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Attorneys for Defendants TMC AT WOLFE'S, INC.

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

EMILEE COMEAU, an individual,
individually and on behalf of all employees
similarly situated,

Plaintiffs,

vs.

TMC AT WOLFE'S INC., a California
corporation; and DOES 1 to 100, Inclusive,

Defendants.

Case No.: 20STCV04095

CLASS ACTION

Assigned for All Purposes To:
Honorable Stuart M. Rice
Dept.:1

**STIPULATION AND AGREEMENT TO
SETTLE CLASS ACTION**

Complaint filed: January 31, 2020
First Amended Complaint filed: April 1, 2020
Trial Date: none set

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court pursuant to California Code of Civil Procedure § 382, that the settlement of this Litigation
3 shall be effectuated upon and subject to the following terms and conditions. Capitalized terms used
4 herein shall have the meanings set forth in Article I or elsewhere in this Stipulation and Agreement
5 to Settle Class Action.

6 This Agreement is made as of the date of the latest dated signature below by Defendants
7 TMC AT WOLFE'S INC., ("Defendant"), and Plaintiff EMILEE COMEAU and the individuals
8 collectively defined below as "Settlement Class Members" who do not timely request exclusion and
9 opt out of this Settlement.

10 The Parties agree that the Litigation shall be ended, settled, resolved, and concluded by
11 agreement of Defendants to pay the maximum total Settlement Sum of **Two Hundred Thousand**
12 **Dollars (\$200,000.00)**, as provided in Section III(E)(1) below, upon the terms and conditions of this
13 Agreement and for the consideration set forth herein, including but not limited to a release of claims
14 by Plaintiff and the Settlement Class Members who do not timely request exclusion and opt out of
15 this Settlement.

16 This is a common fund Settlement without reversion to Defendants, and all Settlement funds
17 remaining after all Court approved deductions from the Settlement Sum (the "Class Member
18 Settlement Fund") will be paid to the Participating Settlement Class Members.

19 **I. DEFINITIONS**

20 Unless otherwise defined herein, the following terms used in this Agreement shall have the
21 meanings ascribed to them as set forth below:

22 A. "Agreement," "Settlement Agreement," "Settlement," or "Stipulation and
23 Agreement" means this Stipulation and Agreement to Settle Class Action, including the attached
24 Exhibits.

25 B. "Class Period" shall mean any time between **January 31, 2016**, through February 1,
26 2022.

27 C. "Class Representative" or "Plaintiff" refers to Plaintiff **Emilee Comeau**.

28 D. "Covered Job Position" is any California non-exempt serving position, held at any

1 time from **January 31, 2016, through February 1, 2022.**

2 E. "Court" means the **California Superior Court, Los Angeles County, Stanley Mosk**
3 **Courthouse, 111 N. Hill Street, Los Angeles, CA 90012.**

4 F. "Defendant" refers to **TMC AT WOLFE'S INC.**

5 G. "Defense Counsel" or "Counsel for Defendant" is:

6 WILLIAM DECLERCQ (SBN 240538)
7 TAYLOR ENGLISH DUMA LLP
8 445 S. FIGUEROA ST., SUITE 3100
9 LOS ANGELES, CALIFORNIA 90071
10 TELEPHONE: (404) 640-5924
11 FACSIMILE: (415) 851-8868
12 WDECLERCQ@TAYLORENGGLISH.COM

11 H. "Effective Date" is the date on which Defendant fully funds the settlement, or upon
12 entry of the Judgment and Final Order in the Litigation, whichever occurs later.

13 I. "Individual Payment Amount" is the amount of money, inclusive of any employee
14 taxes withheld, that shall be paid to each Settlement Class Member who does not timely request
15 exclusion and opt out of this Settlement ("Participating Settlement Class Members"). Individual
16 Payment Amounts will be determined in accordance with Section III(E)(10) herein and may include
17 other amounts as specified in this Agreement, including penalty amounts set forth in Section
18 III(E)(6).

19 J. "Litigation" means the lawsuit entitled *Emilee Comeau, on behalf of herself and on*
20 *behalf of a Class of all other persons similarly situated, v. TMC AT WOLFE'S INC., et al.*, Los
21 Angeles Superior Court Case No. 20STCV04095.

22 K. "Parties" are Defendants, Plaintiff, and the Settlement Class Members who do not
23 timely request exclusion and opt out of this Settlement.

24 L. "PAGA Representatives" means all persons who are employed or have been
25 employed by Defendant in the State of California who, during the period April 5, 2019 to the Present
26 have worked as non-exempt employees and who were subjected to Defendant's alleged unlawful,
27 unfair or fraudulent business acts or practices in the form of Labor Code violations regarding
28

1 overtime, meal periods, rest periods, expense reimbursement, wage statements, or minimum wages
2 and/or waiting time penalties.

3 M. "PAGA Payment" means the sum of five thousand dollars (\$5,000), which shall be
4 allocated from the Maximum Settlement Amount to pay all applicable civil penalties under PAGA
5 on behalf of the Class. Seventy-five percent (75%) of the PAGA Payment, i.e. \$3,750.00, will be
6 paid to the LWDA. The remaining twenty-five percent (25%), i.e. \$1,250.00, will remain in the Net
7 Settlement Amount for distribution to Participating Class Members.

8 N. "PAGA Release" means claims for penalties that were brought based on the facts
9 alleged in Plaintiff's LWDA letter including: Labor Code §§ 558, 1194, 1197, 1197.1 and 1198; paid
10 employees for less hours than they worked by requiring them to work overtime and/or off the clock
11 in violation of Labor Code §§ 510, 1194 and 1198; failed to provide meal periods or compensation
12 in lieu thereof in violation of Labor Code §§ 226.7 and 512; failed to provide rest periods or
13 compensation in lieu thereof in violation of Labor Code §§ 226.7 and 512; failed to provide accurate
14 itemized wage statements in violation of Labor Code § 226; failed to maintain accurate payroll
15 records in violation of Labor Code § 226; failed to pay split shift premium pay in violation of Wage
16 Order No. 5-2001; failed to pay wages of terminated or resigned employees in violation of Labor
17 Code § 203; engaged in unlawful competition in violation of Cal. Business & Professions Code §§
18 17000, et seq.; and participated in unfair business practices in violation of Cal. Business &
19 Professions Code §§ 17200, et seq.

20 O. "Qualifying Work Week" refers to the number of weeks within the Class Period
21 wherein a Settlement Class Member held a Covered Job Position.

22 P. "Recovery" refers to the amount computed by the Settlement Administrator pursuant
23 to Section III(E)(10) to be recovered by Plaintiff and Participating Settlement Class Members who
24 do not timely request exclusion and opt out of this Settlement. Both Parties and their counsel
25 acknowledge that the Recovery cannot be calculated by the Settlement Administrator until after the
26 total number of Qualifying Work Weeks is determined after resolution of any disputes over the
27 number of the Qualifying Work Weeks worked by Settlement Class Members pursuant to Section
28 III(E)(11).

1 Q. “Released Claims” means only the claims alleged in the First Amended Complaint,
2 from January 31, 2016, through February 1, 2022: (1) failure to pay overtime under The Fair Labor
3 Standards Act (FLSA) [29 USC §§ 206, 207]; (2) failure to pay split shift premium pay; (3) failure
4 to pay overtime compensation; (4) failure to provide meal periods; (5) failure to provide rest periods;
5 (6) failure to provide accurate itemized wage statements; (7) failure to pay wages for hours worked;
6 (8) failure to pay wages due and payable twice monthly; (9) failure to pay wages upon termination
7 of employment; (10) Unlawful Competition and Unlawful Business Practices Section 17200, *et seq.*
8 and (11) violation of the California Labor Code, California Private Attorneys’ General Act
9 (“PAGA”) (Lab. Code §2699, *et seq.*)

10 R. “Released Parties” means Defendants and their past and present parents, subsidiaries,
11 related entities, affiliates, and the current and prior owners of **TMC AT WOLFE’S INC.**, and any
12 of these entities’ respective past and present officers, directors, stockholders, agents, managers,
13 representatives, employees, insurers, co-insurers, reinsurers, attorneys, accountants, auditors,
14 advisors, representatives, consultants, pension and welfare benefit plans, plan fiduciaries,
15 administrators, trustees, partners, predecessors, successors and assigns.

16 S. “Service Award” is the amount that shall be paid to Plaintiff and Class Representative
17 Emilee Comeau pursuant to Section III(E)(4) below.

18 T. “Settlement Administrator” means **ILYM Group, Inc.**, which the Parties have
19 agreed will be responsible for the administration of the payments to be made by Defendants from
20 the Settlement Sum and related matters under this Agreement.

21 U. “Settlement Class” or “Settlement Class Members” means all individuals who are or
22 were previously employed (1) in California; (2) by Defendants; (3) in a non-exempt service position;
23 (4) at any point from **January 31, 2016 through February 1, 2022**; (5) excluding any person who
24 has previously signed a release of wage claims.

25 S. “Settlement Sum” means the maximum and all-inclusive Settlement Sum to be paid
26 by the Defendants, and shall be limited to a total of Two Hundred Thousand Dollars (**\$200,000.00**).
27 Pursuant to the terms of this Agreement, the entire Settlement Amount will be paid by Defendant
28 and no part of the Settlement Sum will revert to Defendant.

V. “Settlement Class Counsel” is:

Richard E. Quintilone II, Esq.
Jeffrey T. Green, Esq.
Kyle J. Gallego
QUINTILONE & ASSOCIATES
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II. BACKGROUND.

A. On **January 31, 2020**, Emilee Comeau filed a lawsuit in the Superior Court, Los Angeles County on behalf of herself and all other similarly situated individuals who are currently or were employed by Defendants, within the applicable statute of limitations, as nonexempt hourly employees who were allegedly not paid all regular and overtime wages due, not provided legally compliant meal and rest periods, not furnished an accurate wage statement, and not paid all wages due at the time of termination of employment. Plaintiff also alleged violation of the Business and Professions Code § 17200 *et. seq.* On **April 1, 2020**, Plaintiff filed a First Amended Class Action Complaint including a claim that Defendants violated Labor Code § 2698, *et seq.*

B. On or about **May 22, 2020**, Defendants filed their answer denying all material claims and asserting various affirmative defenses. Thereafter, the Parties engaged in formal discovery including the production of documents by Plaintiff. In preparation for mediation, the Parties also exchanged informal discovery.

C. After the informal and formal discovery, the Parties attended a mediation on **December 4, 2020**, over Zoom call with mediator **Jill Sperber Esq.** The first day of mediation did not result in a settlement After several settlement exchanges conducted informally over the following months, the Parties reached this Settlement. The mediation and settlement negotiations included discussion and examination of the Parties’ respective positions regarding the legal and factual issues pertaining to the claims asserted by Plaintiff.

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1 D. Plaintiff and Settlement Class Counsel concluded, after taking into account the
2 sharply disputed factual and legal issues involved in this Litigation, the risks attendant to further
3 prosecution, the formal and informal discovery conducted to date, and the substantial benefits
4 received and to be received pursuant to the compromise and settlement of the Litigation, that
5 settlement on the terms hereinafter set forth was in the best interest of Plaintiff and the Settlement
6 Class.

7 E. Plaintiff and Settlement Class Counsel are mindful of the problems of proof they face,
8 many of which were discussed during the mediation session and settlement negotiations. As such,
9 Settlement Class Counsel believes that the Settlement reached is fair to the Settlement Class and
10 confers substantial benefits on the Settlement Class, offering all Settlement Class Members certain
11 and meaningful recoveries in the near term. Based on its evaluation, Settlement Class Counsel
12 determined that the Settlement set forth in this Agreement is in the best interest of Plaintiff and the
13 Settlement Class.

14 F. Similarly, Defendants and Defense Counsel concluded that there were benefits
15 associated with settling. Based on the sharply disputed factual and legal issues involved in the
16 Litigation, the risks attendant to further defense, the expense and burden of protracted litigation, and
17 Defendants' desire to put the controversy to rest, Defendants and Defense Counsel believe that
18 settlement on the terms hereinafter set forth is in Defendants' best interest.

19 G. This Settlement contemplates the (a) entry of a final order approving settlement of
20 class action; and (b) discharge of all Parties and their respective counsel from liability for any and
21 all of the Released Claims. The Judgment and Final Order will have the same effect for FLSA claim
22 purposes for Settlement Class Members who opt in pursuant to Section III(E)(13).

23 **III. PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT.**

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

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1 A. Preliminary Approval.

2 Settlement Class Counsel will submit this Agreement to the Court for its preliminary
3 approval. The Court's preliminary approval of this Agreement shall be embodied in an Order
4 Granting Preliminary Approval of Class Action Settlement; Certification of the Settlement Class for
5 settlement purposes only, appointing Class Counsel for settlement purposes only; Setting Final
6 Fairness and Approval Hearing; and Providing for Notice of Class Action, Proposed Settlement,
7 Proposed Payment of Attorneys' Fees, and Fairness Hearing, in the form attached as **Exhibit A**
8 ("Order for Notice of Class Settlement").

9 B. Notice to Settlement Class Members.

10 The Settlement Administrator shall disseminate the Notice of Class Action, Proposed Class
11 Settlement, and Final Fairness and Approval Hearing, which the Parties will ask the Court to approve
12 in the form attached hereto as **Exhibit B** ("Notice of Class Settlement"), by giving notice by first-
13 class United States mail as described in Section III(B)(1).

14 1. Class Notice.

15 Notice shall be provided to Settlement Class Members in the following manner:

16 a. No later than **twenty (20) calendar days** after the Court's Order for Notice
17 of Class Settlement has been received by Defense Counsel, Defendants will provide the Settlement
18 Administrator with a list of all Settlement Class Members ("Class List"). This Class List shall state
19 the social security numbers and the last known home address for each such Settlement Class
20 Member. The Class List shall also state the dates of employment worked by each such Settlement
21 Class Member during the Class Period in a Covered Job Position as indicated in Defendants' records.

22 b. Within **seven (7) calendar days** of receipt of the Class List from Defendants,
23 the Settlement Administrator shall mail the Notice of Class Settlement by first-class United States
24 mail, postage prepaid, to the last known address of each Settlement Class Member, or, in the case of
25 Settlement Class Members known to be deceased, to the legal representative of the estate.

26 c. The Settlement Administrator shall mail with the Notice of Class Settlement
27 a Statement of Weeks Worked in the form attached hereto as **Exhibit C**. The Statement of Weeks
28 Worked will state the dates that the Settlement Class Member worked during the Class Period in a

1 Covered Job Position as indicated in Defendants' records, as well as their estimated Individual
2 Payment Amount based on the formula set forth in Section III(E)(10) below.

3 d. The Settlement Administrator shall mail all returned Notices within ten (10)
4 calendar days of receiving the returned Notice.

5 e. With respect to those Settlement Class Members whose Notice of Class
6 Settlement is returned to the Settlement Administrator as undeliverable, the Settlement
7 Administrator shall promptly attempt to obtain a valid mailing address by use of the Equifax, NCOA
8 ("National Change of Address") database search, and, if necessary, can perform a skip trace using
9 the Settlement Class Member's Social Security Number to locate a valid mailing address. If another
10 address is identified, the Settlement Administrator shall immediately thereafter send the Notice of
11 Class Settlement, Request for Exclusion, and the Statement of Weeks Worked by mail to the new
12 address.

13 f. All costs of the Notice of Class Settlement, whether foreseen or not, shall be
14 paid from the Settlement Sum in accordance with Section III(E)(2) below.

15 2. Declaration of Compliance.

16 No later than **twenty-one (21) court days** before the Final Fairness and Approval Hearing,
17 the Settlement Administrator shall provide Defense Counsel and Settlement Class Counsel with a
18 declaration attesting to completion of the notice process (except for any ongoing attempt to obtain
19 valid mailing addresses for, and the re-sending of, any returned Notices of Class Settlement),
20 including the steps set forth in Section III(B)(1)(c)-(d) ("Declaration of Compliance"), which shall
21 be filed with the Court by Settlement Class Counsel with the final approval motion.

22 Compliance with the procedures described in this Section shall constitute due and sufficient
23 notice to Settlement Class Members of this proposed Settlement and the Final Fairness and Approval
24 Hearing, shall not be subject to objection or collateral attack by any person or entity, and shall satisfy
25 the requirement of due process. Nothing else shall be required of, or done by, the Parties, Settlement
26 Class Counsel, Defense Counsel, or the Settlement Administrator to provide notice of the proposed
27 Settlement and the Final Fairness and Approval Hearing.

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1 C. Responses to Notice.

2 1. Requests for Exclusion from Class.

3 Any person who receives a Notice of Class Settlement may request to be excluded from the
4 Settlement Class by submitting a request for exclusion (“Request for Exclusion” or “Opt Out Form”) in the form attached hereto as **Exhibit D**. Any such request must be made in accordance with the
5 terms set forth in the Notice of Class Settlement and will be timely only if postmarked no later than
6 **forty-five (45) calendar days** after the mailing of the Notice of Class Settlement by the Settlement
7 Administrator, or if otherwise agreed by the Parties, through Settlement Class Counsel and Defense
8 Counsel, in writing. A **sixty (60)** day period will apply for Class Members whose notice packages
9 were initially returned as undeliverable and are re-mailed by the Administrator to an updated address
10 discovered through skip-tracing. Settlement Class Members cannot opt out of the PAGA settlement.

11 2. Objections to Settlement.

12 Any Settlement Class Member wishing to object to the approval of this Settlement
13 (“Objecting Settlement Class Members”) may inform the Settlement Administrator in writing, and
14 may do so by mailing, of his or her intent to object by following the procedure set forth in the Notice
15 of Class Settlement at least **ten (10) court days**, before the date of the Final Fairness and Approval
16 Hearing described in Section III(D) below. A Settlement Class member also has the right to appear
17 via audio, video, or in person at the Final Fairness and Approval Hearing and voice any objections
18 or concerns with the Settlement to the Court.

19 3. Responses to Objections.

20 Counsel for the Parties shall file any response to the objections submitted by Objecting
21 Settlement Class Members at least **five (5) court days** before the date of the Final Fairness and
22 Approval Hearing, or at the Final Fairness and Approval Hearing if the Settlement Class Member
23 objects at the Final Fairness and Approval Hearing.

24 D. Final Fairness and Approval Hearing.

25 On the date set forth in the Order for Notice of Class Settlement, a Final Fairness and
26 Approval Hearing shall be held before the Court in order (1) to review this Agreement and determine
27 whether the Court should give it final approval; and (2) to consider any timely objections made
28

pursuant to Section III(C)(2) above and all responses by the Parties to such objections. At the Final Fairness and Approval Hearing, the Parties shall ask the Court to give final approval to this Agreement. If the Parties' request for final approval is granted, a Judgment and Final Order Approving Settlement of Class Action substantially in the form attached hereto as **Exhibit E** ("Judgment and Final Order") shall be entered in the Litigation. Within **two (2) calendar days** of receipt of the Judgment and Final Order by Settlement Class Counsel, Settlement Class Counsel shall furnish a copy of the Judgment and Final Order to the Settlement Administrator.

E. Settlement Payment Procedures.

1. Settlement Sum.

The maximum and all-inclusive Settlement Sum to be paid by the Defendants shall be limited to a total of **Two Hundred Thousand Dollars (\$200,000.00)**. All amounts to be paid by Defendants from the Settlement Sum shall be paid to a qualified settlement fund ("Qualified Settlement Fund"), which shall be administered by the Settlement Administrator. All amounts to be paid to anyone pursuant to this Agreement ("Settlement Amounts") shall be paid out of the Qualified Settlement Fund. Such Settlement Amounts shall include all amounts to be paid to Plaintiff and Settlement Class Members who do not timely request exclusion and opt out of this Settlement, as set forth in Sections III(E)(4)-(6) below; all amounts to be paid to Settlement Class Counsel as Settlement Class Counsel's Attorneys' Fees, as set forth in Section III(E)(3) below; all amounts to be paid to Settlement Class Counsel as Settlement Class Counsel's Litigation Costs, as set forth in Section III(E)(3) below; all amounts to be paid as a Service Award to Plaintiff as set forth in Section III(E)(4); all amounts to be paid as Settlement Administration Costs, as defined in Section III(E)(2) below; all amounts required to be withheld for payment of federal, state and local payroll taxes (including any employee withholdings but not including employer taxes) and any other payroll charges required to be paid or deposited with the pertinent federal, state and local taxing agencies, with respect to the Settlement Class Members' Individual Payment Amounts, and the payment to the Labor Workforce Development Agency ("LWDA") for its portion of the amount paid to settle alleged PAGA claims, as set forth in Section III(E)(6) below, and any other Settlement Amounts to be paid under this Agreement. All such Settlement Amounts to be paid under this Agreement shall

1 be paid from the Qualified Settlement Fund and Defendants shall have no obligations under this
2 Agreement beyond their obligation to make payments to the Qualified Settlement Fund with the total
3 of all such required payments by Defendants to the Qualified Settlement Fund limited to the
4 Settlement Sum. Defendants' share of payroll taxes shall not be deducted from the Settlement Sum.
5 Defendants will pay their share of payroll taxes in addition to the Settlement Sum.

6 Consistent with the terms of this Agreement, for the purposes of determining the Class
7 Member Settlement Fund, the Settlement Administrator shall first deduct the Settlement
8 Administrator Costs as described in Section III(E)(2), deduct the amount of Attorneys' Fees and
9 Litigation Costs approved by the Court to Settlement Class Counsel as described in Section III(E)(3),
10 deduct the Service Award to Plaintiff as described in Section III(E)(4), and deduct the LWDA for
11 its portion of the amount paid to settle alleged PAGA claims as described in Section III(E)(6).
12 Thereafter, once all disputes over the calculation of the Individual Payment Amounts have been
13 resolved pursuant to Section III(E)(11), the Settlement Administrator shall pay the Individual
14 Payment Amounts to Settlement Class Members who do not timely request exclusion and opt out of
15 this Settlement as described in Section III(E)(5) below, less amounts which must be paid for the
16 Settlement Class Members' share of payroll taxes related to the payment of Settlement Class
17 Members' Individual Payment Amounts. The amount of the Qualified Settlement Fund left after the
18 deduction of Settlement Administrator Costs as described in Section III(E)(2), the amount of
19 Attorneys' Fees and Litigation Costs approved by the Court to Settlement Class Counsel as described
20 in Section III(E)(3), the Service Award to Plaintiff as described in Section III(E)(4), the amount paid
21 to the LWDA to settle alleged PAGA claims as described in Section III(E)(6), and the Settlement
22 Class Members' share of payroll taxes related to the Settlement Class Members' Individual Payment
23 Amounts, will constitute the "Class Member Settlement Fund" from which to pay Settlement Class
24 Members. If the Court renders Final Approval before the date of the last payment in May 2023,
25 Defendant shall immediately issue all remaining payments left outstanding pursuant to the schedule
26 in Section III(E)(1)-(14). The Settlement Sum shall be paid according to the following schedule:

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Month	Amount
January 2023	\$20,000.00
February 2023	\$20,000.00
March 2023	\$20,000.00
April 2023	\$20,000.00
May 2023	\$20,000.00
June 2023	\$20,000.00
July 2023	\$20,000.00
August 2023	\$20,000.00
September 2023	\$20,000.00
October 2023	\$20,000.00
TOTAL	\$200,000.00

2. Settlement Administration Costs.

All costs of administering the Settlement, including but not limited to all tax obligations, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees associated with preparing, translating, issuing and mailing any and all notices or reminders to Settlement Class Members; all costs and fees associated with computing, processing, reviewing, issuing and paying the Service Award, Settlement Amounts, interest, taxes, and any other payments to be made out of or into the Qualified Settlement Fund; all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency; all costs and fees associated with preparing any other notices, reminders, reports, or filings to be prepared in the course of administering disbursements from the Settlement Sum; and any other costs and fees incurred and/or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement (“Settlement Administration Costs”), shall not exceed **\$5,000.00** shall also be paid from the Settlement Sum.

3. Attorneys’ Fees and Costs.

Subject to Court approval, Settlement Class Counsel will be paid up to **Thirty Three and a Third percent (33.3%)** of the Settlement Sum, which equals **\$66,600.00**, for attorneys’ fees (“Attorneys’ Fees”). Subject to Court approval, Settlement Class Counsel will also be paid reasonable and actual costs in prosecuting this Litigation from the Settlement Sum (“Litigation

Costs”) in a sum not to exceed **\$10,000.00**. The Attorneys’ Fees and Litigation Costs shall be paid out of the Settlement Sum. Settlement Class Counsel shall serve Defendants with copies of all documents submitted in support of their fee allocation before such documents are filed with the Court. Defendants agree not to oppose Settlement Class Counsel’s proposed fee allocation. Any amount not approved by the Court will revert to the Class Member Settlement Fund to be split pro rata between the Settlement Class Members. The Court-ordered Attorneys’ Fees and Litigation Costs shall be due and payable no later than **ten (10) calendar days** after the payment of all Settlement Amounts under Sections III(E)(2), (4) and (6), whichever date is later. Defendants shall wire funds to the Settlement Administrator for deposit into the Qualified Settlement Fund in amounts sufficient to fund payment of the Attorneys’ Fees and Litigation Costs no later than **five (5) business days** after the Effective Date.

4. Service Award Payable to Plaintiff.

Subject to Court approval, Plaintiff and Class Representative Emilee Comeau shall receive a Service Award of **ten thousand dollars (\$10,000.00)**. Plaintiff shall provide a release of claims detailed in Section V that she has against Defendants and any Released Parties. The Service Award shall be paid out of the Settlement Sum. The Service Award shall be payable no later than seven (7) business days after the Effective Date. Defendants shall wire funds to the Settlement Administrator for deposit into the Qualified Settlement Fund in amounts sufficient to fund payment of the Service Award no later than **five (5) business days** after the Effective Date. The Settlement Administrator will report the Service Award on a Form 1099, which it will provide to Plaintiff and to the pertinent taxing authorities as required by law.

5. Individual Payment Amounts Payable to Settlement Class Members.

In accordance with the procedures set forth in Sections III(E)(10) and III(E)(12), the Settlement Administrator shall pay each Settlement Class Member his or his Individual Payment Amount.

A portion of each Settlement Class Member’s Individual Payment Amount shall represent wages and a portion of which shall represent interest and a portion of which will represent penalties. **Thirty three percent (33.33%)** of each Settlement Class Member’s Individual Payment Amount

1 shall represent **wages. Thirty three percent (33.33%)** of each Settlement Class Member's
2 Individual Payment Amount shall represent interest. **Thirty three percent (33.33%)** of each
3 Settlement Class Member's Individual Payment Amount shall represent penalties including the
4 Settlement Class Member's portion of the PAGA penalties. That portion of each Settlement Class
5 Member's Individual Payment Amount representing wages will be subject to normal employee tax
6 withholdings with the Settlement Administrator remitting all employment tax withholdings directly
7 to the pertinent state and federal taxing authorities.

8 That portion of each Settlement Class Member's Individual Payment Amount constituting
9 interest or penalties will be reported on a Form 1099 provided to each Settlement Class Member,
10 with the required copies of the Form 1099's provided to the pertinent taxing authorities.

11 Any and all employer tax obligations on any amounts paid to Plaintiff and Settlement Class
12 Members under this Settlement (including any employer FICA or FUTA taxes owed by Defendants
13 or by the Qualified Settlement Fund) are to be paid by Defendants separate and apart from the
14 Settlement Sum. The Settlement Administrator shall be responsible for paying any such taxes owed
15 by Defendants and/or by the Qualified Settlement Fund (including any employer FICA or FUTA
16 taxes) in the manner and within the time prescribed by law.

17 The Parties are mindful that the total consideration payable hereunder is comprised of a
18 number of separate and distinct claims for damages and penalties by Plaintiff and the Settlement
19 Class Members. Accordingly, having considered the matter in detail, having performed their own
20 separate and independent computations and estimation of the damages and penalties potentially
21 awardable to Plaintiff at trial or arbitration, and having done the foregoing with complete and
22 satisfactory access to, and advice from, accounting and legal advisors, the Parties mutually consent
23 and agree that the Settlement Class Members' Individual Payment Amounts be apportioned among
24 the Settlement Class Members' various wage and non-wage claims in this Litigation as set forth
25 above. Moreover, the Parties mutually consent and agree, and hereby represent to the Court in this
26 judicially supervised settlement transaction, that the apportionment of the Settlement Class Members
27 Individual Payment Amounts as stated above is a reasonable and arm's length determination of the
28 character of the Individual Payment Amounts for all purposes, including for tax purposes.

1 6. Payment of PAGA Penalties to the LWDA and Settlement Class Members.

2 The Parties agree to allocate five thousand dollars (**\$5,000.00**) to the settlement of the PAGA
3 penalties alleged in the Complaint, which the Parties believe in good faith is a fair and reasonable
4 apportionment. The Settlement Administrator shall pay seventy-five percent (75%), or **\$3,750.00**,
5 of this amount to the LWDA and twenty-five percent (25%), or **\$1,250.00**, of this amount to
6 Participating Settlement Class Members. Payment shall be made to the LWDA no later than **seven**
7 **(7) business days** after the Effective Date. Defendants shall wire funds to the Settlement
8 Administrator for deposit into the Qualified Settlement Fund in amounts sufficient to make this
9 payment to the LWDA no later than **five (5) business days** after the Effective Date.

10 7. Payments to the DIR and No Residual

11 To the extent there are any payments made to Settlement Class Members that remain
12 uncashed **one hundred and eighty (180) days after mailing**, any uncashed check will be delivered
13 to the **California State Controller's office** in the name of the authorized Settlement Class Member,
14 along with the funds from the uncashed checks.

15 Additionally, this is a non-reversionary Settlement, and any amounts for the allocations of
16 payments from the Settlement Sum that are not finally approved by the Court will be added to the
17 Class Member Settlement fund to be distributed to Participating Class Members. Accordingly, there
18 will be no unpaid residuals. Therefore, the parties agree and stipulate that California Code of Civil
19 Procedure § 384 is inapplicable.

20 8. No Additional Contribution by Defendants.

21 Defendants' monetary obligations under this Agreement are limited to the amount as defined
22 as the Settlement Sum in Section III(E)(1). Defendants may not be called upon or required to
23 contribute additional monies above the Settlement Sum under any circumstances whatsoever. In the
24 event that the total number of Settlement Class Members, estimated to be **265** on **March 15, 2021**,
25 increases by **ten percent (10%)** or more before the preliminary approval hearing, Plaintiff shall have
26 the option to terminate this Agreement. All costs and expenses arising out of or in connection with
27 the performance of this Agreement shall be paid from the Settlement Sum paid by Defendants into
28 the Qualified Settlement Fund, unless expressly provided otherwise herein.

1 In the event that this Agreement is canceled, rescinded, terminated, voided, or nullified,
2 however that may occur, or the Settlement of the Litigation is barred by operation of law, or
3 invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendants will
4 cease to have any obligation to pay any portion of the Settlement Sum to the Qualified Settlement
5 Fund, or any other party under the terms of this Agreement and all previous disbursements made
6 from Defendants to the Qualified Settlement Fund will immediately revert back to Defendants, less
7 any Settlement Administration Costs incurred.

8 9. The Settlement Administrator.

9 The Parties have chosen **ILYM Group, Inc.**, to administer this Settlement and to act as the
10 Settlement Administrator. The Settlement Administrator will administer disbursements from the
11 Settlement Sum paid by Defendants into the Qualified Settlement Fund, including, but not limited
12 to, distributing the Notice of Class Settlement and Statement of Work Weeks, and calculating claims
13 against the Qualified Settlement Fund, calculating interest owed, preparing and issuing all
14 disbursements of the Settlement Amounts required to be paid to the Participating Settlement Class
15 Members who do not timely request exclusion and opt out of this Settlement, Plaintiff, Settlement
16 Class Counsel and the LWDA, and the local state and federal payroll tax authorities, tracking
17 whether Settlement Class Members have cashed issued checks and handling inquiries about the
18 calculation of the Individual Payment Amounts. The Settlement Administrator shall be responsible
19 for the timely filing of all federal, state and local tax returns of the Qualified Settlement Fund and
20 making the timely payment of any and all withholdings required with such returns. The Settlement
21 Administrator shall provide an address and toll-free telephone number to respond to Settlement Class
22 Members' inquiries about the Notice of Class Settlement and determination of the Individual
23 Payment Amounts. All questions by Settlement Class Members shall be directed to the Settlement
24 Administrator.

25 All Settlement Administration Costs associated with administering disbursements from the
26 Qualified Settlement Fund including, but not limited to, the fees and costs of the Settlement
27 Administrator and the cost of the Notice of Class Settlement, shall be paid entirely from the
28 Settlement Sum paid by Defendants into the Qualified Settlement Fund and Defendants' monetary

obligations under this Agreement is limited to the Qualified Settlement Fund. The Parties expect that the Settlement Administrator shall conduct all administration of all disbursements of the Settlement Sum.

10. Calculation of Qualifying Work Weeks Worked and Recovery.

The Settlement Administrator shall determine the total number of Qualifying Work Weeks worked by all Settlement Class Members by determining for each Settlement Class Member, the number of weeks worked in a Covered Job Position. The Settlement Administrator shall compute the value of a Qualifying Work Week ("Base Value") by dividing the amount of the Class Member Settlement Fund by the total number of Qualifying Work Weeks worked by all Settlement Class Members. The Settlement Administrator shall compute each Participating Settlement Class Member's Recovery by multiplying the Base Value by the number of Qualifying Work Weeks worked by the Participating Settlement Class Member.

The Settlement Administrator shall also determine the total number of Qualifying Work Weeks worked by all PAGA Representatives by determining for each PAGA Representatives, the number of weeks worked in a Covered Job Position. The Settlement Administrator shall compute the value of a Qualifying Work Week ("Base Value") by dividing the amount of the PAGA Representatives Settlement Fund by the total number of Qualifying Work Weeks worked by all PAGA Representatives. The Settlement Administrator shall compute each PAGA Representatives' Recovery by multiplying the Base Value by the number of Qualifying Work Weeks worked by the PAGA Representatives.

11. Resolution of Disputes

The Statement of Weeks Worked provided to each individual Settlement Class Member shall set forth the dates that the Settlement Class Member worked during the Class Period in a Covered Job Position, according to Defendants' records. Any Settlement Class Member who disputes the information shown on his or her Statement of Weeks Worked regarding the dates that the Settlement Class Member worked during the Class Period in a Covered Job Position may indicate and explain such disagreement on the Statement of Weeks Worked within forty-five (45) days of the mailing of the Statement of Weeks Worked. Any such Settlement Class Member must submit any

1 documentation relating to his or her dispute along with his or her completed Statement of Weeks
2 Worked. The Settlement Administrator shall notify Defense Counsel and Settlement Class Counsel
3 of any such dispute upon receiving notice of the dispute. The Settlement Administrator shall attempt
4 to resolve the disagreement and may request any information or assistance from Defense Counsel
5 and/or Settlement Class Counsel that the Settlement Administrator, in its sole discretion, believes
6 may assist it in resolving the disagreement. However, the Court shall have final and binding
7 authority to resolve any disputes regarding the number of Qualifying Work Weeks by any Settlement
8 Class Member and dates during the Class Period they were worked by any Settlement Class Member.
9 The Parties and their counsel shall use their best efforts to ensure that any and all such disputes are
10 resolved before the Effective Date.

11 12. Payment of Individual Payment Amounts.

12 Within **five (5) calendar days** after the payment of all Settlement Amounts under Sections
13 III(E)(2), (4) and (6) (as to the LWDA only) above, whichever date is later, the Settlement
14 Administrator shall calculate the final Individual Payment Amount to be paid to each Settlement
15 Class Member, prepare a Final Statement of Individual Payment Amounts for each Settlement Class
16 Member, and direct Defendants to wire funds from the Settlement Sum to the Settlement
17 Administrator for deposit into the Qualified Settlement Fund, which are sufficient to fund the
18 payment of these Individual Payment Amounts, inclusive of payroll taxes of the Settlement Class
19 Members and/or the Qualified Settlement Fund. Additionally, the Settlement Administrator shall
20 calculate the funds sufficient to fund the payment of Defendants' payroll tax obligations and shall
21 direct Defendants to wire such funds to the Settlement Administrator. Defendants shall wire such
22 funds within **five (5) calendar days** thereafter; the Settlement Administrator shall issue and mail the
23 settlement checks within **seven (7) calendar days** thereafter. The mailing shall be by first-class
24 United States mail to the last known mailing address of each Settlement Class Member.

25 13. Opt-In for FLSA Claims

26 The cashing of the settlement check by the Settlement Class Member shall be deemed to be
27 an opt-in for purposes of the FLSA claims referred to in the Released Claims. The Settlement
28 Administrator shall include a legend on the settlement check stating "By cashing this check, I am

1 opting into *Comeau v. TMC AT WOLFE'S INC., et al.*, Case No. 20STCV04095, under FLSA, 29
2 U.S.C. § 216(b), and releasing the Released Claims described in the Settlement Agreement.”

3 14. Extension of Time to Pay and/or Process Claims.

4 Should the Settlement Administrator need more time than is provided under this Agreement
5 to complete any of its obligations as set forth in this Agreement, the Settlement Administrator may
6 request such additional time in writing (including an explanation of the need for additional time)
7 from the Court.

8 F. Public Statements.

9 Plaintiff and Settlement Class Counsel shall not hold any press conferences, issue any press
10 releases, seek any publicity or publish any announcements on any website with respect to this matter
11 at any time. Until the Parties submit a request for preliminary approval from the Court, Plaintiff and
12 Settlement Class Counsel will keep the terms of this Agreement confidential. Prior to final approval
13 of this Settlement, Plaintiff and Settlement Class Counsel will not discuss this Litigation or
14 Settlement or otherwise disclose the terms of this Agreement with third parties other than Settlement
15 Class Members, except (1) as necessary to effectuate this Agreement and (2) to the Parties’ tax
16 advisors. After final approval of this Settlement, Plaintiff, Defendants, and their respective Counsel
17 shall not issue any public statements with respect to the Litigation or Settlement, except as required
18 by law. Upon such final approval, Plaintiff, Defendants and their respective Counsel may issue, if
19 at all, only a mutually agreeable joint press release, although neither party is required to agree to any
20 press release of any kind. Unless otherwise agreed by Plaintiff, Defendants, and their respective
21 Counsel, any oral or written disclosure of information related to the Settlement shall be restricted to
22 the material discussed in this Stipulation and Agreement. Plaintiff, Defendants, and their respective
23 Counsel agree and acknowledge that the phrase “material discussed in this Stipulation and
24 Agreement” shall be narrowly construed. Notwithstanding the specific limitations to public
25 disclosure identified herein, Settlement Class Counsel shall not be precluded from disclosing the
26 Parties to the lawsuit and the fact that the matter settled to a Court or other Tribunal. Furthermore,
27 nothing herein limits Plaintiff’s or any Settlement Class Member’s ability to communicate with any
28

1 government agency or otherwise participate in any investigation or proceeding that may be
2 conducted by any government agency.

3 **IV. LIMITATIONS ON USE OF THIS SETTLEMENT.**

4 A. No Admission.

5 Neither the acceptance nor the performance by Defendants of the terms of this Agreement
6 nor any of the related negotiations or proceedings is or shall be claimed to be, construed as, or
7 deemed to be an admission by Defendants of the truth of any of the allegations in the Complaint, the
8 representative character of the Litigation, the validity of any of the claims that were or could have
9 been asserted by Plaintiff and/or Settlement Class Members in the Litigation, or of any liability or
10 guilt of Defendants in the Litigation.

11 B. No Disparagement

12 Both Plaintiff and Settlement Class Counsel agree not to make or cause to be made at any
13 time, any statements that disparage, are inimical to, or damage the reputation of Released
14 Parties. Plaintiff further agrees that he will not encourage or incite other current or former
15 employees of the Released Parties to disparage or assert any complaint, claim or charge, or to initiate
16 any legal proceeding, against the Released Parties. Nothing herein limits Plaintiff's or any Settlement
17 Class Member's ability to communicate with any government agency or otherwise participate in any
18 investigation or proceeding that may be conducted by any government agency.

19 C. Non-Evidentiary Use.

20 Neither this Agreement nor any of its terms shall be offered or used as evidence by any of
21 the Parties, Settlement Class Members, or their respective counsel in the Litigation or in any other
22 action or proceeding; provided, however, that nothing contained in this Section IV(C) shall prevent
23 this Agreement from being used, offered, or received in evidence in any proceeding to enforce,
24 construe, or finalize this Agreement.

25 D. No Collateral Attack.

26 This Agreement shall not be subject to collateral attack by any Settlement Class Member or
27 any recipient of the Notice of Class Settlement after the Judgment and Final Order described in
28 Section III(D) is entered. Such prohibited collateral attacks shall include but not be limited to claims

1 that the Qualifying Work Weeks attributed to the Settlement Class Member was erroneous or that
2 the Settlement Class Member failed for any reason to receive timely notice of the procedure for
3 disputing the calculation of his or her Individual Payment Amount.

4 E. Nullification.

5 1. If (a) the Court should for any reason fail to certify a class for settlement; or (b) the
6 Court should for any reason fail to approve this Settlement in the form agreed to by the Parties; or
7 (c) the Court should for any reason fail to enter the Judgment and Final Order; or (d) the Judgment
8 and Final Order is reversed, modified, or declared or rendered void, then (i) this Agreement shall be
9 considered null and void, (ii) neither this Agreement nor any of the related negotiations or
10 proceedings shall be of any force or effect, (iii) all Parties to this Agreement shall stand in the same
11 position, without prejudice, as if the Agreement had been neither entered into nor filed with the
12 Court, and (iv) Settlement Class Counsel shall make repayment of any disbursements it received
13 from the Settlement Sum.

14 2. Invalidation of any material term of this Agreement shall invalidate this Agreement
15 in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions
16 shall remain in full force and effect. The material terms are all terms set forth Sections III(E),
17 IV(E)(2) and Article V herein.

18 3. In the event that for any reason final distribution of the Settlement Sum does not
19 occur (for example, because this Agreement and/or the Judgment and Final Order is modified or
20 reversed on appeal), the entire Settlement Sum shall remain the sole property of Defendants and any
21 sums previously paid or distributed shall be returned to Defendants (minus any administrative
22 expense and fees incurred by the Settlement Administrator).

23 4. In the event of a timely appeal from the Judgment and Final Order, the Judgment and
24 Final Order shall be stayed and the Settlement Sum shall not be distributed to Settlement Class
25 Members pending the completion of the appeal.

26 V. RELEASE.

27 It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge
28 disputes and claims alleged in the Litigation. Except for Settlement Class Members who submit a

1 timely request for exclusion from the Class in accordance with Section III(C)(1), upon entry of the
2 Judgment and Final Order in the Litigation, Plaintiff and each and every Settlement Class Member
3 shall be bound by this Agreement and shall have recourse exclusively to the benefits, rights, and
4 remedies provided hereunder. Plaintiff and each and every Settlement Class Member shall be
5 deemed to have, and by operation of the Judgment and Final Order shall have fully, finally, and
6 forever released, relinquished, and discharged each and all of the Released Parties from the Released
7 Claims. With respect to any FLSA claims, by cashing the settlement check referred to in Section
8 III(E)(13), a Settlement Class Member shall be deemed to have opted-in and to have, and by
9 operation of the Judgment and Final Order shall have fully, finally, and forever released,
10 relinquished, and discharged each and all of the Released Parties from any and all FLSA claims.

11 Plaintiff, the Settlement Class, and each and every Settlement Class Member who does not
12 submit a timely request for exclusion from the Class in accordance with Section III(C)(1) shall be
13 deemed to have acknowledged and agreed that: (1) their claims for missed meal and rest breaks,
14 overtime compensation, minimum wages, wages for all hours worked, statutory and civil penalties,
15 and any other payments and/or penalties in the Litigation are disputed; and (2) the payments set forth
16 in Section III(E)(5) above constitute full payment of any amounts allegedly due to them. In light of
17 the payment by Defendants of all amounts due to them, Plaintiff, the Settlement Class, and each and
18 every Settlement Class Member who does not submit a timely request for exclusion from the Class
19 in accordance with Section III(C)(1) shall be deemed to have acknowledged and agreed that
20 California Labor Code § 206.5 is not applicable to the Parties hereto. That section provides in
21 pertinent part as follows:

22 An employer shall not require the execution of any release of a claim or right on
23 account of wages due, or to become due, or made as an advance on wages to be earned,
unless payment of those wages has been made.

24 Each Settlement Class Member who does not submit a timely request for exclusion from the
25 Class in accordance with Section III(C)(1) shall be deemed to have made the foregoing Release as
26 if by manually signing it.

27 In addition to the release provided above with respect to all Settlement Class Members who
28 do not submit a timely request for exclusion from the Class in accordance with Section III(C)(1),

1 and for a valuable consideration, the receipt and adequacy of which is hereby acknowledged and
2 except as specifically provided below, Plaintiff on behalf of herself, and each of his heirs, executors,
3 administrators, attorneys, devisees, successors, and assigns, upon final approval of this Settlement
4 and payment of the agreed upon consideration, does hereby release and forever discharge the
5 Released Parties of the Released Claims and PAGA Release.

6 The Released Claims of Plaintiff herein include only the claims alleged in the Complaint,
7 from January 31, 2016, through February 1, 2022, including: (1) failure to pay overtime under The
8 Fair Labor Standards Act (FLSA) [29 USC §§ 206, 207]; (2) failure to pay split shift premium pay;
9 (3) failure to pay overtime compensation; (4) failure to provide meal periods; (5) failure to provide
10 rest periods; (6) failure to provide accurate itemized wage statements; (7) failure to pay wages for
11 hours worked; (8) failure to pay wages due and payable twice monthly; (9) failure to pay wages upon
12 termination of employment; (10) Unlawful Competition and Unlawful Business Practices Section
13 17200, *et seq.*; and (11) violation of the California Labor Code, California Private Attorneys'
14 General Act ("PAGA") (Lab. Code §2699, *et seq.*).

15 The released claims further included, all claims for penalties that were brought based on the
16 facts alleged in Plaintiff's LWDA letter including: Labor Code §§ 558, 1194, 1197, 1197.1 and 1198;
17 paid employees for less hours than they worked by requiring them to work overtime and/or off the
18 clock in violation of Labor Code §§ 510, 1194 and 1198; failed to provide meal periods or
19 compensation in lieu thereof in violation of Labor Code §§ 226.7 and 512; failed to provide rest
20 periods or compensation in lieu thereof in violation of Labor Code §§ 226.7 and 512; failed to
21 provide accurate itemized wage statements in violation of Labor Code § 226; failed to maintain
22 accurate payroll records in violation of Labor Code § 226; failed to pay split shift premium pay in
23 violation of Wage Order No. 5-2001; failed to pay wages of terminated or resigned employees in
24 violation of Labor Code § 203; engaged in unlawful competition in violation of Cal. Business &
25 Professions Code §§ 17000, *et seq.*; and participated in unfair business practices in violation of Cal.
26 Business & Professions Code §§ 17200, *et seq.*

27 This Agreement does not release claims that cannot be released as a matter of law, including
28 but not limited to claims for indemnity under California Labor Code § 2802, workers' compensation

benefits, or any right to file an application for award for original information submitted pursuant to Section 21F of the Securities Exchange Act of 1934.

VI. MISCELLANEOUS PROVISIONS.

A. Amendments.

The terms and provisions of this Agreement may be amended only by a written agreement that is both (a) signed by the Plaintiff, Settlement Class Counsel, and Defense Counsel who executed this Agreement and (b) approved by the Court.

B. Assignment.

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

C. Governing Law.

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

D. Entire Agreement.

This Agreement, including the Exhibits referred to herein, which form an integral part hereof, contains the entire understanding of the Parties hereto with respect to the subject matter contained herein. In case of any conflict between text contained in Articles I through VI of this Agreement and text contained in Exhibits to this Agreement, the former shall be controlling. There are no restrictions, promises, representations, warranties, covenants, or undertakings governing the subject matter of this Agreement other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Litigation.

///

1 E. Waiver of Compliance.

2 Any failure of any Party, Defense Counsel, and/or Settlement Class Counsel hereto to comply
3 with any obligation, covenant, agreement, or condition herein may be expressly waived in writing,
4 to the extent permitted under applicable law, by the Party or Parties and their respective counsel
5 hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or
6 failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or
7 condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

8 F. Counterparts.

9 This Agreement, and any amendments hereto, may be executed in any number of
10 counterparts and any Party and/or their respective counsel hereto may execute any such counterpart,
11 each of which when executed and delivered shall be deemed to be an original and all of which
12 counterparts taken together shall constitute but one and the same instrument. It shall not be necessary
13 in making proof of this Agreement or any counterpart hereof to produce or account for any of the
14 other counterparts.

15 G. Attorneys' Fees and Costs.

16 Neither Settlement Class Counsel nor any other attorneys acting for, or purporting to act for
17 the Settlement Class, Settlement Class Members, or Plaintiff may recover or seek to recover any
18 amounts for fees, costs, or disbursements from the Released Parties or the Settlement Sum except as
19 expressly provided herein.

20 H. Meet and Confer Regarding Disputes.

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

25 I. Jurisdiction of the Court.

26 The Parties agree that this Settlement Agreement shall be enforceable by the Court pursuant
27 to California Code of Civil Procedure § 664.6. The Court shall retain jurisdiction with respect to the
28 interpretation, implementation, and enforcement of the terms of this Agreement and all orders and

1 judgments entered in connection therewith, and the Parties and their counsel submit to the
 2 jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement
 3 embodied in this Agreement and all orders and judgments entered in connection therewith.

4 IT IS SO STIPULATED.

5
 6 Dated: December 22, 2022

QUINTILONE & ASSOCIATES

DocuSigned by:

By: Richard E. Quintilone II

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RICHARD E. QUINTILONE II.
 JEFFREY T. GREEN.
 KYLE J. GALLEG0.
 Attorneys for Plaintiff EMILEE COMEAU,
 individually, and on behalf of all other
 employees similarly situated

11
 12 Dated: December 22, 2022

DeClercq Law, P.C.

13
 14 By: William B. Declercq

WILLIAM B. DECLERCQ
 Attorneys for Defendant TMC at WOLFE'S
 INC.

15
 16
 17 Dated: December 22, 2022

EMILEE COMEAU, on behalf of herself
 and on behalf of a Class of all other persons
 similarly situated

DocuSigned by:

By: Emilee Comeau

3C5E5F0200DD420...

EMILEE COMEAU

18
 19
 20
 21
 22 Dated: Dec 22, 2022

TMC AT WOLFE'S INC.

23
 24 Anthony Villegas

Authorized Agent for TMC AT WOLFE'S
 INC.

Exhibit A

1 RICHARD E. QUINTILONE II (200995)
2 **QUINTILONE & ASSOCIATES**
3 22974 EL TORO ROAD, SUITE 100
4 LAKE FOREST, CA 92630
5 TEL: (949) 458-9675
6 FAX: (949) 458-9679
7 REQ@QUINTLAW.COM

8 Attorney for Plaintiff, EMILEE COMEAU, an individual, individually and on behalf of all
9 employees similarly situated,

10
11 **SUPERIOR COURT OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

13 EMILEE COMEAU, an individual,
14 individually and on behalf of all
15 employees similarly situated,

16 Plaintiffs,

17 vs.

18 TMC AT WOLFE’S INC., a California
19 corporation; and DOES 1 to 100,
20 Inclusive,

21 Defendants.

Case No.: 20STCV04095

CLASS ACTION

Assigned for All Purposes To:

Honorable Stuart M. Rice

Dept.: 1

**[PROPOSED] ORDER GRANTING
PLAINTIFF’S SUPPLEMENTAL MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: September 29, 2023

Time: 10:30 a.m.

Dept: 1

Complaint filed: January 31, 2020

First Amended Complaint filed: April 1, 2020

Trial Date: none set

Case No.. 20STCV04095

ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

1 Plaintiff's Notice of Motion and Motion for Preliminary Approval of Class Action
2 Settlement was submitted, and the Court has considered the Stipulation and Agreement to Settle
3 Class Action, the proposed Notice of Class Settlement, the proposed Opt Out Form, the
4 submissions of counsel, and all other papers filed in this Litigation. The matter having been
5 submitted and good cause appearing therefor, the Court finds as follows:

6 1. All defined terms contained herein shall have the same meanings as set forth in the
7 Stipulation and Agreement to Settle Class Action executed by the Parties and filed with this Court
8 (the "Settlement Agreement");

9 2. Plaintiff EMILEE COMEAU ("Plaintiff" or "Class Representative") and
10 Defendant TMC AT WOLFE'S INC. ("Defendant") through their counsel of record in the
11 Litigation, have reached an agreement to settle all claims in the Litigation.

12 3. The Parties have agreed that this Litigation may be maintained as a class action for
13 Settlement purposes only.

14 4. The Settlement is within the range of reasonableness and meets the requirements
15 for preliminary approval.

16 5. The moving papers presented for the Court's review set forth a plan to provide
17 notice to the proposed Settlement Class of the terms of the Settlement and the options facing the
18 Settlement Class including, *inter alia*: to be excluded from the Litigation; to be represented by
19 counsel of their choosing; to object to the terms of the Settlement, or to do nothing and be bound
20 by the terms of the Settlement without receiving a portion of the Class Member Settlement Fund.
21 Plaintiff has submitted to the Court a Notice of Class Settlement. The Notice of Class Settlement
22 will be mailed to all Settlement Class Members, at their last known addresses. For returned
23 envelopes, the Claims Administrator will use reasonable diligence to obtain a current address for
24 the Settlement Class Member and re-mail the Notice of Class Settlement. This notice plan
25 provides the best notice practical under the circumstances.

26 Good cause appearing therefor, **IT IS HEREBY ORDERED** that:

- 27 1. The Court grants preliminary approval of the Parties' Settlement Agreement;
28 2. The Settlement Class is provisionally certified for Settlement purposes only,

1 pursuant to Section 382 of the Code of Civil Procedure;

2 3. Plaintiff Emilee Comeau is appointed as the Settlement Class Representative, and
3 Plaintiff's Counsel, Quintilone & Associates, is appointed as Class Counsel for the Settlement
4 Class; For Settlement purposes only, the litigation may be maintained on behalf of a Class
5 defined as follows: any California non-exempt serving position, held at any time from **January 31,**
6 **2016, through February 1, 2022.**

7 4. The Court hereby approves the form of Notice of Class Settlement;

8 5. The notice of the proposed Settlement, and the rights of Settlement Class Members
9 to opt out of the Settlement or to dispute the number of Qualifying Work Weeks, shall be given
10 by mailing of the Notice of Class Settlement by first class, postage prepaid, to all Settlement
11 Class Members pursuant to the applicable provisions in the Settlement Agreement. Defendants
12 shall provide the Claims Administrator with the information necessary to conduct this mailing as
13 set forth in the Settlement Agreement;

14 6. A hearing shall be held before this Court on _____, 2023 at _____ a/p.m. to
15 consider whether the Settlement should be given final approval by the Court;

16 a. Written objections by Settlement Class Members to the proposed
17 Settlement will be considered if received by the Court and the Settlement Administrator in
18 writing no later than **forty-five (45) days** after the mailing of the Notice of Class Settlement;

19 b. At the final approval hearing, Settlement Class Members may be heard
20 orally in support of the Settlement, or in opposition to the Settlement, provided they submit a
21 timely written objection to the Settlement;

22 c. Class Counsel and Defense Counsel should be prepared at the hearing to
23 respond to objections filed by Settlement Class Members and to provide other information as
24 appropriate, bearing on whether or not the Settlement should be approved; and

25 7. In the event the Effective Date occurs, all Class Members who do not timely
26 submit a Request for Exclusion from the Settlement will be deemed to have forever released and
27 discharged the Settlement Class Members' Released Claims as set forth in the Settlement
28

1 Agreement. In the event the Effective Date does not occur for any reason whatsoever, the
2 Settlement Agreement shall be deemed null and void and shall have no effect whatsoever.

3 8. The Court orders the following implementation schedule for further proceedings:

4 Preliminary approval order	TBD by Court
5 Deadline for Defendants to provide the	Twenty (20) days after Defense Counsel
6 Class List to the Settlement Administrator.	receives this Order.
7 Mail notices to Settlement Class Members.	Ten (10) days after Claims Administrator
8	receives the Class List from Defendants.
9 Deadline for Settlement Administrator to	Ten (10) days after notices returned.
10 re-mail notices that were returned.	
11 Deadline for postmark by registered mail	Forty-five (45) days after Settlement
12 of any Request for Exclusion.	Administrator first mails Notice of Class
13	Settlement to Settlement Class Members.
14 Deadline for responses to objections.	At least five (5) court days before the date
15	the Final Fairness and Approval Hearing.
16 Deadline for Class Counsel to file Motion	TBD by Court.
17 for Final Approval of Settlement.	
18 Deadline for Class Counsel to file Motion	TBD by Court.
19 for Attorneys' Fees.	
20 Final Fairness and Final Approval Hearing.	TBD by Court. Approximately seventy-
21	five (75) days after first mailing of Notice
22	of Class Settlement.
23	

24
25 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

26
27 Dated: _____, 2023

28 _____
Hon. Stuart M. Rice
Judge, Los Angeles County Superior Court

Exhibit B

**PLEASE READ THIS NOTICE CAREFULLY. YOU MAY
BE ENTITLED TO MONEY FROM A CLASS
ACTION SETTLEMENT.**

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

EMILEE COMEAU, an individual, individually
and on behalf of all employees similarly situated,

Plaintiffs,

vs.

TMC AT WOLFE'S INC., a California
corporation; and DOES 1 to 100, Inclusive,

Defendants.

Case No.: 20STCV04095

CLASS ACTION

Assigned for All Purposes To:
Honorable Stuart M. Rice
Dept.: 1

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

**ATTENTION ALL INDIVIDUALS WHO ARE OR WERE PREVIOUSLY
EMPLOYED (1) IN CALIFORNIA; (2) BY DEFENDANT TMC AT
WOLFE'S INC.; (3) IN A NON-EXEMPT POSITION; (4) AT ANY POINT
FROM JANUARY 31, 2016, TO FEBRUARY 1, 2022:**

THIS NOTICE EXPLAINS YOUR POTENTIAL RIGHT TO RECOVER MONEY AS THE
RESULT OF A SETTLEMENT OF A CLASS ACTION LAWSUIT ("SETTLEMENT")
AGAINST DEFENDANTS TMC AT WOLFE'S INC. ("DEFENDANTS").

ACCORDING TO DEFENDANT'S RECORDS, YOU ARE ELIGIBLE TO PARTICIPATE IN
THE SETTLEMENT. IF YOU WISH TO BE EXCLUDED FROM THE SETTLEMENT, YOU
MUST SUBMIT THE ATTACHED OPT OUT FORM AND RETURN THE OPT OUT FORM
SO THAT IT IS POSTMARKED NO LATER THAN [REDACTED], 2022. IF YOU DO
NOT COMPLETE AND RETURN YOUR OPT OUT FORM BY THIS DEADLINE, YOU WILL
BE BOUND BY THE TERMS OF THE SETTLEMENT.

THE DEADLINE FOR THE ADMINISTRATOR TO RE-MAIL NOTICES THAT WERE
RETURNED IS TEN (10) CALENDAR DAYS.

I. WHAT IS THIS CASE ABOUT?

The purpose of this Notice is to inform you that your rights may be affected by the proceedings in
a class action lawsuit pending before Judge Stuart M. Rice of the Superior Court of California for

the County of Los Angeles (the “Court”) entitled *Emilee Comeau, on behalf of herself and on behalf of a Class of all other persons similarly situated v. TMC AT WOLFE’S INC., et al.*, Case No: 20STCV04095 (“Litigation”). This Notice is given by Order of the Court.

There is a class action lawsuit now pending before the Court. This lawsuit was originally filed on January 31, 2020, and was brought by Emilee Comeau (“Class Representative” or “Comeau”) on behalf of **all non-exempt former and current employees who worked for Defendant in California from January 31, 2016 to February 1, 2022.** (“Settlement Class Members”). The period from January 31, 2016, through February 1, 2022, is therefore known as the Class Period.

In the Complaint in this lawsuit, Comeau alleges that Defendants (1) Failed to pay overtime under FLSA [29 USC §§ 206, 207]; (2) Failure to Pay Split Shift Premium Pay; (3) Failure to pay overtime compensation; (4) Failure to provide meal periods; (5) Failure to provide rest periods; (6) Failure to provide accurate itemized wage statements; (7) Failure to pay wages for hours worked; (8) Failure to pay wages due and payable twice monthly; (9) Failed to pay wages upon termination of employment; and (10) engaged in Unlawful competition and unlawful business practices.

Plaintiff Comeau filed a First Amended Complaint on April 1, 2020, adding a cause of action for Violating the California Labor Code Private Attorney’s General Act (“PAGA”).

The “Covered Job Positions” in this case is any California non-exempt position, held at any time from January 31, 2016, to February 1, 2022.

II. WHAT ARE THE TERMS OF THE SETTLEMENT?

Defendants deny engaging in any unlawful conduct as alleged in this lawsuit and deny the claims and charges of wrongdoing and liability. Defendants deny that they owe money to Plaintiff or the Settlement Class Members as a result of any of Plaintiff’s allegations, as listed above. Defendants are settling the matter as a compromise. Defendants reserve the right to object to any claim if for any reason the Settlement fails.

The Settlement Agreement applies to all Settlement Class Members who do not timely submit a correctly completed Opt Out Form.

The determination of how much a Participating Settlement Class Member will receive as part of this Settlement depends on when and for how long the Participating Settlement Class Member held a Covered Job Position.

The parties reached a Settlement in which Defendants’ total maximum liability, inclusive of all payments to Participating Settlement Class Members, the Class Representative’s Service Award, Settlement Administration Costs, employer’s share of tax liabilities and attorneys’ fees and costs, will not exceed \$200,000.00 (“Settlement Sum”). If eligible, Settlement Class Members may participate in the Settlement. Settlement Class Members will not pay any out-of-pocket costs.

There was a hearing on [REDACTED], 2023 in the Superior Court of California for the County of Los Angeles. The Court conditionally granted preliminary approval of the class action settlement against Defendants and directed that you receive this Notice.

A. Additional Payments from the Maximum Settlement Amount

The Parties will ask the Court to pay the following amounts from the Settlement Sum.

1. Fee and Cost Award for Class Counsel

Class Counsel is:

Richard E. Quintilone II, Esq.
req@quintlawn.com
QUINTILONE & ASSOCIATES
22974 El Toro Road, Suite 100
Lake Forest, CA 92630-4961
Telephone:(949) 458-9675

Class Counsel filed the Litigation on behalf of Plaintiff and all other similarly situated individuals. Class Counsel served formal discovery and conducted informal discovery and negotiated the settlement of this matter. Class Counsel will request attorneys' fees in the amount of up to \$66,600.00, which represents 33% of the Settlement Sum. Class Counsel will also request reimbursement of litigation costs and expenses in the amount of up to \$10,000.00. The Court will not determine the amount of fees and costs until the Final Approval Hearing. If any portion of the amounts requested for attorneys' fees and costs are not awarded by the Court, they will be reinstated into a qualified settlement fund ("Qualified Settlement Fund"), which shall be administered by the Settlement Administrator and distributed to Participating Settlement Class Members. These attorneys' fees and costs shall compensate Class Counsel for the work they have performed and the expenses they have incurred in this Action. Settlement Class Members are not personally responsible for any of Class Counsel's attorneys' fees and costs.

2. Service Award to the Class Representative

Class Counsel will also seek an enhanced recovery of no more than \$10,000.00 ("Service Award") for Emilee Comeau for acting as representative plaintiff on behalf of the Settlement Class. This will be in addition to whatever payment he is otherwise entitled to as a Participating Settlement Class Member. If approved by the Court, this amount will be paid from the Qualified Settlement Fund for his risk and service on behalf of the Settlement Class which included, among other things, reviewing documents, participating in meetings with Class Counsel, attending mediation, and performing other services of that nature, as well as his general release of all claims against Defendants.

3. Settlement Administration Costs

Settlement Administration Costs, which will not exceed \$5,000.00, will be paid to the Settlement Administrator, ILYM, for its services, including but not limited to distributing Class Notices and Opt Out Forms to Settlement Class Members, processing Opt Out Forms, calculating Settlement payments, and distributing such Settlement payments to the Participating Settlement Class Members.

4. Employer and Employee Tax Obligations

Once the amount of payment for each Participating Settlement Class Member is determined, the Settlement Administrator will calculate the total amount of the employer withholding taxes and the total amount of employee withholding taxes for the portion of the Settlement payment designated as wages as required by law. This total amount will be deducted from the Qualified Settlement Fund.

5. PAGA Penalties

Defendants shall pay \$5,000.00 for settlement of claims brought under the Private Attorneys' General Act ("PAGA"). The PAGA payment shall be allocated as follows: \$3,750.00 (75%) to the California Labor & Workforce Development Agency ("LWDA"), and \$1,250.00 (25%) to the Participating Settlement Class Members.

The difference between the Qualified Settlement Fund and the above payments will be the Class Member Settlement Fund, which is the portion of the Settlement Sum eligible for distribution to Participating Settlement Class Members. All of the foregoing payments are subject to final approval from the Court.

The Claims Administrator will calculate your PAGA payment to be **XXX**.

B. Release of Claims

The Released Claims include, any and all claims alleged in the First Amended Complaint, from January 31, 2016, through February 1, 2022, including: (1) failure to pay overtime under The Fair Labor Standards Act (FLSA) [29 USC §§ 206, 207]; (2) failure to pay split shift premium pay; (3) failure to pay overtime compensation; (4) failure to provide meal periods; (5) failure to provide rest periods; (6) failure to provide accurate itemized wage statements; (7) failure to pay wages for hours worked; (8) failure to pay wages due and payable twice monthly; (9) failure to pay wages upon termination of employment; (10) Unlawful Competition and Unlawful Business Practices Section 17200, et seq. and (11) violation of the California Labor Code, California Private Attorneys' General Act ("PAGA") (Lab. Code §2699, et seq.).

The released claims further included, all claims for penalties that were brought based on the facts alleged in Plaintiff's LWDA letter including: Labor Code §§ 558, 1194, 1197, 1197.1 and 1198; paid employees for less hours than they worked by requiring them to work overtime and/or off the clock in violation of Labor Code §§ 510, 1194 and 1198; failed to provide meal periods or compensation in lieu thereof in violation of Labor Code §§ 226.7 and 512; failed to provide rest periods or compensation in lieu thereof in violation of Labor Code §§ 226.7 and 512; failed to provide accurate itemized wage statements in violation of Labor Code § 226; failed to maintain accurate payroll records in violation of Labor Code § 226; failed to pay split shift premium pay in violation of Wage Order No. 5-2001; failed to pay wages of terminated or resigned employees in violation of Labor Code § 203; engaged in unlawful competition in violation of Cal. Business & Professions Code §§ 17000, et seq.; and participated in unfair business practices in violation of Cal. Business & Professions Code §§ 17200, et seq.

III. IF I CHOOSE TO PARTICIPATE, HOW IS MY SHARE OF THE SETTLEMENT CALCULATED?

The Participating Settlement Class Members shall receive the following amounts based on when and for how long, they held a Covered Job Position. The Settlement Administrator shall determine the total number of weeks within the Class Period wherein a Settlement Class Member held a Covered Job Position ("Qualifying Work Weeks"). The Settlement Administrator shall then determine the total number of Qualifying Work Weeks worked by all Settlement Class Members. The Settlement Administrator shall compute the value of a Qualifying Work Week ("Base Value") by dividing the amount of the Class Member Settlement Fund by the total number of Qualifying Work Weeks worked by all Settlement Class Members. The Settlement Administrator shall compute each Participating Settlement Class Member's Recovery by multiplying the Base Value by the number of Qualifying Work Weeks worked by the Participating Settlement Class Member

Your Individual Settlement Class Member payment is indicated on Attachment A.

TAXABLE PORTION OF SETTLEMENT PAYMENTS

For purposes of tax payment obligations, A portion of each Settlement Class Member's Individual Payment Amount shall represent wages and a portion of which shall represent interest and a portion of which will represent penalties. Thirty three percent (33.33%) of each Settlement Class Member's Individual Payment Amount shall represent wages. Thirty three percent (33.33%) of each Settlement Class Member's Individual Payment Amount shall represent interest. Thirty three percent (33.33%) of each Settlement Class Member's Individual Payment Amount shall represent penalties including the Settlement Class Member's portion of the PAGA penalties. That portion of each Settlement Class Member's Individual Payment Amount representing wages will be subject to normal employee tax withholdings with the Settlement Administrator remitting all employment tax withholdings directly to the pertinent state and federal taxing authorities. An IRS Tax Form W-2 will be issued to each Participating Settlement Class Member with regard to the portion of the Settlement payments attributable to wages and an IRS Tax Form 1099 will be issued to each Participating Settlement Class Member with regard to the remaining portion of the Settlement payments. Participating Settlement Class Members should consult with their tax advisors concerning the tax consequences of the payments that they receive under the Settlement.

CALCULATION OF INDIVIDUAL SETTLEMENT PAYMENTS.

The Settlement Administrator shall determine the total number of Qualifying Work Weeks worked by all Settlement Class Members by determining for each Settlement Class Member, the number of weeks worked in a Covered Job Position. The Settlement Administrator shall compute the value of a Qualifying Work Week ("Base Value") by dividing the amount of the Class Member Settlement Fund by the total number of Qualifying Work Weeks worked by all Settlement Class Members. The Settlement Administrator shall compute each Participating Settlement Class Member's Recovery by multiplying the Base Value by the number of Qualifying Work Weeks worked by the Participating Settlement Class Member.

CALCULATION OF PAGA REPRESENTATIVE PAYMENTS.

The Settlement Administrator shall determine the total number of Qualifying Work Weeks worked by all PAGA Representatives by determining for each PAGA Representatives, the number of weeks worked in a Covered Job Position. The Settlement Administrator shall compute the value of a Qualifying Work Week ("Base Value") by dividing the amount of the PAGA Representatives Settlement Fund by the total number of Qualifying Work Weeks worked by all PAGA Representatives. The Settlement Administrator shall compute each PAGA Representatives' Recovery by multiplying the Base Value by the number of Qualifying Work Weeks worked by the PAGA Representatives.

IV. WHAT ARE MY RIGHTS AND OPTIONS AS A CLASS MEMBER?

You have four options under this Settlement, each of which is discussed below: (A) opt out from the Settlement, (B) object to the Settlement, or (C) do nothing.

A. If You Want To Opt Out of the Settlement

If you do not wish to participate in the Settlement, you must submit an Opt Out Form bearing a postmark no later than [insert date]. The Opt Out Form must: (1) legibly state your name, last four digits of your Social Security number, address and telephone number, (2) state that you wish to opt out of the Settlement, (3) be dated, and (4) be signed by you under penalty of perjury. Opt Out

Forms must be made individually and cannot be made on behalf of a group of employees or on behalf of other Settlement Class Members. If you choose to opt out of the Settlement, you will not receive money from the Settlement. Opt Out Forms must be returned to the Settlement Administrator postmarked no later than [DATE]. Any such person, at his/her own expense, may pursue any claims he/she may have against Defendants. However, there are deadlines to pursuing such claims known as statutes of limitation. Please consult an attorney of your choice to ensure you are not forever barred from pursuing any individual claims you might have if you decide to opt out of the Settlement.

The judgment will bind all Settlement Class Members who do not properly submit and complete an Opt Out Form. **Settlement Class Members cannot opt out of the PAGA settlement.** Please see the attached Opt Out Form for more detail.

B. If You Want To Object To The Settlement

You may object, personally or through an attorney at your own expense, to the proposed Settlement by submitting in writing your objection to the Court and the Parties no later than [DATE]. You may appear, but are not required to appear, at Final Fairness and Approval Hearing where your objection will be heard and considered by the Court.

Settlement Class Members are hereby notified that even if they object, they will still be deemed Settlement Class Members and the judgment will bind them.

Settlement Class Members are hereby notified that they may object to the settlement at the final approval hearing regardless of whether they submitted a written objection.

C. If You Choose To Do Nothing

If you fail to submit an Opt Out Form, you will be deemed a Settlement Class Member, you will be bound by the terms of the Settlement, your rights to pursue any claims covered by the Litigation will be extinguished, and you will not be permitted to recover from the Settlement Sum.

V. WHEN AND WHERE IS THE FINAL APPROVAL HEARING?

The Court will conduct a Final Fairness and Approval Hearing on _____, 2023 in Department 1 of the Superior Court of California, located at Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012. At that hearing, the Court will determine whether the Settlement should be finally approved. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs, and the Service Award to be paid to the Class Representative, and other payments discussed above. Settlement Class Members may appear by audio or video at the Final Approval Hearing. Further see the Court's website for directions: <https://www.lacourt.org/division/civil/civil.aspx>.

Effective Monday, April 4, 2022, face masks are strongly recommended inside all Los Angeles County courthouses in alignment with Los Angeles County Department of Public Health guidance.(See 2022-GEN-005-00).

VI. WHAT IF I NEED MORE INFORMATION?

The foregoing is only a summary of the Litigation and the proposed Settlement and does not purport to be comprehensive. For a more detailed statement of the matters involved in the Litigation and the proposed Settlement, you may refer to the pleadings, the Settlement Agreement, and other papers filed in the Litigation, which may be inspected at the Office of the Clerk of the

Los Angeles County Superior Court, during regular business hours of each Court day, or by obtaining such court filings from the Court's website at <https://www.lacourt.org/paonlineservices/pacommerce/login.aspx?appId=IMG&casetype=CIV>. Further, see the Class Settlement Site at <https://ilymgroup.com/TheMeatCellar>. Notice of Final Judgment will be posted on the Class Settlement Site.

In addition, if you have any questions, please call the Settlement Administrator at 1-800-XXX-XXXX, toll free. You may also contact Class Counsel – Richard E. Quintilone II, at (949) 458-9675 – to ask about the Class Action Settlement.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT OR THE JUDGE WITH
INQUIRIES ABOUT THE SETTLEMENT

ATTACHMENT A – NOTICE OF WORK WEEKS

Exhibit C

STATEMENT OF WEEKS WORKED

Emilee Comeau, on behalf of herself and on behalf of a Class of all other persons similarly situated
v. TMC AT WOLFE'S INC., et al.,
Los Angeles Superior Court Case No: 20STCV04095

Calculation of Individual Class Settlement Payments: Each Settlement Class Member will receive a share of the Net Settlement Amount based on the number of workweeks that he or she worked for <<DEFENDANT>> as a non-exempt employee in California, at any time during the Class Period (**January 31, 2016 to February 22, 2022**). Individual Class Settlement Payments will be calculated as follows:

Defendant will provide the Settlement Administrator with Settlement Employee Data reflecting each Settlement Class Member's workweeks. The Settlement Administrator will calculate the total number of workweeks worked by all Participating Class Members ("Total Workweeks"). The Settlement Administrator will then divide each Settlement Class Member's Workweeks by the Workweeks Periods, resulting in a percentage share ("Percentage Share") for each Settlement Class Member. The Settlement Administrator will then multiply each Settlement Class Member's Percentage Share by the Net Settlement Amount to obtain the estimated amount of each Class Member's Class Settlement Payment.

Your Workweeks and Estimated Class Settlement Payment:

According to Defendant's records, you worked <<Workweeks>> workweeks during the Class Period.

Based on your number of workweeks, **your estimated Class Settlement Payment is \$<<ESA>>**. Please note that this is only an estimate; your actual payment may be greater or smaller than the amount reported above.

Based on your number of PAGA workweeks (**January 30, 2021 to February 22, 2022**), **your estimated PAGA Settlement Payment is \$<<EPAGAA>>**. Please note that this is only an estimate; your actual payment may be greater or smaller than the amount reported above.

Procedure for Disputing Information: If you wish to dispute the number of workweeks attributed to you, as listed above, you must submit a dispute in writing to the Settlement Administrator, which dispute must: (a) state your name, address, telephone number, and the last four digits of your Social Security number; (b) be signed by you; (c) state the information you are challenging; (d) state your belief as to your correct date(s) of employment and number of workweeks worked as a customer experience consultant for Defendant in California; (e) explain why you believe Defendant's records are mistaken and attach any documents or evidence in support of your contentions; and (f) be postmarked, faxed, or e-mailed to the Settlement Administrator no later than <<DATE>>:

Comeau v. The Meat Cellar ("TMC")
Settlement Administrator
c/o ILYM Group, Inc.
P. O. Box 2031; Tustin, CA 92781
Telephone: (888)250-6810
Fax: (888)845-6185
Email: claims@ILYMgroup.com

Defendant's records regarding the correct number of workweeks will be presumed correct, unless you provide documentation or other information to the Settlement Administrator that establishes otherwise. The Settlement Administrator will evaluate the evidence submitted by you and will make the final decision as to the number of workweeks that should be applied and/or the Class Settlement Payment to which you may be entitled. The Settlement Administrator's determination will be final and binding with no opportunity for further appeal.

Exhibit D

OPT OUT FORM

Emilee Comeau, on behalf of herself and on behalf of a Class of all other persons similarly situated, v. TMC AT WOLFE'S INC., et al., Los Angeles Superior Court Case No. 20STCV04095

Instructions: If you want to receive a portion of the Settlement amount, You DO NOT NEED TO DO ANYTHING. This Opt Out Form ("Form") should be filled out only if you DO NOT want to participate in this Settlement. If you want to receive a portion of the Settlement amount, DO NOT sign this Form. If you choose to return this Opt Out Form, the deadline for mailing the form is [DATE].

I. PERSONAL INFORMATION

Please legibly print the following information:

Name (first, middle, and last): _____

Residential Street Address: _____

City, State, Zip Code: _____

Home Telephone Number: (____) _____

Last Four Digits of Your Social Security Number: _____

PERSONAL INFORMATION WILL BE USED ONLY FOR
IDENTIFICATION PURPOSES.

II. QUESTIONS REGARDING THE SETTLEMENT

By signing and returning this Form, I certify that I have read the Notice of Class Action Settlement ("Notice") in this action and wish to be excluded. I understand that this means that I will not receive any money or other benefits under the Settlement.

If you have any questions about this Form or your rights under the Settlement, you may contact Class Counsel at the address or telephone number listed below:

Richard E. Quintilone II, Esq.
req@quintlawn.com
Jeffrey T. Green, Esq.
jtg@quintlawn.com
Kyle J. Gallego, Esq.
kjg@quintlawn.com
QUINTILONE & ASSOCIATES
22974 El Toro Road, Suite 100
Lake Forest, CA 92630-4961
Telephone: (949) 458-9675

III. INDIVIDUAL REPRESENTATIONS

I WISH TO OPT OUT OF THE SETTLEMENT in *Comeau v. TMC AT WOLFE'S INC.*, et al., Los Angeles Superior Court Case No. 20STCV04095.

- By opting out of this Settlement, I understand that I have the right to pursue my own claims against Defendants, if any.
- I also understand that by opting out of this Settlement, I will not receive a Settlement payment as described in the Notice.
- I have had the opportunity to seek the advice of counsel with respect to the legal implications of opting out of the Settlement.
- I understand that prior to signing this Form, I have had the opportunity to direct any questions to the Class Counsel (as set forth herein in Section II) or the Settlement Administrator (as set forth herein in section IV).
- I understand that if I do not affirmatively opt out of this Settlement and mail this Form by [Date], I will automatically be considered a Settlement Class Member and I will be bound by the terms of the Settlement, including the release of all Released Claims as described in the Notice.

IV. MAILING INSTRUCTIONS

If you choose to return this Form, you must mail it, postage paid, to the Settlement Administrator on or before [DATE] at the address listed below. Please do not email or fax the Form.

Comeau v. TMC AT WOLFE'S INC., et al.

Settlement Administrator

ILYM

[INSERT ADDRESS]

[INSERT PHONE NUMBER]

V. DECLARATION UNDER PENALTY OF PERJURY

I declare, under penalty of perjury under the laws of the State of California that all of the information contained in this Opt Out Form is true and correct, and that I signed this Opt Out Form on _____ (date), at _____ (city and state).

Dated: _____

(Signature)

(Print Name)

Exhibit E

1 RICHARD E. QUINTILONE II (200995)
2 **QUINTILONE & ASSOCIATES**
3 22974 EL TORO ROAD, SUITE 100
4 LAKE FOREST, CA 92630
5 TEL: (949) 458-9675
6 FAX: (949) 458-9679
7 EMAIL REQ@QUINTLAW.COM

8 Attorney for Plaintiff, EMILEE COMEAU, an individual, individually and on behalf of all employees
9 similarly situated,

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

13 EMILEE COMEAU, an individual, individually and
14 on behalf of all employees similarly situated,

15 Plaintiffs,

16 vs.

17 TMC AT WOLFE’S INC., a California corporation;
18 and DOES 1 to 100, Inclusive,

19 Defendants.

Case No.: 20STCV04095

CLASS ACTION

Assigned for All Purposes To:
Honorable Stuart M. Rice
Dept.: 1

**[PROPOSED] ORDER GRANTING
PLAINTIFF’S UNOPPOSED MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND JUDGMENT**

Date:
Time: 10:30 a.m.
Dept: 1

Complaint filed: January 31, 2020
First Amended Complaint filed: April 1, 2020
Trial Date: none set

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WHEREAS, the Parties having made application, pursuant to California Rules of Court Rule 3.769, for an order preliminarily approving the settlement of this litigation, in accordance with the Settlement which, together with the exhibits attached thereto, sets forth the terms and conditions for a proposed settlement of the litigation upon the terms and conditions set forth therein and the Court granted preliminary approval to the Settlement of “all individuals who are or were previously employed (1) in California; (2) by Defendants; (3) in a non-exempt service position; (4) at any point from **January 30, 2016 and February 22, 2022**; (5) excluding any person who has previously signed a release of wage claims, on **MOTION FOR PRELIMINARY APPROVAL DATE**; and

1 **WHEREAS**, this matter came before the Court for hearing on **MFA DATE**, on the unopposed
2 application of Plaintiff for final approval of the Settlement Agreement. Due and adequate notice
3 having been given to the Settlement Class, and the fact there are no objections no requests for exclusion
4 and the Court having considered all papers filed and proceedings had herein, and with good cause
5 appearing therefore,

6 **THE COURT ORDERS THAT:**

7 Final approval the Settlement Agreement and the settlement set forth therein is granted as being
8 fair, adequate and reasonable.

9 Solely for purposes of the Settlement and this Final Approval Order and the Judgment to be
10 entered, a Settlement Class is hereby certified pursuant to California Code of Civil Procedure § 382
11 consisting of: **“All individuals who are or were previously employed (1) in California; (2) by**
12 **Defendants; (3) in a non-exempt service position; (4) at any point from January 30, 2016 to**
13 **February 22, 2022; (5) excluding any person who has previously signed a release of wage claims..”**

14 1. This Order incorporates by reference the definitions in the Settlement Agreement, and all
15 terms used herein shall have the same meanings as set forth in the Settlement Agreement.

16 2. This Court has jurisdiction over the subject matter of the Action and jurisdiction over all
17 Parties to the Action, including all Members of the Settlement Class.

18 3. Pursuant to California Rules of Court, Rule 3.769, this Court hereby approves the
19 Settlement set forth in the Settlement Agreement and finds that such Settlement is fair, just, reasonable and
20 adequate as to all of the Parties, and that the Settlement Agreement, and the Settlement contained therein,
21 is hereby finally approved in all respects, and the Parties are hereby directed to perform its terms to the
22 extent such terms have not performed as of the date of this Order and entry of Judgment. The Settlement
23 Agreement shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an
24 Order of this Court.

25 4. The cashing of the settlement check by a Settlement Class Member shall be deemed to be
26 an opt-in for purposes of the federal Fair Labor Standards Act (“FLSA”) claims referred to in the Released
27 Claims definition contained in the Settlement Agreement. Specifically the Released Claims include:
28

1 “Released Claims” means any and all claims, demands, rights, liabilities, and/or causes of
2 action of any nature and description whatsoever, known or unknown, in law or in equity,
3 whether or not concealed or hidden, asserted or which could have been asserted at any time in
4 the Litigation based on the subject matter alleged in the Litigation in the First Amended
5 Complaint by Plaintiff or any Settlement Class Member who does not timely request exclusion
6 and opt out of this Settlement relating to any compensation allegedly due or earned as a result
7 of their employment with Defendants or hours worked by Settlement Class Members, including
8 claims for violations of any state or federal statutes, rules or regulations; or claims which were
9 asserted or could have been asserted at any time in the Litigation based on the subject matter
10 alleged in the Litigation by any Settlement Class Member that, during the Class Period,
11 Defendants (1) engaged in conduct subjecting it to any statutory or civil penalties under any
12 statute, ordinance, or otherwise arising from any alleged violation of the California Labor Code,
13 California Wage Orders or any federal or state statute, including under the federal Fair Labor
14 Standards Act (“FLSA”), regarding compensation, hours, and workplace conditions, including
15 without limitation, California Labor Code § 2698, et seq. (“The Private Attorneys General Act
16 of 2004” or “PAGA”) and Labor Code §§ 203 and 226; (2) failed to pay overtime
17 compensation; (3) failed to provide meal periods; (4) failed to provide rest periods; (5) failed
18 to furnish timely wage statements or failed to maintain adequate payroll records; (6) failed to
19 pay wages for hours worked; (7) failed to pay wages due and payable twice monthly; (8) failed
20 to pay split shift premiums; (9) failed to timely pay wages or pay all wages due upon
21 termination of employment; (10) engaged in any unfair business practices alleged in the
22 Litigation; and (11) any state or federal claims based on any facts, transactions, events,
23 occurrences, acts, disclosures, statements, omissions, or failures to act which were asserted or
24 could have been asserted at any time in the Litigation based on the subject matter of the
25 Litigation and is more fully set forth below in Article V (of the Settlement Agreement)

26 5. Upon the date of entry of this Order and the Judgment, the Plaintiff and each Settlement
27 Class Member who did not submit a timely and valid request for exclusion will be bound by this Final
28 Approval and shall be deemed to have, and by operation of the Judgment shall have, fully, finally and

1 forever released, relinquished and discharged all Released Claims against Defendants and the Released
2 Parties, as set forth in the Settlement Agreement. The concurrently entered Judgment shall have a *res*
3 *judicata* effect and bar each Plaintiff and each Settlement Class Member who has not been excluded from
4 the Settlement Class from bringing any action asserting “Released Claims” as that term is defined in the
5 Settlement Agreement. The Judgment will also have the same effect for FLSA claim purposes for
6 Settlement Class Members if they opt-in by cashing their settlement check.

7 6. The Court finds that the notice given to the Class Members who could be identified through
8 reasonable effort, in the form of the previously-approved “Notice of Class Action Settlement and Hearing
9 Date for Court Approval” (the “Class Notice”), provided the best notice practicable to all persons entitled
10 to such notice under the circumstances of these proceedings and of the matters set forth in the Class Notice,
11 including procedures for objecting to and requesting exclusion from the Settlement and notice of the
12 proposed Settlement set forth in the Settlement Agreement and notice of the final approval hearing thereon.
13 Such notice fully satisfied the requirements of California Rules of Court, Rule 3.769, and the requirements
14 of due process.

15 7. Should for whatever reason the Settlement not become final, the fact that the Parties were
16 willing to stipulate to class certification as part of the Settlement shall have no bearing on, nor be admissible
17 in connection with, the issue of whether a class should be certified in a non-settlement context. This
18 Settlement is not a concession or admission and shall not be used or construed against Defendants or any
19 of the Released Parties defined in the Settlement Agreement as an admission or indication with respect to
20 any claim of any fault or omission by Defendant or any of the Released Parties. In the event the Settlement
21 does not become effective in accordance with the terms of the Settlement or the Settlement is not finally
22 approved, or is terminated, cancelled, or fails to become effective for any reason, this Order shall be
23 rendered null and void and shall be vacated, and the Parties shall revert to their respective positions as of
24 before entering into the Settlement.

25 8. In connection with this final certification, the Court finds, solely for purposes of
26 approving the settlement and for no other purpose and with no other effect on the Litigation, that the
27 proposed Settlement Class meets the requirements for certification under of California Code of Civil
28 Procedure § 382, including that: (a) the proposed class is ascertainable and so numerous that joinder

1 of all members of the class is impracticable; (b) there are, for purposes of the settlement, predominant
2 questions of law or fact common to the proposed class and a sufficient community of interest among
3 the members of the proposed class with respect to the subject matter of the Litigation; (c) the claims
4 of the Named Plaintiff are typical of the claims of the members of the proposed class, (d) Named
5 Plaintiff has fairly and adequately protected the interests of the members of the proposed class with
6 respect to the proposed settlement, (e) a class action is superior to other available methods for efficient
7 adjudication of and settlement of the claims asserted in this controversy, and (f) Class Counsel are
8 qualified to act as counsel for the Named Plaintiff and for all other members of the proposed class.

9 9. Without affecting the finality of the concurrently entered Judgment in any way, this Court
10 hereby retains continuing jurisdiction over (a) implementation and enforcement of the Settlement,
11 including but not limited to the payment of any claim; and (b) all parties hereto, including Settlement Class
12 Members, for the purpose of construing, enforcing and administering the Settlement. Except as provided
13 to the contrary herein, any disputes or controversies arising with respect to interpretation, enforcement or
14 implementation of the Settlement Agreement shall be presented by motion to the Court for resolution

15 10. The following factors also support the decision granting final approval: the risk, expense,
16 complexity and likely duration of further litigation; the risk of attaining and maintaining class action status
17 throughout the proceedings; and the extent of discovery completed and the stage of the proceedings.

18 11. The amounts agreed to be paid by Defendants, including the Settlement Payments to be
19 paid to the Settlement Class Members as provided for by the Settlement, are fair and reasonable under the
20 facts of this case.

21 12. The reaction of the Class Members to the proposed Settlement further supports the Court's
22 decision granting final approval. **No Class members objected to the Settlement. No Class Members**
23 **have opted out of the Settlement,** as detailed in the Declaration of the Settlement Administrator in support
24 of the Motion for Final Approval.

25 13. Payment to Class Members pursuant to the Settlement is fair, reasonable, adequate and
26 appropriate. Payment to Class Members from the Class Member Settlement Fund shall be made in
27 accordance with the Settlement, and Participating Settlement Class Members (i.e., all Class Members who
28

1 did not submit valid Requests for Exclusion) will be bound by the Settlement and this Order and the
2 Judgment entered by the Court.

3 14. Payment to the California Labor and Workforce Development Agency of **\$3,750.00** as its
4 share of the settlement of civil penalties in this case is fair, reasonable, adequate and appropriate. Payment
5 of that amount shall be paid from the Settlement Sum in accordance with the Settlement Agreement, and
6 there shall be no further recourse for the civil penalties released under the terms of the Settlement.

7 15. The fees, expenses, and any other costs of **ILYM Group, Inc.** in administering the
8 Settlement, in the amount of **\$5,000.00**, are fair and reasonable. Payment of that amount shall be paid out
9 of the Settlement Sum in accordance with the Settlement Agreement, which shall fully, finally and
10 completely compensate **ILYM Group** for all fees, expenses and any other costs in administering the
11 Settlement.

12 16. Based upon application by Class Counsel and Plaintiff, the Court approves the payment of
13 a Class Representative Enhancement in the amount of **\$10,000.00** to be awarded to the Representative
14 Plaintiff (in addition to any recovery that they may receive as a Class Members under the Settlement) in
15 recognition for their efforts and the risks they undertook on behalf of the Class Members.

16 17. Based upon application by Class Counsel, and the Declarations from counsel detailing the
17 fees and hours incurred by Quintilone & Associates, the Court approves the payment of attorneys' fees to
18 Class Counsel in the amount of 33.33% of the Settlement Sum, i.e. **\$66,600**, to be paid in the manner set
19 forth in the Settlement Agreement upon entry of this Order.

20 18. Based upon application by Class Counsel, and the Declarations from counsel detailing the
21 reasonable and necessary litigation costs incurred by Quintilone & Associates, the Court approves the
22 payment of attorneys' costs to Class Counsel in the amount of **\$10,000.00** be paid in the manner set forth
23 in the Settlement Agreement upon entry of this Order. The difference between actual costs incurred and
24 the preliminarily approved costs of **\$15,000.00 is \$586.23** and this amount will be included in the Net
25 Settlement Amount to be distributed to the Participating Settlement Class Members on a *pro rata* basis as
26 detailed in the Settlement Agreement.

27 19. Each side is to bear its own costs and fees (including attorneys' fees) except as provided by
28 the Settlement Agreement, and Defendants shall not be required to pay any amounts other than as set forth

1 in the Settlement Agreement and this Order, and in no event any amount above the maximum Settlement
2 Sum.

3 20. A final accounting hearing shall be held before the Court on **DATE AND TIME** to address
4 the disbursement of the Settlement funds as set forth in the Settlement Agreement and this Order and to
5 address the disposition and disbursement of any unpaid residual funds from the Settlement. At least five
6 court days before the hearing, Class Counsel and the Settlement Administrator shall submit a summary
7 accounting of the Class Member Settlement Fund identifying distributions made as ordered herein, the
8 number and value of any uncashed checks, amounts remitted to the California State Controller's Office,
9 the status of any unresolved issues, and any other matters appropriate to bring to the Court's attention.

10 **IT IS SO ORDERED.**

11
12 Dated: _____

13 Hon. Stuart M. Rice
14 Judge of the Superior Court
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