either make a timely
14 complaint in intervention before final judgment or by file a motion to set aside and
15 vacate the class judgment under Code of Civil Procedure § 663 to have standing to
16 appeal entry of judgment approving this Settlement, as is required under the
17 California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal.
18 5th 260 (2018). A Class Member who does not object prior to or at the Final
19 Approval Hearing, will be deemed to have waived any objections and will be
20 foreclosed from making any objections (whether at the Final Approval Hearing, by
21 appeal, or otherwise) to the Settlement. If the objecting Class Member does not
22 formally intervene in the action or move to set aside any judgment and/or the Court
23 rejects the Class Member’s objection, the Class Member will still be bound by the
24 terms of this Agreement. Class Counsel and Defendant’s Counsel may, at least
25 five (5) calendar days (or some other number of days as the Court shall specify)
26 before the final approval hearing, file responses to any written objections submitted
27 to the Court.

28 (y) Notice to LWDA: Plaintiff will provide notice of the settlement and submit

1 Settlement Agreement to the LWDA on or before the date Plaintiff files the motion
2 seeking preliminary approval pursuant to Cal. Lab. Code 2699(1)(2), (1)(4) and
3 provide proof of submission to the court.

4 **THE SETTLEMENT ADMINISTRATOR'S PRIMARY DUTIES**

5 27. Subject to the Court's approval, and subject to reconsideration by the Parties after a
6 competitive bidding process, the Parties have agreed to the appointment of ILYM Group, Inc. to perform
7 the customary duties of Settlement Administrator. The Settlement Administrator will mail the Notice,
8 both in English and Spanish, to the Class Members.

9 28. The Settlement Administrator will independently review the Covered Workweeks
10 attributed to each Class Member and will calculate the estimated amounts due to each Class Member and
11 the actual amounts due to each Settlement Class Member in accordance with this Settlement. The
12 Settlement Administrator shall report, in summary or narrative form, the substance of its findings. The
13 Settlement Administrator shall be granted reasonable access to Defendant's records in order to perform its
14 duties.

15 29. In accordance with the terms of this Settlement, and within fourteen (14) calendar days of
16 receipt of the Gross Settlement Amount from Defendant, the Settlement Administrator will issue and send
17 out the Settlement Payment checks to the Class Members. Tax treatment of the Settlement Payments will
18 be as set forth herein, and in accordance with state and federal tax laws. All disputes relating to the
19 Settlement Administrator's performance of its duties shall be referred to the Court, if necessary, which will
20 have continuing jurisdiction over the terms and conditions of this Settlement until all payments and
21 obligations contemplated by this Settlement have been fully carried out. Within fourteen (14) calendar
22 days of receipt of the Gross Settlement Amount from Defendant the Settlement Administrator will also
23 distribute the Service Payment to Plaintiff, attorney's fees and costs to Class counsel, PAGA penalty
24 payment to LWDA and the Settlement Administrator's fees.

25 30. The Settlement Administrator will post the court orders granting preliminary and final
26 approval of the Settlement and final judgment approving the Settlement on the Settlement Administrator's
27 website for a period of not less than 90 calendar days after the final judgment is entered. The address of
28 that website will be included in the Notice.

ATTORNEY'S FEES AND COSTS

31. In consideration for resolving this matter and in exchange for the release of all claims by the Class Members, including Plaintiff, and subject to approval by the Court, Defendant will not object to Class Counsel's application for attorney's fees not to exceed 33 and 1/3% of the Gross Settlement Amount (\$58,333.33 of \$175,000.00) and litigation costs not to exceed \$22,000.00. The amounts set forth above will cover all work performed and all fees and costs incurred to date, and all work to be performed and all fees and costs to be incurred in connection with the approval by the Court of this Settlement and administration of the Settlement.

THE NOTICE PROCESS

32. A Notice in approximately the form attached hereto as **Exhibit "B"**, the Request for Exclusion in approximately the form attached hereto as **Exhibit "C"** and the Objection Form in approximately the form attached hereto as **Exhibit "D"** (referred to jointly below as the "Notice packet") and as approved by the Court, shall be sent by the Settlement Administrator to the Class Members by first class mail. The Notice packet shall be translated into Spanish so that Spanish and English language versions of the Notice packet are included in the mailing. Any returned envelopes from this mailing with forwarding addresses will be utilized by the Settlement Administrator to forward the Notices to the Class.

- (a) Within 15 calendar days from the date of preliminary approval of this Settlement by the Court, Defendant shall provide to the Settlement Administrator a class database containing the following information for each Class Member: (1) name; (2) last known address; (3) social security number; and (4) dates of employment at Defendant's location in California. This database shall be based on Defendant's payroll and other business records and shall be provided in a format acceptable to the Settlement Administrator. Defendant agrees to consult with the Settlement Administrator prior to the production date to ensure that the format will be acceptable to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List; this check will be performed only once per Class Member by the Settlement Administrator. Absent mutual written

1 agreement of counsel for the Parties or Court order, the Settlement Administrator
2 will keep this database confidential and secure and use it only for the purposes
3 described herein, and will return this database to Defendant upon final approval of
4 the settlement or destroy electronic records containing the database after the
5 Settlement is final and all payments are distributed as required under this
6 Agreement. However, Plaintiff's Counsel shall be entitled to review anonymized
7 data showing the workweeks worked by each Class Member, with Class Member
8 identity concealed through use of an employee number or number assigned by the
9 Settlement Administrator.

10 (b) Within 14 calendar days after the Class database is provided to the Settlement
11 Administrator, the Settlement Administrator will mail the Notices to the Class
12 Members by First Class United States mail.

13 (c) Notices returned to the Settlement Administrator as non-deliverable on or before
14 the initial Response Deadline shall be resent to the forwarding address, if any, on
15 the returned envelope. A returned Notice will be forwarded by the Settlement
16 Administrator any time that a forwarding address is provided with the returned
17 mail. If there is no forwarding address, the Settlement Administrator will do a
18 computer search for a new address using the Class Member's social security
19 number or other information. In any instance where a Notice is re-mailed, that
20 Class Member will have until the extended Response Deadline as described above.
21 A letter prepared by the Settlement Administrator will be included in the re-mailed
22 Notice in that instance, stating the extended Response Deadline if different than the
23 original Response Deadline. Upon completion of these steps by the Settlement
24 Administrator, Defendant and the Settlement Administrator shall be deemed to
25 have satisfied their obligations to provide the Notice to the affected Class Member.
26 The affected Class Member shall remain a member of the Settlement Class and
27 shall be bound by all the terms of the Settlement and the Court's Order and Final
28 Judgment.

(d) Class Counsel shall provide to the Court, at least five calendar days prior to the final approval hearing, or such other date as set by the Court, a declaration by the Settlement Administrator of due diligence and confirming mailing of the Notices.

DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS

33. As set forth above, each Class Member will have until the expiration of the applicable Response Deadline to submit to the Settlement Administrator any challenge or dispute to the Class Member's Covered Workweek information on the Notice. No disputes will be honored if they are submitted after the Response Deadline, unless the Parties mutually agree to accept the untimely dispute. Each Class Member is responsible to maintain a copy of any documents sent to the Settlement Administrator and a record of proof of mailing.

34. The Settlement Administrator shall cause the Settlement Payments to be mailed to the Settlement Class Members and PAGA Employees as provided herein. Settlement Class Payments and PAGA Payments may be combined into one check. Settlement Payment checks shall remain valid and negotiable for 180 calendar days from the date of their issuance. Settlement Payment checks will automatically be cancelled by the Settlement Administrator if they are not cashed by the Class Member within that time, and the Class Member's relevant claims will remain released by the Settlement. Settlement Payment checks which have expired will not be reissued.

35. Funds from unclaimed, uncashed or abandoned Settlement Payment checks, based on a 180-day void date, shall be transmitted to Legal Aid Society of San Bernardino subject to the requirements of California Code of Civil Procedure § 384(b) (the "Cy Pres Recipient"). Consistent with the purpose of Section 384, Legal Aid Society of San Bernardino was selected because its mission is to provide equal access to justice by offering legal education, counsel, and advocacy services for those in need, irrespective of their financial capabilities. The Parties, Class Counsel and Defense Counsel represent, by their signatures hereon, that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient. In such event, the Settlement Class Members and PAGA Employees shall nevertheless remain bound by the Settlement.

36. Upon completion of its calculation of Settlement Payments, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a report listing the amounts of all payments to

1 be made to Class Members (to be identified anonymously by employee number or other identifier). A
2 Declaration attesting to completion of all payment obligations will be provided to Class Counsel and
3 Defendant's Counsel and filed with the Court by Class Counsel.

4 **RELEASE BY THE CLASS**

5 37. Upon the final approval by the Court of this Settlement and Defendant's payment of all
6 sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this
7 Settlement, the Class Representatives, the Class and each Class Member who has not submitted a valid
8 and timely request for exclusion as to claims other than the PAGA claim, will release claims as follows:

- 9 (a) **Identity of Released Parties.** The released parties are Defendant and its past,
10 present and/or future officers, directors, managers, employees, and agents,
11 including, but not limited to, Walker R. Evans, Phyllis E. Evans, and Randal C.
12 Anderson (collectively "Releasees").
- 13 (b) **Date Release Becomes Effective.** The Released Claims will be released upon the
14 later of (1) the Settlement's Effective Date, or (2) the satisfaction of Defendant's
15 obligation to provide to the Settlement Administrator a sum in the amount required
16 to satisfy all required payments and distributions pursuant to this Settlement and
17 the Order and Judgment of final approval. Class Members will not release the
18 Released Claims or Released PAGA Claims until both the Effective Date of the
19 Settlement has occurred, **and** Defendant has paid all amounts owing under the
20 Settlement.
- 21 (c) **Claims Released by Settlement Class Members.** Each and every Class Member,
22 himself and each of their heirs, assigns and successors, unless he or she has
23 submitted a timely and valid Request for Exclusion (which will not effectuate an
24 opt-out from the release of Released PAGA Claims), hereby releases Releasees
25 from the following claims for the entire Class Period:
- 26 1) any and all claims that were either alleged, or that reasonably could have
27 been alleged based on the factual allegations contained in Plaintiff's
28 operative complaint, including, but not limited to, claims pursuant to

California Labor Code sections 201, 202, 203, 204, 210, 226, et seq., 226.2, 226.3, 226.7, 510, 512, 1174, et seq., 1175, 1194, 1194.2, 1197, 1197.1, 1198, 2100, 2101, 2102, 2103, 2104, 2109, 2800, 2802, 6310, 6400, 6401, 6401.7, 6402, 6403, 6404, 6409.6, 2698, et seq., 2699, et seq., 2699.3, and the Industrial Welfare Commission Wage Orders, and also any claim for unpaid wages, including under any theory of rounding, unpaid minimum wage, off-the-clock work, meal and rest period violations, waiting time penalties, itemized wage statement penalties, expense reimbursements, wages for unpaid time, other related wages, restitution, disgorgement, civil or statutory penalties, attorneys' fees, and/or costs and all claims under the Private Attorneys General Act of 2004, under the Unfair Competition Law, Business & Professions Code § 17200, et seq., and/or which are alleged in the First Amended Complaint and Plaintiff's administrative exhaustion letter submitted to the LWDA (**Exhibit A**) within the Class Period ("Released Claims"),

2) Plaintiff releases all claims for statutory penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff's pre-filing letter to the LWDA attached as **Exhibit A** upon the Effective Date and full funding of the Gross Settlement amount ("Released PAGA Claims"). To the maximum extent permitted by law, the final judgment entered pursuant to this settlement will bind all those who would be bound by a judgment if the action had been brought by the LWDA, including Plaintiff, the LWDA, and all Class Members employed during the Released PAGA Claims Period, whether requesting exclusion from the Settlement or not, with respect to the recovery of civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, et. seq. only, against the Released Parties. See *Arias v. Superior Court* (2009) 46 Cal.4th 986.

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

38. The Parties shall submit this Joint Stipulation of Class Action Settlement to the Court in support of Plaintiff's unopposed motion for preliminary approval for determination by the Court as to its fairness, adequacy, and reasonableness. Upon execution of this Joint Stipulation of Class and PAGA Representative Action Settlement, the Parties shall apply to the Court for the entry of an order:

- (a) Scheduling a final approval and fairness hearing on the question of whether the proposed Settlement, including payment of attorney's fees and costs, and the Class Representative's service payment, should be finally approved as fair, reasonable, and adequate as to the members of the Class;
- (b) Certifying a Class;
- (c) Approving as to form and content the proposed Notice;
- (d) Directing the mailing of the Notice;
- (e) Preliminarily approving the Settlement, including Class and PAGA claims, subject only to the objections of Class Members as to the Class Settlement and final review by the Court;
- (f) Conditionally appointing Plaintiff and Class Counsel as representatives of the proposed Class Members; and,
- (g) Appointing ILYM Group, Inc. as the Settlement Administrator, and order the Settlement Administrator to issue Notices as outlined above.

39. Defendant and its their counsel agree to cooperate to obtain approval of the Settlement, pursuant to the terms set forth herein.

DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

40. In conjunction with the hearing of a motion for final approval by the Court of the Settlement provided for in this Joint Stipulation of Settlement, Class Counsel will provide to Defendant's Counsel for review and approval and then submit to the Court a proposed final order and judgment containing provisions sufficient to accomplish the following:

- (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

- (b) Approving Class Counsel's application for an award of attorney's fees and costs;
- (c) Approving the Service Payment to the Class Representative;
- (d) Adjudging the Settlement Administrator has fulfilled its initial notice and reporting duties under the Settlement.
- (e) Adjudging Plaintiff and Class Counsel may adequately represent the Final Settlement Class for the purpose of entering into and implementing the Agreement;
- (f) Entering a final judgment in the action as to all PAGA and Class Claims and related issues;
- (g) Adjudging that notwithstanding the submission of a timely request for exclusion, Class Members are still bound by the settlement and release of the Released PAGA Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), as requests to be excluded from the Settlement do not apply to the Released PAGA Claims, and further affirms that the State's claims for civil penalties pursuant to PAGA are also extinguished;
- (h) Directing the posting of the settlement documents provided in Paragraph 30 and final judgment on a website maintained by the Settlement Administrator for a period of not less than 90 calendar days after entry of final judgment.

Any revised final judgments will also be provided to Defendant's Counsel for review and approval before they are submitted to the Court.

NULLIFICATION AND TERMINATION

41. This Settlement will be null and void if any of the following occur: (a) the Court should for any reason fail to certify a class for settlement purposes; (b) the Court should for any reason fail to preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than adjustments made to the attorney's fees and costs or granting of Service Payment or settlement money distribution terms; (c) the Court should for any reason fail to enter the final judgment; (d) the final judgment is reversed, modified, or declared or rendered void; or (e) the Settlement does not become final for any other reason.

42. If 5% or more of the Class Members opt out of this Settlement, then Defendant in its sole

1 discretion may terminate, nullify and void this Settlement. The Settlement Administrator shall provide
2 Defendant's Counsel with the information necessary to effectuate this provision on a regular basis, but no
3 less frequently than on a monthly basis. To terminate this Settlement under this paragraph, Defendant's
4 Counsel must give Plaintiff's Counsel written notice, by facsimile, e-mail, or mail, no later than fifteen
5 (15) days prior to the date of the Final Approval Hearing. If this option is exercised by Defendant,
6 Defendant shall be solely responsible for the costs incurred by the Settlement Administrator for the
7 settlement administration.

8 43. In the event this Settlement is nullified or terminated as provided above: (i) this Settlement
9 shall be considered null and void, (ii) neither this Settlement nor any of the related negotiations or
10 proceedings shall have any force or effect and no party shall be bound by any of its terms, and (iii) all
11 Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been
12 neither entered into nor filed with the Court.

13 **PARTIES' AUTHORITY**

14 44. The signatories hereto hereby represent that they are fully authorized to enter into this
15 Settlement and bind the Parties hereto to the terms and conditions thereof.

16 **MUTUAL FULL COOPERATION**

17 45. The Parties agree to fully cooperate with each other to accomplish the terms of this
18 Settlement including, but not limited to, execution of such documents and taking such other action as
19 reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement
20 shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that
21 may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set
22 forth herein. As soon as practicable after execution of this Settlement, Class Counsel shall, with the
23 assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the
24 Court's preliminary and final approval of this Settlement.

25 **NO PRIOR ASSIGNMENTS**

26 46. The Parties and their respective counsel represent, covenant, and warrant that they have not
27 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
28 any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein

1 released and discharged except as set forth herein.

2 **NO ADMISSION OF LIABILITY**

3 47. Nothing contained herein, nor the consummation of this Settlement, is to be construed or
4 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant.
5 Defendant denies all the claims and contentions alleged by the Plaintiff in this case. The Defendant has
6 entered into this Settlement solely with the intention to avoid further disputes and litigation with the
7 attendant inconvenience and expenses.

8 **ENFORCEMENT ACTIONS**

9 48. The Parties agree that following entry of the Final Approval Order and Judgment, this
10 Agreement shall be enforceable by the Court and the Court shall retain exclusive and continuing
11 jurisdiction of the Action over all parties and the Class Members to interpret and enforce the terms,
12 conditions, and obligations of the Agreement pursuant to California Code of Civil Procedure section
13 664.6. In the event that one or more of the Parties to this Settlement institutes any legal action or other
14 proceeding against any other party or parties to enforce the provisions of this Settlement or to declare
15 rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover
16 from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees
17 incurred in connection with any enforcement actions.

18 **NOTICES**

19 49. Unless otherwise specifically provided herein, all notices, demands or other
20 communications given hereunder shall be in writing and shall be deemed to have been duly given as of the
21 third business day after mailing by United States registered or certified mail, return receipt requested,
22 addressed as follows:

23 Class Counsel:

24 Lilit Tunyan
25 ltunyan@tunyanlaw.com
26 Artur Tunyan
27 atunyan@tunyanlaw.com
28 **TUNYAN LAW, APC**
535 N. Brand Blvd., Suite 285
Glendale, California 91203
Telephone: (323) 410-5050

Counsel for Defendant:

Richard D. Marca
Richard.Marca@varnerbrandt.com
Alisha Maline
Alisha.Maline@varnerbrandt.com
VARNER & BRANDT LLP
3750 University Avenue, Floor 6
Riverside, CA 92501
Telephone: (951) 274 -7777

Facsimile: (951) 274- 7770

CONSTRUCTION

50. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties, and this Settlement shall not be construed in favor of or against any party by reason of the extent to which any party or his, her or its counsel participated in the drafting of this Settlement.

CAPTIONS AND INTERPRETATIONS

51. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

MODIFICATION

52. This Settlement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

INTEGRATION CLAUSE

53. This Settlement contains the entire agreement between the Parties relating to the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

WAIVER OF APPEALS

54. The Parties agree to waive appeals and to stipulate to class certification for purposes of implementing this Settlement only, with the exception that Class Counsel retains the right to appeal the amount awarded as attorney's fees.

BINDING ON ASSIGNS

55. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

CLASS COUNSEL SIGNATORIES

56. It is agreed that because the members of the Class are so numerous, it is impossible or impractical to have each member of the Class execute this Settlement. The Notice will advise all Class Members of the binding nature of the Released Claims and Released PAGA Claims, and the release shall have the same force and effect as if this Settlement were executed by each member of the Class.

COUNTERPARTS

57. This Settlement may be executed in counterparts and by electronic or facsimile signatures, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties.

CONFIDENTIALITY & PUBLIC COMMENT

58. The Class Representative and Class Counsel shall only disclose matters of public record other than to Class Members, who may receive information about the Settlement that is not in the public record after the Court has preliminarily approved the Settlement. Other than as to Class Members who are allowed to discuss the terms or the fact of the settlement with their immediate family members, their respective accountants or lawyers as necessary for tax purposes; or other Class Members, the Parties and attorneys will keep the settlement confidential until the filing of the motion for preliminary approval of the class settlement. Thereafter, the Parties agree to make no comments to the media or otherwise publicize the terms of the Settlement, other than in court filings.

FINAL JUDGMENT

59. The Parties agree that, upon final approval of the Settlement, final judgment of this Action will be made and entered in its entirety. The final judgment may be included in the Order granting Final Approval of the Settlement.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action Settlement between Plaintiff and Defendant as set forth below:

IT IS SO STIPULATED.

///

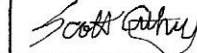
///

Plaintiff & Class Representative:

Dated: 5/28/2024 | 11:53 AM PDT

By:

DocuSigned by:



BBB15260A63E400

SCOTT ALLEN ATHEY

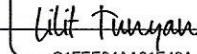
Plaintiff's Counsel:

Dated: 5/28/2024 | 11:54 AM PDT

TUNYAN LAW, APC

DocuSigned by:

By:



C1FEE94AA91E49A...

Lilit Tunyan
Artur Tunyan

Attorneys for Plaintiff SCOTT ALLEN ATHEY

Defendant:

Dated: 6/5/24

WALKER EVANS ENTERPRISES

By:

Victoria Lee

Print Name

Victoria Lee

Signature

Finance Manager

Title

Defendant's Counsel:

Dated: 6/5/24

VARNER & BRANDT LLP

By:



Richard D. Marca
Alisha Maline

Attorneys for Defendant
WALKER EVANS ENTERPRISES

Exhibit “A”



TUNYAN LAW

Lilit Tunyan, Esq.

1336 Rossmoyne Avenue,
Glendale, CA 91207
Tel: (323) 410-5050
ltunyan@tunyanlaw.com

March 24, 2023

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAFilings@dir.ca.gov

VIA ONLINE SUBMISSION

Department of Industrial Relations
Division of Occupational Safety and Health
464 West 4th Street, Suite 332
San Bernardino, CA 92401
DOSHSD@dir.ca.gov

VIA CERTIFIED MAIL

Return Receipt Requested

Walker Evans Enterprises
Agent for Service of Process
Phyllis E. Evans
2304 Fleetwood Drive
Riverside, CA 92509

VIA CERTIFIED MAIL

Return Receipt Requested

Attorneys for Walker Evans Enterprises
VARNER & BRANDT LLP
Richard Marca
3750 University Avenue, Floor 6
Riverside, CA 92501

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698, 2699 ET SEQ.**

Re: *Scott Allen Athey v. Walker Evans Enterprises*

To Whom It May Concern:

Please be advised that my office has been retained by Scott Allen Athey ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§

2699, *et seq.*) against his former employer Walker Evans Enterprises (“Defendant”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of himself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff’s Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Riverside County. As such, Defendant are subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiff worked for Defendant as a quality controller from approximately April 12, 2021 to February 12, 2022, primarily in Riverside County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 days per week, and over 8 hours each workday.

Throughout Plaintiff’s employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff’s experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. “Hours worked” is 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.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the

employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the time period involved in this case, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked (including straight time wages and overtime wages). Throughout the statutory period, Plaintiff and the Aggrieved Employees received additional remuneration in the form of bonuses. However, Defendant has not compensated Plaintiff and the Aggrieved Employees at the proper overtime and sick pay rate. Defendant did not include the bonuses paid to Plaintiff and the Aggrieved Employees in the regular rate of pay for purposes of calculating overtime rate of pay and sick pay. Throughout the statutory period, Defendant maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to perform work “off-the-clock”. Defendant required Plaintiff and the Aggrieved Employees to arrive earlier than their scheduled shift or continue working after the scheduled shift. Plaintiff was required to arrive at least 10-15 minutes earlier than his scheduled shift to perform preparatory work prior to clocking in to work such as turning on the computer, setting things to prepare for work. Additionally, Plaintiff and the Aggrieved Employees were also required to arrive earlier than their scheduled time to stay in line with other employees to use the timeclock machine to clock in to work on time. Defendant failed to compensate Plaintiff and the Aggrieved Employees for that time. Plaintiff and the Aggrieved Employees were also required to clock out at the end of their shifts and continue working to clean up the workplace since Plaintiff and the Aggrieved Employees were not always authorized for overtime work and had to do the cleanup work off-the-clock. Defendant also required Plaintiff and the Aggrieved Employees to clock out but continue working through meal periods. Plaintiff and the Aggrieved Employees were required to communicate with their supervisors using their personal cellular telephones for work purposes at home after their scheduled work time. Lastly, Defendant would modify Plaintiff’s and the Aggrieved Employees’ time records to reflect that they worked 5 hour shifts instead of 6 hours by implementing unlawful time shaving as well as to reflect on the records that meal periods were taken when they were not actually taken. In maintaining a practice of not paying all wages owed, Defendant failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked. In doing so, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees

are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not allow Plaintiff and the Aggrieved Employees to leave the warehouse premises, and thus prevented duty-free meal periods for the Aggrieved Employees. Plaintiff's meal periods were always interrupted by Defendant's owner and co-workers, taken late or missed. Often times Defendant required Plaintiff and the Aggrieved Employees to clock out for meal periods but continue working so that it appears on the records as they took their meal periods. In those occasions when Plaintiff or the Aggrieved Employees did not clock out for meal periods as they did not actually take those meal periods, Defendant would manually alter the records of the Aggrieved Employees to reflect the meal periods which were not actually taken. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Plaintiff and the Aggrieved Employees would often times miss their first and second rest periods. Most importantly, Plaintiff and the Aggrieved Employees were not authorized and allowed to leave the warehouse premises to take their rest periods outside. Hence, Plaintiff and the Aggrieved Employees were prevented from taking duty-free rest periods. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to

dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement. Plaintiff and the Aggrieved Employees were required to use their personal cell phones for work to receive and make work related calls and receive work related text messages from supervisors, managers and co-workers. Further, Plaintiff and the Aggrieved Employees were required to use their personal vehicles for work to drive to Defendant's second location to pick up supplies. Plaintiff and the Aggrieved Employees were also required to purchase tools and safety equipment necessary to perform their work. Defendant failed to reimburse Plaintiff and the Aggrieved Employees for usage of personal cell phones, mileage for using their personal vehicles as well as tools. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant have failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant' employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant' conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." (Lab. Code § 226(e)(1).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owe employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Take All Feasible Means to Reduce Excessive Heat in Workplace

In accordance with the Section 15 (a) of the applicable wage order issued by the Industrial Welfare Commission ("IWC"), The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed. Further Section 15 (b) of IWC states that if excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

However, Defendant has not taken feasible means to reduce such excessive heat. Defendant did not have proper air conditioning and air ventilation, and temperature during summer times in the warehouse became as hot as 100 degrees Fahrenheit. As a result, Plaintiff and Aggrieved Employees suffered injuries at their workplace due to the excessive heat.

Labor Code § 1199 (c) provides that employers, persons, officers, agents, or other employees are guilty of a misdemeanor and subject to a fine of at least \$100 for violating, refusing or neglecting to comply with any provision of the particular Labor Code chapter or any order or ruling of the Commission.

Section 20 of IWC provides that in addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty of initial violation - \$50.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages, and subsequent violations — \$100.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover unpaid wages.

Failure to Provide Safe and Healthful Work Environment

Labor Code § 6400 provides that every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein.

Labor Code § 6401 provides that every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

Labor Code § 6402 provides that no employer shall require or permit any employee to go or be in any employment or place of employment which is not safe and healthful.

Labor Code § 6403 provides no employer shall fail or neglect to do any of the following:

- (a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.
- (b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe.
- (c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.

Labor Code § 6404 provides that no employer shall occupy or maintain any place of employment that is not safe and healthful.

Defendant failed to furnish employees with safety devices and implement necessary processes and practices necessary to prevent exposure to COVID-2019. Defendant failed to necessitate the use of and provide the appropriate personal protective equipment.

Defendant failed to establish infection prevention measures such as encouraging sick employees to stay home, implementing social distancing protocols, or establishing procedures to routinely disinfect and clean commonly used surfaces. Defendant failed to take safety measures for COVID pre-screening prior to entering the premises.

Defendant failed to take individual measures and screening to provide illness prevention training.

Defendant failed to provide all the protective equipment necessary for the work performed in the warehouse.

Defendant failed to provide training to employees on how to use personal protective equipment and safety resources. Defendant failed to provide training materials and conduct training for employees regarding health and safety measures and usage and maintenance of equipment. As a result, employees were exposed to the risk of injuries. There was an incident when Defendant's employee injured her finger as she was not trained how to use the press equipment.

Defendant failed to establish proper safety procedures and take proper health and safety measures. Defendant used to keep racks in the warehouse which were not bolted down exposing employees to the risk of injuries. Defendant also exposed employees to work in the areas that contained acetone. Defendant mandated employees to wash the shocks in acetone and alcohol and blow dry them in the warehouse with no ventilation and air conditioning. As a result, employees had chemical burns caused by the acetone.

Defendant also failed to establish and properly supervise employees on enforcement of safety and injuries reporting procedures.

Failure to Implement and Maintain an Effective Written Injury Prevention Program

Labor Code § 6401.7 provides that every employer shall establish, implement, and maintain an effective injury prevention program.

Defendant failed to establish and maintain a program that will prevent Plaintiff and Aggrieved Employees from injuries that might be caused by exposure to COVID-2019 as well as other health and safety hazards in the workplace. Specifically, Defendant failed to establish adequate injury prevention program as well infection prevention measures such as properly training employees how to use safety equipment, reporting on hazards, encouraging sick employees to stay home, implementing social distancing protocols, or establishing procedures to routinely disinfect and clean commonly used surfaces.

Failure to Provide Notice of a Potential COVID-19 Workplace Exposure

Labor Code § 6409.6 provides that if an employer or representative of the employer receives a notice of potential exposure to COVID-19, the employer shall take all of the following actions within one business day of the notice of potential exposure:

- (1) Provide a written notice to all employees, and the employers of subcontracted employees, who were on the premises at the same worksite as the qualifying individual within the infectious period that they may have been exposed to COVID-19 in a manner the employer normally uses to communicate employment-related information.
- (2) Provide a written notice to the exclusive representative, if any, of employees under paragraph (1).
- (3) Provide all employees who may have been exposed and the exclusive representative, if any, with information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state, or local laws.
- (4) Notify all employees, and the employers of subcontracted employees and the exclusive representative, if any, on the disinfection and safety plan that the employer plans to implement and complete per the guidelines of the federal Centers for Disease Control.

Despite the fact that, based on information and belief, Defendant was notified of employees who were infected with COVID-2019 and other employees were exposed to COVID-2019, Defendant failed to provide any notice to Plaintiff and Aggrieved Employees about exposure to COVID-2019 and failed to take necessary measures to prevent exposure of Aggrieved Employees to COVID-2019. In opposite, Plaintiff, who contracted COVID, was required to arrive to work and was disciplined for staying home for three days when he tested positive for COVID.

Failure to Provide Access to Shade and Failure to Implement Heat Illness Prevention Plan

California Code of Regulations title 8, Section 3395(d) provides that shade shall be present when the temperature exceeds 80 degrees Fahrenheit. When the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling.

California Code of Regulations. title 8, Section 3395(d) also provides that employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times.

California Code of Regulations title 8, Section 3395(i) provides that the employer shall establish, implement, and maintain, an effective heat illness prevention plan.

However, Defendant failed to maintain proper ventilation and air conditioning at the warehouse and has not taken feasible means to sufficiently reduce such excessive heat. The temperature in the warehouse was often times more than 100 degrees Fahrenheit. As a result, Plaintiff and Aggrieved Employees suffered injuries at their workplace due to the excessive heat, and Defendant failed to provide shade and to establish and maintain a heat illness prevention plan.

Failure to Provide Suitable Seats

Pursuant to applicable IWC Section 14(A) all working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats. IWC Section 14(B) states that when employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work areas and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

However, Defendant failed to provide Plaintiff and the Aggrieved Employees with suitable seats.

Retaliation for Complaining About Occupational Safety Hazards

Labor Code § 6310 provides that no person shall discharge or in any manner discriminate against any employee because the employee has done any of the following:

- (1) Made any oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, their employer, or their representative.
- (2) Instituted or caused to be instituted any proceeding under or relating to their rights or has testified or is about to testify in the proceeding or because of the exercise by the employee on behalf of themselves, or others of any rights afforded to them.
- (3) Participated in an occupational health and safety committee established pursuant to Section 6401.7.
- (4) Reported a work-related fatality, injury, or illness, requested access to occupational injury or illness reports and records that are made or maintained pursuant to Subchapter 1 (commencing with Section 14000) of Chapter 1 of Division 1 of Title 8 of the California Code of Regulations, or exercised any other rights protected by the federal Occupational Safety and Health Act (29 U.S.C. Sec. 651 et seq.), except in cases where the employee alleges they have been retaliated against because they have filed or made known their intention to file a workers' compensation claim pursuant to Section 132a, which is under the exclusive jurisdiction of the Workers' Compensation Appeals Board.

However, Defendant, on information and belief, retaliated against Aggrieved Employees for complaining and/or reporting about the occupational safety hazards and/or injuries by terminating their employment or taking other adverse actions against them.

Labor Code § 6427 provides that any employer who violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, and the violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to twelve thousand four hundred seventy-one dollars (\$12,471) for each violation.

Labor Code § 6428 that any employer who violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, if that violation is a serious violation, shall be assessed a civil penalty of up to twenty-five thousand dollars (\$25,000) for each violation. Employers who do not have an operative injury prevention program shall receive no adjustment for good faith of the employer or history of previous violations as provided in paragraphs (3) and (4) of subdivision (c) of Section 6319.

Labor Code § 6429 that any employer who willfully or repeatedly violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, may be assessed a civil penalty of not more than one hundred twenty-four thousand seven hundred nine dollars (\$124,709) for each violation, but in no case less than eight thousand nine hundred eight dollars (\$8,908) for each willful violation.

Failure to Provide Warehouse Quotas

Labor Code § 2100 provides that each employee of a warehouse that employs 100 employees, or a group of related warehouses that employ at least 1,000 employees may request and receive a written description of applicable quotas and work speed data. In fact, employers must give written quota descriptions to all new hires and current employees upon request. Further, pursuant to Labor Code § 2101 an employee cannot be required to meet a quota that prevents compliance with meal or rest periods, use of bathroom facilities (including reasonable travel time to and from bathrooms), or compliance with occupational health and safety standards.

Defendant failed to provide a written description of applicable quotas and work speed data to employees.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;

2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements; and
8. Labor Code § 204 by failing to pay all earned wages two times per month.
9. IWC applicable order for failure to take all feasible means to reduce excessive heat in the workplace and provide suitable seats;
10. Labor Code § 640, 6401, 6402, 6403, 6404 for failure to provide safe and healthful work environment;
11. Labor Code § 6401.7 for failure to implement and maintain an effective written injury prevention program;
12. Labor Code § 6409.6 for failure to provide notice of a potential COVID-19 workplace exposure;
13. California Code of Regulations title 8, Section 3395(d) and (i) for failure to provide access to shade and failure to implement heat illness prevention plan;
14. Labor Code § 6310 for retaliation for complaining about occupational safety hazards.
15. Labor Code § 2100 for failure to provide warehouse quotas.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 1401, 2109, 2802, and 2699(f)(2), 6423, 6427, 6428, 6429.

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address and address of the agent for service, as indicated on the first page.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional compensation owed or losses incurred by Plaintiff or by the Aggrieved Employees or any additional facts, Plaintiff expressly reserves the right to revise these facts and/or add any new

claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Lilit Tunyan, Esq.
Partner
TUNYAN LAW, APC

Exhibit “B”

NOTICE OF PROPOSED CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT

Athey v. Walker Evans Enterprises
Riverside County Superior Court Case No. CVRI2301534

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE AN HOURLY EMPLOYEE OF WALKER EVANS ENTERPRISES (“DEFENDANT”) WHO WORKED IN CALIFORNIA AT ANY TIME BETWEEN SEPTEMBER 22, 2021 AND AUGUST 31, 2023 (THE “CLASS PERIOD”), THIS PROPOSED CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

Why should you read this Notice?

A proposed settlement (the “Settlement”) has been reached in a class and PAGA action lawsuit entitled *Athey v. Walker Evans Enterprises*, Riverside County Superior Court Case No. CVRI2301534 (the “Action”). The purpose of this Notice of Proposed Class and Private Attorneys General Act of 2004 (“PAGA”) Representative Action Settlement (“Notice”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement. The proposed Settlement will resolve all claims in the Complaint.

YOUR ESTIMATED PAYMENT FROM THIS SETTLEMENT: Your estimated Individual Settlement Payment is <<Estimated Payment>>, which includes your payment from the Class settlement in the estimated amount of <<Estimated Individual Settlement Class Payment>> and, because you [ARE/ARE NOT] also a member of the PAGA Employee group, your payment from the PAGA settlement in the estimated amount of <<Estimated Individual PAGA Settlement Payment>>.

A hearing concerning final approval of the proposed Settlement will be held before Hon. Harold W. Hopp, on <<FA DATE>>, at <<FA TIME>>, in Department 1 of the Riverside County Superior Court, 4050 Main Street, Riverside, CA 92501, to determine whether the Settlement is fair, adequate and reasonable. As a Settlement Class Member, you are eligible to receive an individual Settlement Payment under the Settlement and will be bound by the release of claims described in this Notice and the Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

DO NOTHING – GET MONEY	If you do nothing, you will be considered a “Settlement Class Member” in the Settlement and will receive settlement benefits as explained more fully below. You will also give up rights to pursue a separate legal action against Defendant for the Released Claims asserted in the Action as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT. DEADLINE TO EXCLUDE YOURSELF: <<RESPONSE DEADLINE>>	You have the option to pursue separate legal action against Defendant about the claims in the Action. If you choose to do so, you must exclude yourself, in writing, from the Settlement by completing and submitting the included request to be excluded (“Request for Exclusion Form”). As a result, you will not receive any benefits under the Settlement (other than based on the PAGA Claim). Request for Exclusion forms must be submitted by <<RESPONSE DEADLINE>>.
OBJECT TO THE SETTLEMENT. DEADLINE TO SUBMIT WRITTEN OBJECTIONS: <<RESPONSE DEADLINE>>	To object to the Settlement, you may mail a written explanation of why you don’t like the Settlement to the Settlement Administrator by completing and submitting the objection form (“Objection Form”), appear at the Final Approval Hearing, or hire an attorney at your expense to object for you. This option is available only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> submit a Request for Exclusion form if you wish to object. <i>Written</i> objections must be submitted by <<RESPONSE DEADLINE>>.

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following class (the “Class”):

All hourly employees of Defendant who worked in California during the Class Period (“Class Members”). The “Class Period” is September 22, 2021 to August 31, 2023.

All hourly employees of Defendant who worked in California during the PAGA Period are “aggrieved employees” as defined pursuant to PAGA (“PAGA Employees”). The “PAGA Period” is March 27, 2022 to August 31, 2023.

According to Defendant’s records, you are a member of the Class (“Class Member”). PAGA Employees will automatically receive their *pro rata* share of the \$2,500 allocated from the PAGA Allocation to PAGA Employees, cannot opt-out of the release of PAGA Claims, and will be bound by the release of the PAGA Claims even if they opt-out of the Settlement. Defendant’s records indicate you [ARE/ARE NOT] also a PAGA Employee who worked in the State of California at any time during the PAGA Period of March 27, 2022 through to August 31, 2023.

What is this case about?

In the Action, Plaintiff Scott Allen Athey (“Plaintiff”) alleges on behalf of himself and the Class that Defendant: (1) failed to pay all wages; (2) failed to provide meal periods; (3) failed to authorize and permit rest periods; (4) failed to timely pay all wages at termination; (5) failed to furnish accurate itemized wage statements; (6) failed to indemnify necessary business expenses; (7) violated California’s Unfair Competition Law, California Business and Professions Code § 17200 *et seq.*; and (8) violated provisions of the Labor Code giving rise to civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, *et seq.*] (“PAGA”). Plaintiff seeks among other things, recovery of unpaid wages and meal and rest period premiums, unreimbursed business expenses, restitution, penalties, interest, and attorneys’ fees and costs.

Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, *et seq.*] (“PAGA”) claim alleged by Plaintiff allows employees to file a representative action on behalf of themselves, all other aggrieved employees, and the State of California for alleged Labor Code violations to recover civil penalties for the same Labor Code violations (not actual wage damages but civil penalties for California Labor Code violations which could have been sought by the State of California).

Defendant denies all liability and is confident that it has strong legal and factual defenses to these claims, but it recognizes the risks, distractions, and costs associated with litigation. Defendant contends that its conduct is and has been lawful at all times relevant and that Plaintiff’s claims do not meet the requirements for class certification.

This Settlement is a compromise reached after good faith, arm’s length negotiations between Plaintiff and Defendant (the “Parties”), through their attorneys, and is not an admission of liability on the part of Defendant. Both sides agree that this Settlement is fair, adequate and reasonable. Plaintiff also believes this Settlement is in the best interests of all Class Members.

The Court has not ruled on the merits of Plaintiffs’ claims or Defendant’s defenses. 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.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

Class Counsel

Lilit Tunyan

ltunyan@tunyanlaw.com

Artur Tunyan

atunyan@tunyanlaw.com

TUNYAN LAW, APC

535 N. Brand Blvd., Suite 285

Glendale, California 91203

Defendant’s Counsel

Richard D. Marca

Richard.Marca@varnerbrandt.com

Alisha Maline

Alisha.Maline@varnerbrandt.com

VARNER & BRANDT LLP

3750 University Avenue, Floor 6

Riverside, CA 92501

Telephone: (323) 410-5050

Telephone: (951) 274-7777

Facsimile: (951) 274-7770

What are the Settlement terms?

Subject to final Court approval, Defendant will pay \$175,000.00 (the “Gross Settlement Amount”) for: (a) Individual Settlement Payments to Settlement Class Members; (b) the Court-approved Class Representative Service Payment to Plaintiff (\$10,000.00); (c) the Court-approved attorneys’ fees and costs to Class Counsel (“Class Counsel’s Fees and Expenses”) (\$58,333.33 in fees and up to \$22,000.00 in costs to be requested); (d) payment to the Labor and Workforce Development Agency (“LWDA”) for alleged PAGA penalties (the “PAGA Penalty Payment”) (\$10,000.00 allocated to the PAGA settlement); and (e) payment to the Settlement Administrator for settlement administration services (“Administrative Expenses”) (estimated to be no more than \$6,950.00).

Individual Settlement Payments. Class Members who do not timely and properly request to be excluded from the Settlement (the “Settlement Class Members”) will receive a share of the Net Settlement Amount, and Class Members who are also PAGA Employees will receive a share of the \$2,500.00 from the PAGA Settlement allocated to PAGA Employees (the “PAGA Settlement Payment”), regardless of whether the request exclusion from the Settlement (the total payment to a Class Member is their “Individual Settlement Payment”).

The “Net Settlement Amount” will be calculated by deducting from the Gross Settlement Amount the Class Counsel’s Fees and Expenses, the Class Representative Service Payment, the PAGA Penalty Payment, and the Administrative Expenses. Payments by Defendant from the Net Settlement Amount will be included in the Settlement Payments to each Settlement Class Member (the “Settlement Class Payments”) and each PAGA Employee (the “PAGA Settlement Payments”).

The Settlement Class Payment shall be divided among all Settlement Class Members on a *pro rata* basis based upon the total number of work weeks worked by each Settlement Class Member during the Class Period. The portion of the Net Settlement Amount paid to a Settlement Class Member = Net Settlement Amount (minus \$2,500.00 set aside for all PAGA Settlement Payment) × the work weeks worked by a Settlement Class Member ÷ the work weeks worked by all Settlement Class Members.

The PAGA Settlement Payment shall be divided among all PAGA Employees on a *pro rata* basis based upon the total number of pay periods worked by each PAGA Employee during the PAGA Period. The portion of the PAGA Settlement Payment paid to a PAGA Employee = \$2,500.00 × the pay periods worked by a PAGA Employee (during the PAGA Period) ÷ the pay periods worked by all PAGA Employees (during the PAGA Period).

The estimated average Settlement Share is approximately: \$[estimated average Settlement Share]

The estimated highest Settlement Share is approximately: \$[estimated average Settlement Share]

The estimated lowest Settlement Share is approximately: \$[estimated average Settlement Share]

According to Defendant’s records:

- From September 22, 2021 to August 31, 2023 (i.e., the Class Period), you are credited as having worked [] Workweeks.
- From March 27, 2022 to August 31, 2023 (i.e., the PAGA Period), you are credited as having worked [] Pay Periods.

If you wish to dispute the Workweeks credited to you, you must submit a written letter (“Workweeks Dispute”), which must: (a) contain your full name, current address, current telephone number, last four digits of your Social Security number or employee ID number, and signature; (b) contain the case name and number of the Action (Athey v. Walker Evans Enterprises, Case No. CVRI2301534); (c) contain a clear statement explaining the basis for your dispute; (d) attach any documentation that you have to support the dispute; and (e) be mailed or delivered to the Settlement Administrator, postmarked or delivered on or before [Response Deadline] at:

You must produce documentary evidence supporting your contention. Defendant’s records will be presumed correct unless you prove otherwise by credible evidence. The Settlement Administrator and the Parties will

attempt to resolve all work week disputes with you informally. If they cannot resolve your work week dispute with you informally, the dispute will be submitted by the Parties to the Court for final resolution.

Settlement Share and Individual PAGA Payment is based on the number of Workweeks credited to you.

Under the terms of the Settlement, your Settlement Share is estimated to be \$ [REDACTED]. The Settlement Share is subject to reduction for the employees share of taxes and withholdings with respect to the wages portion of the Settlement Share.

Under the terms of the Settlement, your Individual PAGA Payment is estimated to be \$ [REDACTED].

The settlement approval process may take multiple months. Your Settlement Share and Individual PAGA Payment (if applicable) reflected in this Notice is only an estimate. Your actual Settlement Share and Individual PAGA Payment (if applicable) may be higher or lower. Payments will be distributed only after the Court grants final approval of the Settlement, and after the Settlement goes into effect.

For tax reporting purposes, the payments to Class Members will be allocated 20 as wages, 40% as penalties and 40% as interest. All PAGA Settlement Payments will be allocated as 100% penalties. The wage portion of the Individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable employee-side payroll taxes from the wage portion of the Individual Settlement Payments. The portion of the Individual Settlement Payments allocated as civil penalties and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC if required by governing tax laws. Any taxes owed on that other miscellaneous income will be the responsibility of Class Members receiving those payments. The employer's share of any payroll taxes will be separately paid by Defendant.

All checks for Individual Settlement Payments paid to Class Members will remain valid and negotiable for one hundred eighty (180) days from the date of the checks' issuance and shall thereafter automatically be void if not claimed or negotiated by a Class Member within that time. Any Individual Settlement Payment that is not claimed or negotiated by a Class Member within one hundred eighty (180) days of issuance shall be transmitted to Legal Aid Society of San Bernardino subject to the requirements of California Code of Civil Procedure § 384(b) (the "Cy Pres Recipient") which was selected because its mission is to provide equal access to justice by offering legal education, counsel, and advocacy services for those in need, irrespective of their financial capabilities. In such event, the Settlement Class Members and PAGA Employees shall nevertheless remain bound by the Settlement.

The "Effective Date" of the Settlement will be will be the last to occur of the following: (a) if there are no objections to the settlement, then the date of final approval by the Court; (b) if there are objections to the settlement, and if an appeal, review or writ is not sought from the order granting final approval of the settlement, the 31st day after service of notice of entry of the order; or (c) if an appeal, review or writ is sought from the order, the day after the order is affirmed or the appeal, review or writ is dismissed or denied, and the order is no longer subject to further judicial review. Defendant will fund the settlement account and distribute the Gross Settlement Amount to the Settlement Administrator within twenty-one (21) days of the Effective Date. The Settlement Administrator shall mail the Settlement Payments to the Class Members only AFTER the payment by Defendant of the Gross Settlement Amount.

PLEASE BE PATIENT AND UPDATE THE SETTLEMENT ADMINISTRATOR WITH YOUR NEW ADDRESS IF YOU MOVE AFTER RECEIVING THIS NOTICE OR YOU RECEIVED THIS NOTICE AS FORWARDED MAIL.

None of the Parties or their attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member.

Class Counsel's Fees and Expenses, the Class Representative Service Payment, Administrative Expenses, the PAGA LWDA Payment. Class Counsel will ask the Court to award attorneys' fees up to \$58,333.33 (one third) of the Gross Settlement Amount and reimbursement of reasonable costs incurred in the Action not to exceed \$22,000. In addition, Class Counsel will ask the Court to authorize Class Representative Service Payment made to Plaintiff in the amount of \$10,000.00, for his efforts in bringing the Action on behalf of the Class and for general release of his known and unknown claims in addition to claims released by each class member. The Parties estimate the cost of administering the Settlement will not exceed \$ 6,950.00. The PAGA Penalty Payment

in the amount of \$7,500.00 will also be made to the LWDA for PAGA penalties, which represents 75% of the \$10,000.00 PAGA Allocation.

What claims are being released by the proposed Settlement?

Upon the final approval by the Court of this Settlement and Defendant's payment of all sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representative, the Class and each Class Member who has not submitted a valid and timely request for exclusion as to claims other than the PAGA claim, will release claims as follows:

(a) Identity of Released Parties. The released parties are Defendant and its past, present and/or future officers, directors, managers, employees, and agents, including, but not limited to, Walker R. Evans, Phyllis E. Evans, and Randal C. Anderson (collectively "Releasees").

(b) Date Release Becomes Effective. The Released Claims will be released upon the later of (1) the Settlement's Effective Date, or (2) the satisfaction of Defendant's obligation to provide to the Settlement Administrator a sum in the amount required to satisfy all required payments and distributions pursuant to this Settlement and the Order and Judgment of final approval. Class Members will not release the Released Claims or Released PAGA Claims until both the Effective Date of the Settlement has occurred, and Defendant has paid all amounts owing under the Settlement.

(c) Claims Released by Settlement Class Members. Each and every Class Member, on behalf of himself or herself and their successors, assigns, and/or agents, unless he or she has submitted a timely and valid Request for Exclusion (which will not effectuate an opt-out from the release of Released PAGA Claims), hereby releases Releasees from the following claims for the entire Class Period:

1) any and all claims that were either alleged, or that reasonably could have been alleged based on the factual allegations contained in Plaintiff's operative complaint, including, but not limited to, claims pursuant to California Labor Code sections 201, 202, 203, 204, 210, 226, et seq., 226.2, 226.3, 226.7, 510, 512, 1174, et seq., 1175, 1194, 1194.2, 1197, 1197.1, 1198, 2100, 2101, 2102, 2103, 2104, 2109, 2800, 2802, 6310, 6400, 6401, 6401.7, 6402, 6403, 6404, 6409.6, 2698, et seq., 2699, et seq., 2699.3, and the Industrial Welfare Commission Wage Orders, and also any claim for unpaid wages, including under any theory of rounding, unpaid minimum wage, off-the-clock work, meal and rest period violations, waiting time penalties, itemized wage statement penalties, expense reimbursements, wages for unpaid time, other related wages, restitution, disgorgement, civil or statutory penalties, attorneys' fees, and/or costs and all claims under the Private Attorneys General Act of 2004, under the Unfair Competition Law, Business & Professions Code § 17200, et seq., and/or which are alleged in the First Amended Complaint and Plaintiff's administrative exhaustion letter submitted to the LWDA within the Class Period ("Released Claims"),

2) Plaintiff releases all claims for statutory penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff's pre-filing letter to the LWDA upon the Effective Date and full funding of the Gross Settlement amount ("Released PAGA Claims"). To the maximum extent permitted by law, the final judgment entered pursuant to this settlement will bind all those who would be bound by a judgment if the action had been brought by the LWDA, including Plaintiff, the LWDA, and all Class Members employed during the Released PAGA Claims Period, whether requesting exclusion from the Settlement or not, with respect to the recovery of civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, et. seq. only, against the Released Parties. See *Arias v. Superior Court* (2009) 46 Cal.4th 986.

No PAGA Employee can request exclusion from the settlement of the PAGA Claim. The PAGA Employees are bound by the release of the PAGA Claims regardless of whether they cash their PAGA Payment Check.

What are my options in this matter?

You have two options under this Settlement, each of which is further discussed below. You may: (A) remain in the Class and receive an Individual Settlement Payment; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement, as explained below.

If you remain in the Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you do not exclude yourself from the

Any amount paid to Settlement Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendant, unless otherwise required by law.

You may object to the Settlement in writing or by appearing at the Final Approval Hearing, either in-person or through your attorney. If you appear through your own attorney, you are responsible for paying that attorney. You may appear and orally object regardless of whether you submitted a written objection. Written objections in the Objection Form should be sent to the Settlement Administrator at -----, -----. If you choose not to submit a written objection using the Objection Form , the written objection in any form should contain sufficient information to confirm your identity and the basis of the objection, including: (1) your full name; (2) the grounds for the objection; (3) your signature; (4) the case and number (*Athey v. Walker Evans Enterprises*, Riverside County Superior Court Case No. CVRI2301534); and (5) be postmarked on or before <<**RESPONSE DEADLINE**>> and submitted to the Settlement Administrator at the address listed above. You can also hire an attorney at your own expense to represent you in your objection. The Parties shall file responses to any written objections before the Final Approval Hearing. Regardless of whether you object in writing, the Court may, in its sole discretion, permit you to state any objections you may have at the Final Approval Hearing. **Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of Released Claims as set forth above, unless the Settlement is not finally approved by the Court.** If you submit a written objection and then request exclusion from, and opt out of, the Class Settlement, you would be deemed to have waived your objection.

Regardless of the form, an objection, alone will not satisfy the requirement that a Class Member must formally intervene and become a party of record in the action to appeal a Judgment entered following an Order finally approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018).

Your Request for Exclusion form (to remove you from the Class Settlement) must postmarked on or before <<RESPONSE DEADLINE>>. If you do not submit a Request for Exclusion form on time (as evidenced by the postmark), your request to be excluded from the Settlement will be rejected, you will be deemed a Settlement Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a Request for Exclusion form by the deadline to request exclusion, you will have

no further role in the Action as it relates to the Class claims. You will not be able to complain to the Court about any aspect of the Class Settlement and any written objection to the Class Settlement would not be considered valid. **You will not be entitled to any benefit, including money**, as a result of the Action and Settlement, except for any payment you may receive from the PAGA portion of this Settlement.

IMPORTANT: DO NOT SUBMIT A REQUEST FOR EXCLUSION FORM IF YOU WISH TO BE INCLUDED IN THE CLASS SETTLEMENT AND RECEIVE YOUR SHARE OF THE MONEY AVAILABLE TO YOU AS PART OF THE SETTLEMENT.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's Fees and Expenses, the Class Representative Service Payment, the Administrative Expenses, and the PAGA Allocation on <<FINAL APPROVAL HEARING DATE & TIME>>, in Department 1 of the Riverside County Superior Court, 4050 Main Street, Riverside, CA 92501. As described above, if you wish to attend the Final Approval Hearing remotely, you can do so via Zoom link provided on the court's website <https://riverside.courts.ca.gov/general-information/remote-appearances/remote-appearance-meeting-numbers>. If you wish to attend the Final Approval Hearing in person, you can attend it at Riverside County Superior Court, 4050 Main Street, Riverside, CA 92501. The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an Individual Settlement Payment.

If the Court grants Final Approval of the Settlement, the Order granting Final Approval and entering a Judgment will be posted on a website by the Settlement Administrator for a period of at least 90 days following the entry of that Order in the Court record. That website is: <<website>>.

How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Joint Stipulation of Class and PAGA Representative Action Settlement attached to the Declaration of Lilit Tunyan in Support of Plaintiff's Motion for Preliminary Approval. The Joint Stipulation of Class and PAGA Representative Action Settlement and all other records relating to the lawsuit are available for inspection and/or copying at the Civil Records Office of the Riverside County Superior Court. Class Members may be required to make an appointment with the Court to view documents. You may also request a copy of the Settlement Agreement from Class Counsel, at the address listed above.

You may also view documents filed in this case, including the complete Settlement, on the Court's website at: <https://epublic-access.riverside.courts.ca.gov/public-portal/?q=user/login&destination=node/379>. You may need the case number to access and view case documents (CVRI2301534) NOTE: If you choose to access documents online, the Court will charge you a fee for access. Class Counsel can provide you with copies of the settlement documents at no charge.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: [INSERT].

Exhibit “C”

REQUEST FOR EXCLUSION FORM

Superior Court of California for the County of Riverside
Athey v. Walker Evans Enterprises, Case No. CVRI2301534

If you want to receive an Individual Settlement Award, you should not fill out this form; you are not required to do anything at this time. This form is to be used only if you want to exclude yourself from the Settlement.

If you exclude yourself from the Settlement: (1) you will not receive any payments or benefits under the Settlement; (2) you will not be able to object to the Settlement; (3) you will not be bound by the class settlement if it is ultimately approved by the Court.

To be excluded from the Settlement, complete this Request for Exclusion Form and mail it to the Settlement Administrator at the address listed below, postmarked no later than [Response Deadline-45 days following the date of mailing].

[ILYM GROUP, INC.]
[INSERT INFO]

Request for Exclusion

I hereby certify that I am or was employed by Defendant as a non-exempt, hourly employee in California for some period of time between September 22, 2021 and August 31, 2023.

I have received the Notice of Class Action Settlement ("Notice") in the Action, and I request to be excluded from the Settlement. I understand that by submitting this Request for Exclusion Form, I will not be bound by the class settlement, including the release of Released Claims, as described in the Notice and in the Settlement Agreement on file with the Court, and I will not receive a payment from the class settlement. I understand that I cannot exclude myself from the Individual PAGA Settlement Payment and that I will still receive a pro-rata share of the PAGA Settlement Amount and will be bound by the release of the PAGA claims regardless of whether I exclude myself from the Individual Settlement Payment.

Full Name: _____

Street Address: _____

City, State, Zip Code: _____

Telephone Number: (____) _____

Last four digits of your SSN: _____

Signature of Class Member (or Legal Representative): _____

Date: _____

Exhibit “D”

OBJECTION FORM

Superior Court of California for the County of Riverside
Athey v. Walker Evans Enterprises, Case No. CVRI2301534

USE AND RETURN THIS FORM ONLY IF YOU WISH TO OBJECT TO THE CLASS SETTLEMENT.

If you do not wish to object to the Class Settlement, you should NOT fill out this form. You do not need to take any action. If the proposed settlement receives final approval from the Court, the Settlement Administrator will send you a check by U.S. Mail, at the last address the Settlement Administrator has on file for you.

If you wish to object to the Class Settlement, you must state all factual and legal bases for your objection (space is provided below for doing so), attach any documents you are relying on for your objection, indicate whether you are represented by counsel and, if so, provide their contact information, indicate whether you plan to appear at the Final Approval Hearing, write your name, address, and last four digits of your Social Security number, sign on the following page, and return this form by mail or delivery to the Settlement Administrator, at the following mailing address, postmarked or delivered on or before

[RESPONSE DEADLINE--45 days following the date of mailing].

TBD

[INSERT MAILING ADDRESS]

I wish to object to the Class Settlement on the following grounds:

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper has a slight shadow on the right side, suggesting it's resting on a surface.

Date: _____