

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiffs Diana Smyth, Lisa Vaughan and Tammi Palfreyman (“Plaintiffs”) and defendant Evereve Incorporated (“Defendant”). The Agreement refers to Plaintiffs and Defendant collectively as the “Parties,” or individually as “Party.”

1. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- 1.1. “Actions” means the Class Action and the PAGA Action, as those terms are defined in this Agreement.
- 1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement and as approved by the Court.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval.
- 1.4. “Aggrieved Employees” means all individuals who were employed by Defendant in California and classified as a non-exempt employee at any time during the PAGA Period.
- 1.5. “Class” means all individuals who were employed by Defendant in California and classified as a non-exempt employee at any time during the Class Period.
- 1.6. “Class Action” means the Complaint pending before the United States District Court, Central District of California, Case No. CV 23-10828-MWF(ROAx).
- 1.7. “Class Counsel” means Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP.
- 1.8. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action.
- 1.9. “Class Data” means the Class Member’s name, last-known mailing address, Social Security number, and number of Workweeks and PAGA Pay Periods.

- 1.10. “Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).
- 1.11. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members by use of available email addresses, phone numbers, social security numbers, credit reports, LinkedIn and Facebook.
- 1.12. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.13. “Class Notice Packet” means the Class Notice to be provided to the Class Members by the Administrator in the form set forth as Exhibit A to this Agreement (other than formatting changes to facilitate printing by the Administrator).
- 1.14. “Class Period” means the period of time from October 31, 2019 to the earlier of Preliminary Approval or December 18, 2024.
- 1.15. “Class Representatives” means the named Plaintiffs in the Operative Complaint in the Actions seeking Court approval to serve as the Class Representatives.
- 1.16. “Class Representative Service Payment” means the service payment made each of the Plaintiffs as Class Representatives in order to compensate them for initiating the Actions, performing work in support of the Actions, undertaking the risk of liability for Defendant’s expenses, and for the general release of all claims by the Plaintiffs.
- 1.17. “Court” means the Superior Court of California, County of Santa Clara.
- 1.18. “Defendant” means Evereve Incorporated.
- 1.19. “Defense Counsel means Danielle H. Moore, Kathryn M. Evans, and Joshua D. Klein of Fisher & Phillips LLP.
- 1.20. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment and none is filed; or (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

- 1.21. “Final Approval” means the Court’s order granting final approval of the Settlement substantially in the form attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- 1.22. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
- 1.23. “Gross Settlement Amount” means Four Hundred Twenty Five Thousand Dollars (\$425,000) which is the total amount to be paid by Defendant as provided by this Agreement except as provided in Paragraph 9 below. The Gross Settlement Amount is inclusive of the Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the Administration Expenses Payment. This Gross Settlement Amount is an all-in amount without any reversion to Defendant, and excludes any employer payroll taxes, if any, due on the portion of the Individual Class Payments allocated to wages which shall not be paid from the Gross Settlement Amount and shall be the separate additional obligation of Defendant.
- 1.24. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.25. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.
- 1.26. “Judgment” means the judgment entered by the Court based upon Final Approval substantially in the form attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- 1.27. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.28. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.29. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The Net Settlement Amount is to be paid to Participating Class Members as Individual Class Payments.
- 1.30. “Non-Participating Class Member” means a Class Member who opts out of the Class Settlement by submitting a valid and timely Request for Exclusion to the Administrator.

- 1.31. “PAGA Action” means the Complaint pending before the Superior Court of California, County of Santa Clara, Case No. 23CV425684.
- 1.32. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.33. “PAGA Period” means the period of time from September 5, 2022 to the earlier of Preliminary Approval or December 18, 2024.
- 1.34. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.35. “PAGA Notice” means the Plaintiff Diana Smyth’s July 20, 2023 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.36. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$2,500) and the 75% to LWDA (\$7,500) in settlement of PAGA claims.
- 1.37. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion.
- 1.38. “Plaintiffs” means Diana Smyth, Lisa Vaughan and Tammi Palfreyman, the named plaintiffs in the Actions.
- 1.39. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement, substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by this reference herein.
- 1.40. “Released Class Claims” means all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint which occurred during the Class Period during employment in a non-exempt position in California, including claims for (1) unfair competition in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (2) failure to pay minimum wages in violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) failure to pay overtime wages in violation of Cal. Lab. Code § 510; (4) failure to provide required meal periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the applicable IWC Wage Order; (5) failure to provide required rest periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the applicable IWC Wage Order; (6) failure to provide accurate itemized statements in violation of Cal. Lab. Code § 226; (7) failure to reimburse employees for required expenses in violation of Cal. Lab. Code § 2802; and (8) failure to pay sick pay wages in violation of Cal. Lab. Code §§ 201-203, 233, 246. Except as expressly set forth in this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

- 1.41. “Released PAGA Claims” means all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, which occurred during the PAGA Period during employment in a non-exempt position in California, including claims for PAGA penalties based on violations of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and the applicable Wage Order(s) and expressly excluding all other claims including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, worker’s compensation, and PAGA claims outside of the PAGA Period.
- 1.42. “Released Parties” means: Defendant and each of its past, present, and future parents, affiliated entities, corporations, divisions, managers, partners, members, agents, employees, directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, and subsidiaries.
- 1.43. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member and in accordance with the procedure in the Class Notice.
- 1.44. “Response Deadline” means sixty (60) calendar days after the Administrator mails Class Notice Packet to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) submit Requests for Exclusion from the Settlement, or (b) submit his or her Objection to the Settlement. Class Members to whom Class Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.45. “Settlement” means the disposition of the Actions and all related claims effectuated by this Agreement and the Judgment.
- 1.46. “Workweek” means any week during the Class Period in which a Class Member worked for Defendant as a Class Member for at least one day.

2. RECITALS

- 2.1. On October 31, 2023, plaintiff Diana Smyth filed a complaint against Defendant in the Superior Court of the State of California, County of Los Angeles (“Class Action”). Plaintiff Smyth’s complaint asserted claims that Defendant:
- (a) Violated California Business and Professions Code § 17200 *et seq.*;
 - (b) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197 & 1197.1;

- (c) Failed to pay overtime wages in violation of California Labor Code § 510, et seq.;
- (d) Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
- (e) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
- (f) Failed to reimburse employees for required expenses in violation of California Labor Code § 2802.
- (g) Failed to provide accurate itemized wage statements in violation of California Labor Code § 226; and,
- (h) Failed to provide wages when due in violation of California Labor Code §§ 201, 202 and 203; and,
- (i) Failed to pay sick pay wages in violation of California Labor Code §§ 201-203, 233, 246.

2.2. On December 27, 2023, Defendant filed a general denial along with forty (40) affirmative defenses to the Class Action complaint.

2.3. On December 27, 2023, Defendant removed the Class Action to the United States District Court, Central District of California.

2.4. On November 9, 2023, plaintiff Diana Smyth filed a complaint against Defendant in the Superior Court of the State of California, County of Santa Clara (“PAGA Action”). Plaintiff Smyth’s complaint asserted a single cause of action for violation of the Private Attorney General Act, Cal. Labor Code §§ 2698, et seq. (“PAGA”).

2.5. On September 17, 2024, the Parties participated in an all-day mediation presided over by Steve Rottman, a respected mediator of wage and hour representative and class actions. Following the mediation, each side, represented by its respective counsel, were able to agree to settle the Action which was memorialized in the form of a Memorandum of Understanding. This Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties.

2.6. On December 3, 2024, the Parties filed a stipulation to provide plaintiff Diana Smyth leave to file a First Amended Complaint in the PAGA Action which added the claims from the Class Action and also added Lisa Vaughan and Tammi Palfreyman as named plaintiffs. The First Amended Complaint in the PAGA Action is the operative complaint in the Actions (the “Operative Complaint”).

2.7. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint, and denies any and all liability for the causes of action alleged.

2.8. Prior to mediation, Plaintiffs obtained sufficient documents and information to sufficiently investigate the claims such that Plaintiffs’ investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996)

48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

2.9. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Actions of Plaintiffs or the Class have merit or that Defendant bears any liability to Plaintiffs or the Class on those claims or any other claims, or as an admission by Plaintiffs that Defendant’s defenses in the Actions have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, this Agreement shall not be admissible, and Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Actions.

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

3. MONETARY TERMS

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below and subject to the terms and conditions of this Agreement, Defendant promises to pay Four Hundred Twenty Five Thousand Dollars (\$425,000.00) and no more as the Gross Settlement Amount. This amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages which shall be separately paid by Defendant to the Administrator. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. Subject to the terms and conditions of this Agreement, the Administrator will make the following payments out of the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval.

(a) To Plaintiffs: Class Representative Service Payments to the Class Representatives of not more than \$10,000 each (in addition to any Individual Class Payments and any Individual PAGA Payments the Class Representatives are entitled to receive as Participating Class Members). Defendant will not oppose Plaintiffs’ request for the Class Representative Service Payments that do not exceed these amounts. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves the Class Representative Service Payments less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs assume full responsibility and liability for taxes owed on the Class

Representative Service Payment. To receive the payment, Plaintiffs each agree to a Civil Code section 1542 waiver and a general release of all claims as set forth below.

- (b) To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement Amount, which is currently estimated to be \$141,666 and a Class Counsel Litigation Expenses Payment of not more than \$30,000. Defendant will not oppose requests for these payments provided that do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim for any portion of any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these payments.
- (c) To the Administrator: An Administration Expenses Payment not to exceed \$9,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses Payment is less or the Court approves payment less than \$9,000.00, the Administrator will retain the remainder in the Net Settlement Amount for distribution to Participating Class Members.
- (d) To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$10,000 to be paid from the Gross Settlement Amount, with 75% (\$7,500) allocated to the LWDA PAGA Payment and 25% (\$2,500) allocated to the Individual PAGA Payments.
 - i. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$2,500) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
 - ii. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.
- (e) To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

- i. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for non-wages, expense reimbursement, interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.
- ii. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

4. SETTLEMENT FUNDING

- 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on its records, Defendant estimates there are 234 Class Members who collectively worked approximately 10,000 workweeks, and 94 Aggrieved Employees who worked a total of 2,510 pay periods during the period of October 31, 2019 through September 17, 2024.
- 4.2. Class Data. Not later than 15 days after the Court enters an Order granting Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted Class Member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3. Funding of the Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date.

5. PAYMENTS FROM THE GROSS SETTLEMENT AMOUNT

- 5.1. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees

Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment in accordance with this Agreement.

- 5.2. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the “void date”, which is 180 days after the date of mailing, when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Class Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator must update the recipients’ mailing addresses using the National Change of Address Database. If a Participating Class Member’s or Aggrieved Employee’s check is not cashed within 120 days after its last mailing to the affected individual, the Administrator will also send the individual a notice informing him or her that unless the check is cashed by the void date, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed.
- 5.3. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
- 5.4. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to a Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure Section 384(b) (“Cy Pres Recipient”). The Parties agree to propose Casa Cornelia Law Center as the Cy Pres Recipient of this Settlement. The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.
- 5.5. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement. Participating Class Members will be deemed to have waived all such claims resulting from the payment of Individual Class Payments and/or Individual PAGA Payments, whether known or unknown by them, as part of their release of claims under this Agreement.

6. RELEASE OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Participating Class Members, Aggrieved Employees and the LWDA will release claims against all Released Parties as follows:

6.1. Plaintiffs' Release. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, the PAGA Notice ("Plaintiffs' Release"). Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

(a) Plaintiffs' Waiver of Rights Under Civil Code Section 1542. Plaintiffs' Release shall include all claims, whether known or unknown by the releasing party. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

6.2. Release by Participating Class Members. All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from the Released Class Claims.

6.3. Release of PAGA Claims. All Aggrieved Employees and the LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA Claims.

7. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's procedures and instructions.

7.1. Amended Complaint. The Parties agree to stay the Class Action and will stipulate to the filing of an amended complaint that adds the Plaintiffs and all of the class claims currently pending in the Class Action to the case pending as the PAGA action. If and when preliminary approval is granted by the Santa Clara Superior Court, the Class Action will

be dismissed without prejudice.

- 7.2. Defendant's Responsibilities. Within 30 days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed Declaration disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator and the Cy Pres Recipient, if any. In the Declaration, Defendant shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement. In this Declaration, Defendant shall also aver as to the number of Class Members and the number of Workweeks for the Class during the Class Period.
- 7.3. Plaintiffs' Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members and/or the proposed Cy Pres Recipient; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator and/or the proposed Cy Pres Recipient; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient, if any. In their Declarations, Plaintiffs and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement
- 7.4. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- 7.5. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material

change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

8. SETTLEMENT ADMINISTRATION

- 8.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Administrator's duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member's new address; setting up a toll-free telephone number and email and a fax number to receive communications from Class Members; receiving and reviewing for validity completed Requests for Exclusion; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of Requests for Exclusion, objections and disputes; calculating Individual Class Payments and Individual PAGA Payments; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 8.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 8.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 8.4. Notice to Class Members.
- (a) No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
 - (b) Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

- (c) Not later than 7 days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- (d) The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the Response Deadline provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- (e) If the Administrator, the Parties, Defense Counsel or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

8.5. Requests for Exclusion (Opt-Outs).

- (a) Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- (b) The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- (c) Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all

benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraph 6.2 of the Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

- (d) Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment. If a Class Member submits both a Request for Exclusion and an objection, only the Request for Exclusion will be accepted and the objection will be void.

8.6. Challenges to Calculation of Workweeks. Each Class Member shall have until the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination as to the challenges

8.7. Objections to Settlement.

- (a) Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.
- (b) Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, or in addition to a written objection, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice was re-mailed).
- (c) Non-Participating Class Members have no right to object to any of the class action components of the Settlement. If a Class Member submits both a Request for

Exclusion and an objection, only the Request for Exclusion will be accepted and the objection will be void.

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

- (a) Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.
- (b) Request for Exclusion (Opt-Outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 7 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- (c) Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- (d) Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- (e) Administrator’s Declaration. Not later than 7 days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it

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

- (f) Final Report by Administrator. Within 10 days after the Administrator disburses all funds of the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 7 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court. If a second declaration attesting to the distribution of uncashed checks is required, the Administrator shall provide this second declaration at least 7 days before any deadline for a second declaration and Class Counsel shall be responsible for filing the second declaration with the Court.

- 9. CLASS SIZE MODIFICATION AND ESCALATOR CLAUSE.** Based on its records, Defendant provided figures as to the Class size as set forth in paragraph 4.1 above. In regard hereto, Defendant is providing a declaration as set forth in paragraph 7.2 above. If the actual number of workweeks during the Class Period increases by more than 10% over 10,000 workweeks, Defendant shall have the option of increasing the Gross Settlement Amount by the percentage increase over 10% or ending the Class Period on a date on which the class workweek count reached 11,000.

- 10. DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Administration Expenses incurred as of the date Defendant makes this election to withdraw. Defendant must notify Class Counsel and the Court of its election to withdraw not later than 7 days after the Administrator sends the final Exclusion List to Defense Counsel. Invalid Requests for Exclusion will have no effect on this threshold for an election.

- 11. MOTION FOR FINAL APPROVAL.** Unless otherwise ordered by the Court, not later than 16 court days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699(1), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiffs shall provide drafts of these documents to Defense Counsel not later than 7 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

- 11.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court

no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

- 11.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for a Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administration Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 11.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement under C.C.P. section 664.6 solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
- 11.4. Waiver of the Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
- 11.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on an equal basis, any additional Administration Expenses reasonably incurred at the time of remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

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

13. ADDITIONAL PROVISIONS

- 13.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or Judgment pursuant to this Agreement, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 13.2. Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. Plaintiffs and Class Counsel agree that they will not issue any press releases or have any contact with the media about the fact, amount, or terms of the Settlement. This paragraph does not restrict Class Counsel's communications with Class Members after preliminary approval is granted for the sole purpose of administering the Settlement and in accordance with Class Counsel's ethical obligations owed to Class Members.
- 13.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees have not and will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. If a Class Member submits a valid Election Not to Participate in Settlement, Class Counsel will not solicit, represent, or otherwise encourage that Non-Participating Class Member to participate in separate litigation against Released Parties and agrees that such representation would create a conflict of interest. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to

communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

- 13.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 13.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 13.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 13.7. Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 13.8. Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 13.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 13.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 13.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

- 13.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 13.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiffs shall destroy, all paper and electronic versions of Class Data received from Defendant.
- 13.15. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 13.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 13.17. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs and the Class:

Norman B. Blumenthal
Kyle R. Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223
Fax: (858) 551-1232
E-Mail: norm@bamlawca.com
kyle@bamlawca.com

To Defendant:

Danielle H. Moore
Kathryn M. Evans
Fisher & Phillips LLP
4747 Executive Dr., Suite 1000
San Diego, CA 92121
Tel.: (858) 597-9600

Fax: (858) 9601
E-Mail: dmoore@fisherphillips.com
kmevans@fisherphillips.com

Joshua D. Klein
Fisher & Phillips LLP
2050 Main Street, Suite 1000
Irvine, CA 92614
Tel.: (949) 851-2424
Fax: (949) 851-0152
E-Mail: jdklein@fisherphillips.com

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

13.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process from the mediation on September 17, 2024 until the earlier of the Effective Date or the date this Agreement shall no longer be of any force or effect.

13.20. Fair Settlement. The Parties, Class Counsel and Defense Counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, both current and potential.

14. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: 12/26/2024

[Diana Smyth \(Dec 26, 2024 10:54 PST\)](#)
Plaintiff Diana Smyth

Dated: 12/20/2024

[Lisa Vaughan \(Dec 20, 2024 15:28 PST\)](#)
Plaintiff Lisa Vaughan

Dated: 12/30/2024

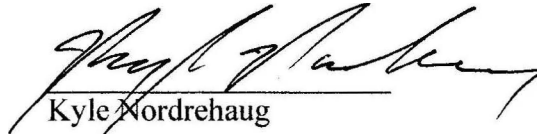
[Tammi Palfreyman \(Dec 30, 2024 14:10 PST\)](#)
Plaintiff Tammi Palfreyman

Dated: 12/20/2

Michael Porter
Michael Porter (Dec 20, 2024 15:46 CST)

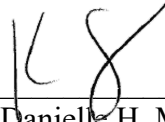
Michael Porter [name]
For Defendant Evereve Incorporated

Dated: 1/2/25



Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiffs

Dated: 12/20/2024



Danielle H. Moore
Kathryn M. Evans
Fisher & Phillips LLP
Attorney for Defendant

EXHIBIT A

[NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND HEARING DATE FOR
FINAL COURT APPROVAL]

EXHIBIT “A”

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

***Smyth v. Evereve Incorporated, Superior Court of the State of California,
County of Santa Clara, Case No. 23CV425684***

The Superior Court for the State of California authorized this Notice.

READ IT CAREFULLY!

It is not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT
ACT. PLEASE READ THIS NOTICE CAREFULLY.**

You may be eligible to receive money from employee class action lawsuits (“Actions”) against Evereve Incorporated (“Defendant”) for alleged wage and hour violations. The Actions were brought by Plaintiffs Diana Smyth, Lisa Vaughan, and Tammi Palfreyman (“Plaintiffs”) and seek payment of wages and other relief on behalf of all individuals who were employed by Defendant in California and classified as a non-exempt employee at any time during the Class Period, which is October 31, 2019 through December 18, 2024 (“Class Members”). The Actions also sought civil penalties under the California Private Attorneys General Act (“PAGA”) for all individuals who were employed by Defendant in California and classified as a non-exempt employee at any time during the PAGA Period, which is September 5, 2022, through December 18, 2024 (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payment payments to Class Members, and (2) a PAGA Settlement requiring Defendant to fund the PAGA Penalties to pay penalties to the California Labor and Workforce Development Agency (LWDA”) and to Aggrieved Employees.

Based on Defendant’s records, **your Individual Class Payment is estimated to be** <<\$_____>> **(less withholding) and your share of the PAGA Penalties (“Individual PAGA Payment”) is estimated to be** <<\$_____>>. The actual amounts you receive likely will be different from the numbers in the previous sentence, depending on tax withholdings and other required deductions. (If no amount is stated for your Individual PAGA Payment it is because according to Defendant’s records you are not eligible for an Individual PAGA Payment because you did not work for Defendant during the PAGA Period.)

The above estimates are based on Defendant’s records showing that **you worked** <<_____>> **workweeks** during the Class Period and **you worked** <<_____>> **pay periods** during the PAGA Period. If you believe that you worked more workweeks and/or pay periods than these figures, you can submit a challenge by the deadline date. See Section 5 below.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. At the Final Approval Hearing,

the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs' attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and in exchange requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

You will be deemed to have carefully read and understood this Notice, and your legal rights will be affected whether you act or do not act. You have three basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert any claims for wages against Defendant that arose during the Class Period, as described in Section 4 below.
- (2) **Opt Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt out) by submitting the written Request for Exclusion. If you opt out of the Settlement, you will not receive an Individual Class Payment; however, you will preserve your right to personally pursue wage claims against Defendant that arose during the Class Period. If you are an Aggrieved Employee, you will remain eligible for an Individual PAGA Payment, even if you opt out of the Class Settlement. You cannot opt out of the PAGA portion of the proposed Settlement.
- (3) **Object to the Settlement.** You may object to the Settlement, either in writing or verbally at the hearing. Instructions on how to object are provided below.

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Take No Action and Receive a Settlement Payment	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendant that are covered by this Settlement ("Released Class Claims"), in addition to being subject to the release of the Released PAGA Claims. Additional information is set forth below.
You Can Opt Out of the Class Settlement but not the PAGA Settlement The Response Deadline is _____.	If you don't want to fully participate in the proposed Settlement, you can opt out of the Class Settlement by sending the Administrator a written Request for Exclusion. If you request exclusion, you will receive no money from the Class Settlement and you will not be bound by the Class Settlement. Once excluded, you will be a Non-Participating Class Member and you will not be able to object to any portion of the proposed Settlement. See Section 7 of this Notice. However, you cannot opt out of the PAGA portion of the proposed Settlement. If you are an Aggrieved Employee and exclude yourself, you

	will still be paid your Individual PAGA Payment stated above and will remain subject to the release of the Released PAGA Claims regardless of whether you submit a request for exclusion.
If You do not Opt Out of the Class Settlement, You Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by the Response Deadline ()	All Class Members who do not opt out (“Participating Class Members”) can object to any aspect of the proposed Class Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Actions on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable, provided that you do not opt out of the Class Settlement. See Section 8 of this Notice.
You Can Participate in the Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____ at 1:30 p.m., at the Santa Clara County Superior Court, located at 161 North First Street, San Jose, CA 95113, in Department 19 before Judge Theodore C. Zayner. This hearing may change as explained below in Section 9. Class Members may appear at the final approval hearing in person or remotely using the Microsoft Teams link for Department 19 (Afternoon Session). Instructions for appearing remotely are provided at https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. You do not have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost). Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 9 of this Notice.
You Can Challenge the Calculation of Your Workweeks / Pay Periods	The amount of your Individual Class Payment and your Individual PAGA Payment (if any) depend on how many workweeks during which you worked at least one day during the Class Period and how many pay periods during which you worked at least one day during the PAGA Period, respectively. The number of Class Period workweeks and number of PAGA Period pay periods you worked according to Defendant’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you may challenge it by _____. See Section 5 of this Notice.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of the above-captioned action pending in the Superior Court of the State of California, in and for the County of Santa Clara (the “Court”), has been reached between Plaintiffs and Defendant and has been granted preliminary approval by the Court. You may be entitled to receive money from this Settlement.

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All individuals who were employed by Defendant in California and classified as a non-exempt employee at any time during the Class Period.

The “Class Period” is October 31, 2019 through December 18, 2024.

2. What is this class action lawsuit about?

On October 31, 2023, plaintiff Diana Smyth filed a complaint against Defendant in the Superior Court of the State of California, County of Los Angeles (“Class Action”). Plaintiff Smyth asserted the following class claims against Defendant: unfair competition, failure to pay wages for all hours worked, failure to pay overtime wages, failure to provide required meal periods and unpaid premiums, failure to provide required rest periods and unpaid premiums, failure to reimburse employees for expenses, failure to provide accurate itemized wage statements, failure to pay wages due upon discharge, and failure to pay sick wages. On December 27, 2023, Defendant removed the class action complaint to a federal court, the Central District of California. On November 9, 2023, plaintiff Diana Smyth filed a complaint against Defendant in the Superior Court of the State of California, County of Santa Clara (“PAGA Action”). Plaintiff Smyth’s complaint asserted a single cause of action for violation of the Private Attorney General Act, Cal. Labor Code §§ 2698, et seq. (“PAGA”).

As part of this Settlement, on December 11, 2024, Plaintiff filed a First Amended Complaint in the PAGA Action which added the claims from the Class Action and also added Lisa Vaughan and Tammi Palfreyman as named plaintiffs. The First Amended Complaint in the PAGA Action is the operative complaint in the Actions (the “Operative Complaint”).

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiffs to serve as the Class Representatives, and the law firm of Blumenthal Nordrehaug Bhowmik De Blouw LLP to serve as Class Counsel. The Court’s order granting preliminary approval to the Settlement, and any order granting Final Approval, will not include any finding of wrongdoing by Defendant or any failure to comply with California law.

In fact, Defendant strenuously denies that it has done anything wrong and disputes all the claims in the Actions. Specifically, Defendant contends that Plaintiffs and the Class Members were, at all times, properly compensated for wages under California law; that Plaintiffs and the Class Members were provided with meal and rest periods in compliance with California law; that Defendant did not fail to pay Plaintiffs or any Class Members any wages allegedly due at the

time of their termination; that Defendant did not fail to provide required expense reimbursement; that Defendant complied with California wage statement requirements; that Defendant did not violate California Business and Professions Code section 17200 *et seq.*; that Defendant properly paid Plaintiffs and Class Members sick wages; that Defendant is not liable for any of the penalties sought or that could be sought in the Actions; and that the Actions cannot be maintained as a class or representative action.

In deciding to settle the Actions, Defendant has not acknowledged any wrongdoing. Defendant chose to settle the Actions to avoid additional expense, inconvenience, and interference with its business operations, and because it highly values its employees. Thus, both sides concluded that it is in their best interests and the interests of the Class to settle the Action now based on the terms summarized in this Class Notice. The Settlement was reached after mediation before a professional wage-and-hour mediator and is the product of arm's-length negotiations between the Parties. The Plaintiffs and Class Counsel believe the settlement is in the best interest of all Class Members. The Court overseeing this lawsuit has not made any determination that the Plaintiffs' claims are valid.

The Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendant, which expressly denies all liability.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay the amount of Four Hundred Twenty-Five Thousand Dollars (\$425,000) (the "Gross Settlement Amount") to fund the settlement of the Actions. The Gross Settlement Amount includes all payments to Class Members, all payments to the LWDA and Aggrieved Employees for civil penalties under PAGA, Service Payments to the three Plaintiffs, third party administration costs, and the amounts for Plaintiffs' attorneys' fees and costs. Any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages shall be separately paid by Defendant. Defendant shall fully fund the Gross Settlement Amount no later than fourteen (14) days after the Effective Date. The Effective Date is the date the Judgment is entered, unless there are objections or an appeal, in which case it is the date the Judgment is final and no longer subject to an appeal. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all payments required by the Settlement, including payments to Class Members and Aggrieved Employees.

Court Approved Deductions from Gross Settlement Amount. The following payments, subject to Court approval, will be deducted from the Gross Settlement Amount before payments of Individual Class Payments are made to Class Members who do not request exclusion ("Participating Class Members"). At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:

- **Administration Expenses Payment.** Payment to the Administrator of the Settlement, estimated not to exceed \$9,000, for expenses of administration, including notifying the Class Members of the Settlement, processing opt-outs, and distributing settlement checks and tax forms.

- Attorneys' Fees and Costs. Payment to Class Counsel of reasonable attorneys' fees not to exceed one-third (1/3) of the Gross Settlement Amount, which presently equals \$141,666, and an additional amount to reimburse actual litigation costs incurred by the Plaintiffs not to exceed \$30,000. Class Counsel have been prosecuting the Action on behalf of Plaintiffs and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The amounts stated in this paragraph are what Class Counsel will be requesting, and the final amounts to be paid will be decided by the Court at the Final Approval Hearing.
- Class Representative Service Payments. Class Representative Service Payments in an amount not more than \$10,000 to each of the Plaintiffs, or such lesser amount as may be approved by the Court, to compensate them for services on behalf of the Class in initiating and prosecuting the Actions, and for the risks Plaintiffs undertook. The amounts stated is what Plaintiffs will be requesting and the final amounts to be paid will be decided by the Court at the Final Approval Hearing.
- PAGA Penalties. A payment of \$10,000 relating to Plaintiffs' claim under PAGA, \$7,500 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA"). The remaining \$2,500 will be distributed to the Aggrieved Employees as Individual PAGA Payments. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$2,500) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. "PAGA Pay Period" means any pay period during which an Aggrieved Employee worked for Defendant in California for at least one day during the PAGA Period (September 5, 2022, through December 18, 2024).

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

Calculation of Payments to Class Members. After the amounts of the court-approved Attorneys' Fees and Costs, the Class Representative Service Payments, the PAGA Penalties, and the Administration Expenses Payment are deducted from the Gross Settlement Amount, the remaining portion, the "Net Settlement Amount", shall be distributed as Individual Class Payments to the Participating Class Members. The Net Settlement Amount is estimated to be at least \$204,334. The Administrator will pay an Individual Class Payment from the Net Settlement Amount to each Participating Class Member. The Individual Class Payment for each Participating Class Member will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. "Workweek" means any week during the Class Period in which a Class Member worked for Defendant as a Class Member for at least one day. The number of Workweeks will be based on Defendant's records; however, Class Members may challenge the number of Workweeks as explained below.

If the Settlement is approved by the Court and you do not exclude yourself, you will automatically be mailed a check for your Individual Class Payment to the same address as this Class Notice. You do not have to do anything to receive a payment. If your name or address has changed, you must contact the Administrator to inform them of your correct name or address to ensure you receive your payment.

Tax Matters. Twenty percent (20%) of each Participating Class Member's Individual Class Payment is in settlement of wage claims (the "Wage Portion"). Accordingly, the Wage Portion is subject to wage withholdings and shall be reported on IRS Form W-2. Eighty percent (80%) of each Participating Class Member's Individual Class Payment is in settlement of claims for alleged non-wages, expense reimbursement, interest, and penalties (collectively the "Non-Wage Portion"). The Non-Wage Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099. The employee portion of all applicable income and payroll taxes will be the responsibility of the Participating Class Members. Neither Class Counsel nor Defendant's Counsel intend anything contained in this Class Notice to constitute advice regarding taxes or taxability. The tax issues for each Participating Class Member are unique to him/her, and each Participating Class Member may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement and your receipt of the Individual Class Payment is conditioned upon the Court entering an order granting final approval of the Settlement and entering Judgment.

The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.

Need to Promptly Cash Payment Checks. The front of every check issued will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the funds represented by such checks remitted to a non-profit charity as the Cy Pres Recipient pursuant to California Code of Civil Procedure section 384. The Parties have proposed Casa Cornelia Law Center as the Cy Pres Recipient.

4. What Do I Release Under the Settlement?

Released Class Claims. As of the Effective Date and upon full funding of the Gross Settlement Amount by Defendant, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from the Released Class Claims. The "Released Class Claims" are all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint which occurred during the Class Period during employment in a non-exempt position in California, including claims for (1) unfair competition in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (2) failure to pay minimum wages in violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) failure to pay overtime wages in violation of Cal. Lab. Code § 510; (4) failure to provide required meal periods in violation of

Cal. Lab. Code §§ 226.7 & 512 and the applicable IWC Wage Order; (5) failure to provide required rest periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the applicable IWC Wage Order; (6) failure to provide accurate itemized statements in violation of Cal. Lab. Code § 226; (7) failure to reimburse employees for required expenses in violation of Cal. Lab. Code § 2802; and (8) failure to pay sick pay wages in violation of Cal. Lab. Code §§ 201-203, 233, 246. Except as expressly set forth in the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

This means that, if you do not timely and formally exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit or claims against Defendant or any other Released Party about the Released Class Claims resolved by this Settlement. It also means that all of the Court's orders in the Action will apply to you and legally bind you.

Released PAGA Claims. As of the Effective Date and upon full funding of the Gross Settlement Amount by Defendant, all Aggrieved Employees and the LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA Claims. The "Released PAGA Claims" are all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, which occurred during the PAGA Period during employment in a non-exempt position in California, including claims for PAGA penalties based on violations of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s) and expressly excluding all other claims including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, worker's compensation, and PAGA claims outside of the PAGA Period.

Released Parties. The Released Parties are Defendant and each of its past, present, and future parents, affiliated entities, corporations, divisions, managers, partners, members, agents, employees, directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, and subsidiaries.

5. How much will my payment be?

Defendant's records reflect that you worked <<_____>> Workweeks during the Class Period (October 31, 2019 through December 18, 2024).

Based on this information, your estimated Individual Class Payment from the Net Settlement Amount is <<_____>>.

[Defendant's records reflect that you worked <<____>> PAGA Pay Periods during the during the PAGA Period (September 5, 2022, through December 18, 2024). Based on this information, your estimated Individual PAGA Payment is <<____>>.]

If you wish to challenge the number of Workweeks or PAGA Pay Periods set forth in this section "5," you must submit a written, signed dispute along with supporting documents, to the Administrator no later than the Response Deadline, which is _____ [sixty (60) days after the mailing of the Class Notice or an additional 14 days in the case of re-mailing]. Such dispute must be sent to the following address:

_____. You may also fax the dispute to _____ or email the dispute to _____ by no later than the Response Deadline. Any dispute should include supporting documents or evidence and will be finally resolved by the Administrator. You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of Workweeks or PAGA Pay Periods based on Defendant's records as accurate unless you send copies of records containing contrary information.

6. How can I get a payment?

To get money from the Settlement, you do not have to do anything. A check for your Individual Class Payment and Individual PAGA Payment (if any) will be mailed to the same address as this Class Notice. If your name or address is incorrect or has changed, you must notify the Administrator. The Administrator is: ILYM Group, _____, (800) _____.

The Court will hold a Final Approval Hearing on _____ at 1:30 p.m. to decide whether to approve the Settlement and fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as service payment to Plaintiffs. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed approximately one month after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Class portion of the Settlement, referred to as "opting out." **If you opt out, you will not receive an Individual Class Payment from the Settlement, and you will not be bound by its terms, which means you will retain the right to sue Defendant for the Released Class Claims.** However, Aggrieved Employees who opt out will still be paid their Individual PAGA Payment and will remain subject to the release of the Released PAGA Claims regardless of whether they submit a request for exclusion.

To opt out, you must submit to the Administrator a written, signed and dated request to opt out postmarked no later than the Response Deadline, which is _____. You may also fax your request to opt out to _____ or email the dispute to _____ by no later than the Response Deadline. The request to opt out should be signed by you and state in substance that you wish to be excluded from the class settlement in the *Smyth v. Evereve Incorporated* lawsuit. The request to opt out should state the Class Member's full name and

current street address. Please include the name and number of the case, which is *Smyth v. Evereve Incorporated*, Case No. 23CV425684. The request to opt out must be completed and signed by you personally; no other person may opt out for a living member of the Class.

The address for the Administrator is _____. Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the releases described above.

8. How do I Object to the Settlement?

Only Participating Class Members (i.e., Class Members who do not opt out) have the right to object to the Settlement.

A Participating Class Member who disagrees with any aspect of the Agreement, may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low. **The Response Deadline for sending written objections to the Administrator is _____** [sixty (60) days after the date of the Notice or an additional 14 days after the Notice in the case of re-mailing]. You may also fax the dispute to _____ or email the dispute to _____ by no later than this Response Deadline. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, *Smyth v. Evereve Incorporated*, Case No. 23CV425684, and include your name and current street address, email or telephone number, and approximate dates of employment for Defendant and sign the objection. The Administrator's contact information is as follows:

Administrator:

Name of Company: ILYM Group

Email Address: _____

Mailing Address: _____

Telephone Number: _____

Fax Number: _____

Alternatively, or in addition to submitting a written objection, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. Please see instructions in the following section for how you or your attorney can appear at the Final Hearing.

The addresses for Parties' counsel are as follows:

CLASS COUNSEL:

Kyle Nordrehaug

Blumenthal Nordrehaug Bhowmik DeBlouw LLP

2255 Calle Clara

La Jolla, CA 92037

Tel.: (858) 551-1223

Fax: (858) 551-1232
E-Mail: kyle@bamlawca.com

COUNSEL FOR DEFENDANT:

Danielle H. Moore
Kathryn M. Evans
Fisher & Phillips LLP
4747 Executive Dr., Suite 1000
San Diego, CA 92121
Tel: (858) 597-9600
E-Mail: kmevans@fisherphillips.com

In deciding whether to object, you are entitled to see further information about what the Parties are asking the Court to approve and the basis for such requests. At least sixteen (16) court days before the Final Approval Hearing, scheduled for _____, Class Counsel and Plaintiffs will file in Court a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and for Attorneys' Fees, Litigation Expenses and Service Awards stating (a) the amounts Class Counsel is requesting for attorneys' fees and litigation expenses; (b) the amount Plaintiffs are requesting as Class Representative Service Payments; and (c) the basis for such requested amounts. Upon request, Class Counsel (whose contact information is above) will send you copies of these documents at no cost to you. You can also view them (i) on Class Counsel's website at www.bamlawca.com under "Class Notices" for *Smyth v. Evereve Incorporated* or (ii) on the via the Case Information Portal for the California Superior Court for the County of Santa Clara (<https://portal.scscourt.org/>), by entering Case No. 23CV425684.

9. Can I Attend the Final Approval Hearing?

The Court will hold a Final Approval Hearing at 1:30p.m. (Pacific Standard Time) on _____, in Department 19 of the Superior Court of California, County of Santa Clara County Superior Court, located at 161 North First Street, San Jose, CA 95113, before Judge Theodore C. Zayner. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement and to fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as a service payment to Plaintiffs. If there are objections, the Court will consider them. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing, or have an attorney appear on their behalf (at the Class Member's own cost).

Class Members and their attorneys may appear at the final approval hearing in person or remotely using the Microsoft Teams link for Department 19 (Afternoon Session) and should review the remote appearance instructions beforehand: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. Class members who wish to appear remotely are encouraged to contact class counsel at least three days before the hearing, if possible, so that potential technology or audibility issues can be avoided or minimized.

It is possible the Court will reschedule the Final Approval Hearing. If the hearing is continued, notice will be posted on Class Counsel's website at www.bamlawca.com under "Class Notices" for *Smyth v. Evereve Incorporated*. In addition, hearing dates are posted on the Internet via the Case Query page for the California Superior Court for the County of Santa Clara (<https://portal.scscourt.org/>) and entering the Case No. 23CV425684. Before appearing at the Final Approval Hearing, you should confirm the date of the hearing by one of the means just described.

10. How Can I Get More Information?

You may call the Administrator at _____ or write to *Smyth v. Evereve Incorporated* Administrator, c/o _____.

This Class Notice summarizes the proposed settlement. More details are in the Settlement Agreement, which ultimately controls. You may receive a copy of the Settlement Agreement, the Judgment, the motion for final approval or other Settlement documents by going to the Administrator's website at _____; or Class Counsel's website at www.bamlawca.com under "Class Notices" for *Smyth v. Evereve Incorporated*. You may also get more details by examining the Court's file on the Internet via the Case Information Portal for the California Superior Court for the County of Santa Clara (<https://portal.scscourt.org/>) and entering the Case No. 23CV425684. If you wish to view the Court files in person, you should go to the Clerk's Office located at 191 North First Street, San Jose, CA 95113.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- **What if Your Name or Address Changes** - To receive your check, you should immediately notify the Administrator if you change your name, move or otherwise change your mailing address. A change of address form is included with this Notice.
- **What if You Lose Your Check** - If your check is lost or misplaced, you should contact the Administrator immediately to request a replacement.
- **What if You Fail to Cash a Check** - Settlement checks will be null and void 180 days after issuance if not deposited or cashed by that date. The specific expiration date will be printed on the check you receive. The Administrator will pay all unclaimed funds (i.e., funds associated with all checks that are not cashed by the deadline) to a non-profit charity as the Cy Pres Recipient. The Parties have proposed Casa Cornelia Law Center as the Cy Pres Recipient.

EXHIBIT B

[ORDER GRANTING PRELIMINARY APPROVAL]

EXHIBIT "B"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

DIANA SMYTH, LISA VAUGHAN and
TAMMI PALFREYMAN, individually, on
behalf of themselves and on behalf of all
persons similarly situated,

Plaintiffs,

v.

EVEREVE INCORPORATED, a corporation;
and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: **23CV425684**

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: _____
Hearing Time: 1:30 p.m.

Judge: Hon. Theodore C. Zayner
Dept.: 19

Action Filed: November 9, 2023
Trial Date: Not set

PRELIMINARY APPROVAL ORDER

1 This matter came before the Honorable Theordore C. Zayner of the Superior Court of the
2 State of California, in and for the County Santa Clara, on _____[DATE], for the unopposed
3 motion by Plaintiffs Diana Smyth, Lisa Vaughan and Tammi Palfreyman (“Plaintiffs”) for
4 preliminary approval of the class and PAGA settlement with Defendant Evereve Incorporated
5 (“Defendant”). The Court, having considered the briefs, argument of counsel and all matters
6 presented to the Court and good cause appearing, hereby GRANTS Plaintiffs’ Motion for
7 Preliminary Approval of Class Action Settlement.

8 **IT IS HEREBY ORDERED:**

9 1. The Court preliminarily approves the Class Action and PAGA Settlement
10 Agreement (“Agreement” or “Settlement”) submitted as Exhibit ____ to the Declaration of Kyle
11 Nordrehaug in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement.
12 This preliminary approval is based on the Court’s determination that the Settlement set forth in the
13 Agreement is within the range of possible final approval, pursuant to the provisions of section 382
14 of the California Code of Civil Procedure, the Private Attorneys’ General Act, and California
15 Rules of Court, rule 3.769.

16 2. This Order incorporates by reference the definitions in the Agreement, and all
17 terms not otherwise defined in this Order shall have the same meaning as set forth in the
18 Agreement.

19 3. The Gross Settlement Amount is Four Hundred Twenty-Five Thousand Dollars and
20 zero cents (\$425,000.00). It appears to the Court on a preliminary basis that the Settlement
21 amount and terms are fair, adequate and reasonable as to all potential Class Members when
22 balanced against the probable outcome of further litigation and the significant risks relating to
23 certification, liability and damages issues. It further appears that investigation and research have
24 been conducted such that counsel for the Parties are able to reasonably evaluate their respective
25 positions. It further appears to the Court that settlement at this time will avoid substantial
26 additional costs by all Parties, as well as avoid the delay and risks that would be presented by the
27 further prosecution of the Action. It further appears that the Agreement has been reached as the

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PRELIMINARY APPROVAL ORDER

1 result of serious and non-collusive, arms-length negotiations. The Court therefore preliminarily
2 finds that the Settlement is fair, adequate, and reasonable when balanced against the probable
3 outcome of further litigation and the significant risks relating to certification, liability, and
4 damages issues.

5 4. The Agreement specifies an attorneys' fees award not to exceed one-third of the
6 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed Thirty
7 Thousand Dollars (\$30,000), and proposed Class Representative Service Payments to the Plaintiffs
8 in an amount not to exceed Ten Thousand Dollars (\$10,000) each. The Court will not approve the
9 amount of attorneys' fees and litigation expenses, nor the amount of any service award, until the
10 Final Approval Hearing. Plaintiffs will be required to present evidence supporting these requests
11 prior to final approval.

12 5. The Court recognizes that Plaintiffs and Defendant stipulate and agree to
13 certification of a class for settlement purposes only. This stipulation will not be deemed
14 admissible in this or any other proceeding should this Settlement not become final. For settlement
15 purposes only, the Court conditionally certifies the following Class: "all individuals who were
16 employed by Defendant in California and classified as a non-exempt employee at any time during
17 the Class Period." The Class Period is October 31, 2019 through December 18, 2024.

18 6. The Court concludes that, for purposes of approving this settlement only, the Class
19 meets the requirements for certification under section 382 of the California Code of Civil
20 Procedure in that: (a) the Class is ascertainable and so numerous that joinder of all members of the
21 Class is impracticable; (b) common questions of law and fact predominate, and there is a well-
22 defined community of interest amongst the members of the Class with respect to the subject matter
23 of the litigation; (c) the claims of the Plaintiffs are typical of the claims of the members of the
24 Class; (d) the Plaintiffs can fairly and adequately protect the interests of the members of the Class;
25 (e) a class action is superior to other available methods for the efficient resolution of this
26 controversy; and (f) counsel for the Class is qualified to act as counsel for the Class and the
27 Plaintiffs are adequate representatives of the Class.

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PRELIMINARY APPROVAL ORDER

1 7. The Court provisionally appoints Plaintiffs as the representatives of the Class. The
2 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik
3 of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel.

4 8. The Court hereby approves, as to form and content, the Court Approved Notice of
5 Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”), attached as
6 Exhibit A to the Agreement. The Court finds that the Class Notice appears to fully and accurately
7 inform the Class of all material elements of the proposed Settlement and the Class Members’
8 options including, inter alia, their options (i) to be excluded from the Class by submitting a written
9 opt-out request, (ii) to be represented by counsel of their choosing, and (iii) to object to the terms
10 of the Settlement. The Court further finds that the distribution of the Class Notice substantially in
11 the manner and form set forth in the Agreement and this Order meets the requirements of due
12 process, is the best notice practicable under the circumstances, and shall constitute due and
13 sufficient notice to all persons entitled thereto. The Court orders the mailing of the Class Notice
14 by first class mail, pursuant to the terms set forth in the Agreement. If a Class Notice Packet is
15 returned because of an incorrect address, the Administrator will promptly search for a more
16 current address for the Class Member and re-mail the Class Notice Packet to the Class Member in
17 accordance with the Agreement.

18 9. The Court hereby appoints ILYM Group, Inc. as Administrator for the Settlement.
19 No later than fifteen (15) calendar days after issuance of this Order, Defendant shall provide to the
20 Administrator an electronic spreadsheet with the Class Data. This information will otherwise
21 remain confidential and will not be disclosed to anyone, except as required to applicable taxing
22 authorities, to carry out the procedures in the Agreement, or pursuant to Defendant’s express
23 written authorization or by order of the Court. The Administrator will perform address updates
24 and verifications as necessary prior to the mailing of the Class Notice. Using best efforts to mail it
25 as soon as possible, and in no event later than fourteen (14) calendar days after receiving the Class
26 Data spreadsheet, the Administrator will mail the Class Notice Packet to all Class Members via
27 first-class U.S. Mail.

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PRELIMINARY APPROVAL ORDER

1 10. The Court hereby preliminarily approves the proposed procedure for exclusion
2 from the Settlement. Any Class Member may individually choose to opt-out of and be excluded
3 from the Class as provided in the Class Notice by following the instructions set forth in the Class
4 Notice. All requests for exclusion must be sent to the Administrator and postmarked by no later
5 than the Response Deadline, which is sixty (60) calendar days after the Administrator initially
6 mails the Class Notice Packets to the Class Members. If the Class Notice Packet is re-mailed, this
7 Response Deadline will be extended an additional fourteen (14) calendar days. Any person who
8 chooses to opt-out of and be excluded from the Class will not be entitled to any recovery under the
9 Settlement and will not be bound by the Settlement or have any right to object, appeal or comment
10 thereon. Aggrieved Employees shall be sent their Individual PAGA Payment and will be subject to
11 the release of the Released PAGA Claims regardless of whether they opt-out of the Class. Class
12 Members who have not requested exclusion shall be bound by all determinations of the Court, the
13 Agreement, and the Judgment. A request for exclusion applies only to the individual submitting
14 the request for exclusion, and any attempt to effect an opt-out on behalf of any other individual or
15 individuals (including a group, class, or subclass of individuals) is not permitted and will be
16 deemed invalid.

17 11. Any Class Member who has not opted-out may appear at the Final Approval
18 Hearing and may object or express the Class Member's views regarding the Settlement and may
19 present evidence and file briefs or other papers that may be proper and relevant to the issues to be
20 heard and determined by the Court as provided in the Class Notice. Class Members will have
21 until the Response Deadline set forth in the Class Notice to submit their written objections to the
22 Administrator in accordance with the instructions in the Class Notice. If the Class Notice is re-
23 mailed, the Response Deadline will be extended an additional fourteen (14) calendar days.
24 Alternatively, Class Members may appear at the Final Approval Hearing to make an oral
25 objection.

26 12. A Final Approval Hearing shall be held before this Court on _____
27 _____ at 1:30 p.m. in Department 19 at the of the Santa Clara County Superior Court
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PRELIMINARY APPROVAL ORDER

1 to determine all necessary matters concerning the Settlement, including: whether the proposed
2 settlement of the Action on the terms and conditions provided for in the Agreement is fair,
3 adequate and reasonable and should be finally approved by the Court; whether the Final Approval
4 Order and Judgment should be entered herein; whether the plan of allocation contained in the
5 Agreement should be approved as fair, adequate and reasonable to the Class Members; and to
6 finally approve attorneys' fees and costs, the service awards, and the expenses of the
7 Administrator. The motion for final approval of the class settlement and for award of attorneys'
8 fees, costs and service awards shall be filed with the Court and served on all counsel no later than
9 sixteen (16) court days before the hearing and shall be heard at the Final Approval Hearing.

10 13. Neither the Settlement nor any exhibit, document, or instrument delivered
11 thereunder shall be construed as a concession or admission by Defendant in any way that the
12 claims asserted have any merit or that this Action was properly brought as a class or representative
13 action, and shall not be used as evidence of, or used against Defendant as, an admission or
14 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
15 omission by Defendant or with respect to the truth of any allegation asserted by any person.
16 Whether or not the Settlement is finally approved, neither the Agreement, nor any exhibit,
17 document, statement, proceeding or conduct related to the Settlement or Agreement, nor any
18 reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as,
19 received as or deemed to be evidence for any purpose adverse to the Defendant, including, but not
20 limited to, evidence of a presumption, concession, indication or admission by Defendant of any
21 liability, fault, wrongdoing, omission, concession or damage. Nothing in the Settlement or this
22 Order shall be deemed a waiver of Defendant's rights to enforce arbitration agreements entered
23 into by Class Members or Aggrieved Employees.

24 14. The Agreement provides for a PAGA Penalties out of the Gross Settlement
25 Amount of \$10,000, which shall be allocated \$7,500 to the Labor & Workforce Development
26 Agency ("LWDA") as the LWDA's 75% share of the settlement of civil penalties paid under this
27 Agreement pursuant to the PAGA and \$2,500 to the Aggrieved Employees. "Aggrieved
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PRELIMINARY APPROVAL ORDER

1 Employees” are all individuals who are or were employed by Defendant in California and
2 classified as a non-exempt or hourly employee at any time during the PAGA Period (September 5,
3 2022 through December 18, 2024). The Court finds the PAGA Penalties to be reasonable.
4 Plaintiffs are hereby ordered to give notice of the Settlement to the California Labor and
5 Workforce Development Agency, as required by PAGA.

6
7 15. In the event the Settlement does not become effective in accordance with the terms
8 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
9 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
10 and the Parties shall revert to their respective positions as of before entering into the Agreement,
11 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
12 including all available defenses and affirmative defenses, and arguments that no claim in the
13 Action could be certified as a class action and/or managed as a representative action. In such an
14 event, the Court’s orders regarding the Settlement, including this Order, shall not be used or
15 referred to in litigation or otherwise for any purpose.

16 16. The Court reserves the right to adjourn or continue the date of the Final Approval
17 Hearing and all dates provided for in the Agreement without further notice to Class Members and
18 retains jurisdiction to consider all further applications arising out of or connected with the
19 proposed Settlement.

20 17. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
21 further orders of the Court at the Final Approval Hearing.

22 **IT IS SO ORDERED.**

23
24 Dated: _____

HON. THEODORE C. ZAYNER
JUDGE, SUPERIOR COURT OF CALIFORNIA

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PRELIMINARY APPROVAL ORDER

EXHIBIT C

[FINAL APPROVAL ORDER AND JUDGMENT]

EXHIBIT "C"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

DIANA SMYTH, LISA VAUGHAN and
TAMMI PALFREYMAN, individually, on
behalf of themselves and on behalf of all
persons similarly situated,

Plaintiffs,

v.

EVEREVE INCORPORATED, a corporation;
and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 23CV425684

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date: _____
Hearing Time: _____

Judge: Hon. Theodore C. Zayner
Dept.: 19

Action Filed: July 7, 2023
Trial Date: Not set

FINAL APPROVAL ORDER AND JUDGMENT

1 The unopposed motion of Plaintiffs Diana Smyth, Lisa Vaughan and Tammi Palfreyman
2 (“Plaintiffs”) for an order finally approving the class action settlement of this action between
3 Plaintiffs and Defendant Evereve Incorporated (“Defendant”) came on for hearing on
4 _____ before the Honorable Theodore C. Zayner. The Court, having reviewed the
5 motion, arguments of counsel and evidence presented at the hearing, and otherwise being fully
6 informed, hereby ORDERS that the motion is GRANTED.

7 It is further ORDERED, ADJUDGED, and DECREED as follows:

8 1. For the reasons set forth in the Preliminary Approval Order, which are adopted and
9 incorporated herein by reference, this Court finds that the requirements of California Code of Civil
10 Procedure section 382 and rule 3.769 of the California Rules of Court have been satisfied.

11 2. The Court hereby adopts and incorporates by reference the terms and conditions
12 defined in the Class Action and PAGA Settlement Agreement (the “Agreement” or “Settlement”),
13 and all terms not otherwise defined in this Order and Judgment shall have the same meaning as set
14 forth in the Agreement.

15 3. This Court finds that it has jurisdiction over the subject matter of this litigation
16 pending before the California Superior Court for the County of Santa Clara, and over all Parties to
17 this litigation, including the Class.

18 4. Plaintiffs submitted notice of the Settlement to the California Labor and Workforce
19 Development Agency (“LWDA”), and the LWDA has not indicated any opposition to the
20 Settlement.

21 5. Pursuant to Labor Code § 2698, *et seq.*, the Court also finds that the Settlement’s
22 resolution of the alleged PAGA claims furthers PAGA’s objectives. The PAGA Penalties amount
23 of \$10,000 is approved and shall be paid out of the Gross Settlement Amount, 75% of which shall
24 be allocated and paid to the LWDA and 25% of which shall be distributed to the Aggrieved
25 Employees as Individual PAGA Payments. The Administrator will calculate each Individual
26 PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA
27 Penalties (\$2,500) by the total number of PAGA Pay Periods worked by all Aggrieved Employees
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FINAL APPROVAL ORDER AND JUDGMENT

1 during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay
2 Periods. The Aggrieved Employees are all individuals who were employed by Defendant in
3 California and classified as a non-exempt employee at any time during the PAGA Period, which is
4 September 5, 2022, through December 18, 2024. All Aggrieved Employees will be sent their
5 share of the PAGA Penalties and will be subject to the release of the Released PAGA Claims as
6 set forth below, whether or not they opt out of the Class Settlement.

7 6. In compliance with the Preliminary Approval Order, the Class Notice was mailed
8 by first class mail to members of the Class at their last known addresses on or about
9 _____. Mailing of the Class Notice to members' last known addresses was the best
10 notice practicable under the circumstances and was reasonably calculated to communicate actual
11 notice of the litigation and the proposed settlement to the Class.

12 7. The Class Notice fully and accurately informed the Class Members of all material
13 elements of the proposed Settlement and the Class Members' options including, *inter alia*, their
14 options (i) to be excluded from the Class by submitting a written opt-out request, (ii) to be
15 represented by counsel of their choosing, and (iii) to object to the terms of the Settlement. The
16 Class Notice was valid, due, and sufficient notice to all Class Members, and complied fully with
17 the laws of the State of California, the United States Constitution, due process and other applicable
18 law. The Class Notice fairly and adequately described the Settlement and provided Class
19 Members with adequate instructions and means to obtain additional information.

20 8. A full opportunity has been afforded to the Class Members to participate in this
21 hearing, and all Class Members and other persons wishing to be heard have been heard. Class
22 Members also have had a full and fair opportunity to exclude themselves from the proposed
23 Settlement and Class. There was an adequate interval between notice and the deadline to permit
24 Class Members to choose what to do and act on their decision. Accordingly, the Court determines
25 that all Class Members who did not timely and properly submit a request for exclusion in
26 accordance with the Agreement are bound by the Settlement and this Final Approval Order and
27 Judgment.

1 9. The Court has considered all relevant factors for determining the fairness of the
2 Settlement and has concluded that all such factors weigh in favor of granting final approval. In
3 particular, the Court finds that the Gross Settlement Amount of Four Hundred Twenty-Five
4 Thousand Dollars and Zero Cents (\$425,000.00) and the other terms set forth in the Agreement are
5 fair, reasonable, and adequate.

6 10. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
7 48 Cal.App.4th 1794, 1801 (1996). The Court finds that the Settlement was the result of arm's-
8 length bargaining between the Parties during an all-day mediation before Steve Rottman, a
9 respected and experienced mediator of wage and hour class actions. There has been no collusion
10 between the Parties in reaching the proposed settlement. Plaintiffs' investigation and discovery
11 have been sufficient to allow the Court and counsel to act intelligently and to become familiar with
12 the strengths and weaknesses of the claims. Counsel for both Parties are experienced in similar
13 employment class action litigation. All counsel recommended approval of the Agreement. [There
14 were no objectors/the percentage of objectors and requests for exclusion is small. ____ objections
15 were received. _____ requests for exclusion were received].

16 11. The consideration to be given to the Class Members, the Aggrieved Employees,
17 and the LWDA under the terms of the Agreement, is fair, reasonable and adequate consideration
18 for the release of claims, given the uncertainties and significant risks of the litigation related to
19 certification, liability, and damages issues; the strengths and weaknesses of the claims; and the
20 delays which would ensue from continued prosecution of the action. In so finding, the Court has
21 considered all evidence presented, and the Parties have provided the Court with sufficient
22 information about the nature and magnitude of the claims being settled, as well as the
23 impediments to recovery, to permit the Court to make an independent assessment of the
24 reasonableness of the terms to which the Parties have agreed.

25 12. The Court hereby grants final approval of the class settlement with respect to: All
26 individuals who were employed by Defendant in California and classified as a non-exempt
27 employee at any time during the Class Period. The "Class Period" is October 31, 2019 through
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1 December 18, 2024. All persons who meet the foregoing definition are members of the Class,
2 except for those individuals who timely submitted a valid request for exclusion (“opt out”) from
3 the Class. The following Class Members were the only Class Members who opted out of the
4 Settlement: _____.

5 13. Plaintiffs are suitable Class Representatives and are hereby confirmed as the Class
6 Representatives for the Class. The Court finds that Plaintiffs’ investment and commitment to the
7 litigation and its outcome ensured adequate and zealous advocacy for the Class, and that their
8 interests are aligned with those of the Class.

9 14. The Agreement provides for Class Representative Service Payments of not more
10 than \$10,000 each to the Plaintiffs, subject to the Court’s approval. The Court hereby awards the
11 Class Representative Service Payments in the amount of \$_____ each to the Plaintiffs and finds
12 that such Class Representative Service Payments are reasonable in light of the risks and burdens
13 undertaken by the Plaintiffs in the litigation, for their time and effort in bringing and prosecuting
14 this matter on behalf of the Class and the Aggrieved Employees, and for their execution of general
15 releases.

16 15. The Court finds that Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit
17 Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP (“Class Counsel”) have the
18 requisite qualifications, experience, and skill to protect and advance the interests of the Class. The
19 Court therefore confirms its Preliminary Approval Order appointing Class Counsel as counsel for
20 the Class.

21 16. The Court hereby awards Class Counsel a Class Counsel Fees Payment in the
22 amount of \$_____ and a Class Counsel Litigation Expenses Payment in the amount of
23 \$_____. These amounts are reasonable, in light of the contingent nature of Class Counsel’s
24 fee, the hours worked by Class Counsel, and the results achieved by Class Counsel. The requested
25 award has been supported by Class Counsel’s lodestar and billing statement. Class Counsel shall
26 not seek or obtain any other compensation or reimbursement from Defendant, Plaintiffs, or
27 members of the Class.

1 17. The payment of \$ _____ to the Administrator as the Administration
2 Expenses Payment is approved because this amount is reasonable in light of the work performed
3 by the Administrator. The Administrator shall calculate and administer the payments to be made
4 to the Participating Class Members, transmit payment for attorneys' fees and costs to Class
5 Counsel, transmit the Class Representative Service Payments to the Plaintiffs, distribute the
6 PAGA Penalties, issue any required tax reporting forms, calculate withholdings, and perform the
7 other remaining duties set forth in the Agreement.

8 18. Notice of entry of this Final Approval Order and Judgment shall be given to all
9 Parties by Class Counsel on behalf of Plaintiffs and all Class Members. This Final Approval
10 Order and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice. It
11 shall not be necessary to send notice of entry of this Final Approval Order and Judgment to
12 individual Class Members. Class Counsel shall serve this Final Approval Order and Judgment on
13 the LWDA.

14 19. Defendant shall fully fund the Gross Settlement Amount, and also fund the
15 amounts necessary to fully pay Defendant's share of payroll taxes in accordance with the
16 Agreement, by transmitting the funds to the Administrator no later than 14 days after the Effective
17 Date.

18 20. Within 14 days after Defendant funds the Gross Settlement Amount, the
19 Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments,
20 the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees
21 Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service
22 Payments.

23 21. Participating Class Members and Aggrieved Employees must cash their Individual
24 Class Payment checks within 180 days after issuance. If such checks are not cashed within 120
25 days after the initial mailing of the checks, the Administrator will send the affected Participating
26 Class Member and/or Aggrieved Employee a reminder notice stating that unless the check is
27 cashed in the next 60 days, it will expire and become non-negotiable and offer to replace the check
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FINAL APPROVAL ORDER AND JUDGMENT

1 if it was lost or misplaced. All funds associated with check that remain uncashed by the expiration
2 of the 180 day period, and therefore become void, shall be paid to Casa Cornelia Law Center as
3 the Cy Pres Recipient of this Settlement in accordance with California Code of Civil Procedure
4 section 384(b).

5 22. The Agreement and this Settlement are not an admission by Defendant, nor is this
6 Final Approval Order and Judgment a finding of the validity of any claims in the Action or of any
7 wrongdoing by Defendant or that this Action is appropriate for class treatment (other than for
8 settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any
9 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
10 as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability
11 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or
12 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an
13 admission or concession with regard to the denials or defenses by Defendant.

14 23. Neither this Judgment, Approval Motion, the Settlement, any document referred to
15 herein, any exhibit to any document referred to herein, any action taken to carry out the
16 Settlement, nor any negotiations or proceedings related to the Settlement shall have any collateral
17 estoppel or other preclusive effect against Defendant; provided, however, that Defendant and any
18 of the Released Parties can use the Agreement and this Final Approval Order and Judgment to
19 enforce the release and extinguishment of the Released Class Claims and Released PAGA Claims,
20 including without limitation by way of defense to any claims that have been or may hereafter be
21 asserted in any lawsuit or other judicial, administrative, or arbitral proceeding. Neither this Final
22 Approval Order and Judgment, the Agreement, nor any document referred to herein, nor any
23 action taken to carry out the Agreement may be deemed a waiver of Defendant's rights to enforce
24 arbitration agreements entered into by Class Members or Aggrieved Employees.

25 24. Except as set forth in the Agreement and this Final Approval Order and Judgment,
26 Plaintiffs, and all members of the Class, shall take nothing in the Action. Each party shall bear its
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own attorneys' fees and costs, except as otherwise provided in the Agreement and in this Final Approval Order and Judgment.

25. As of the Effective Date and upon full finding of the Gross Settlement Amount by Defendant, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from the Released Class Claims. The "Released Class Claims" are all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint which occurred during the Class Period during employment in a non-exempt position in California, including claims for (1) unfair competition in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (2) failure to pay minimum wages in violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) failure to pay overtime wages in violation of Cal. Lab. Code § 510; (4) failure to provide required meal periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the applicable IWC Wage Order; (5) failure to provide required rest periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the applicable IWC Wage Order; (6) failure to provide accurate itemized statements in violation of Cal. Lab. Code § 226; (7) failure to reimburse employees for required expenses in violation of Cal. Lab. Code § 2802; and (8) failure to pay sick pay wages in violation of Cal. Lab. Code §§ 201-203, 233, 246. Except as expressly set forth in the Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

26. As of the Effective Date and upon full funding of the Gross Settlement Amount by Defendant, all Aggrieved Employees and the LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA Claims. The "Released PAGA Claims" are all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA

1 Notice, which occurred during the PAGA Period during employment in a non-exempt position in
2 California, including claims for PAGA penalties based on violations of California Labor Code §§
3 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2),
4 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040,
5 subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to
6 Provide Seating), and the applicable Wage Order(s) and expressly excluding all other claims
7 including claims for vested benefits, wrongful termination, violation of the Fair Employment and
8 Housing Act, unemployment insurance, disability, social security, worker's compensation, and
9 PAGA claims outside of the PAGA Period.

10 27. The Released Parties are: Defendant and each of its past, present, and future
11 parents, affiliated entities, corporations, divisions, managers, partners, members, agents,
12 employees, directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors,
13 assigns, and subsidiaries.

14 28. This Final Approval Order and Judgment shall be binding on Plaintiffs and all
15 Class Members who are hereby barred by the doctrine of res judicata from asserting any and all of
16 the Released Class Claims.

17 29. This Final Approval Order and Judgment shall be binding on Plaintiffs and all
18 Aggrieved Employees, the LWDA, and the State of California who are hereby barred by the
19 doctrine of res judicata from asserting any and all of the Released PAGA Claims. *See Arias v.*
20 *Superior Court*, 46 Cal. 4th 969, 986 (2009).

21 30. This document shall constitute a judgment under California Code of Civil
22 Procedure section 664.6 and California Rules of Court, Rule 7.69(h).

23 31. Pursuant to California Code of Civil Procedure section 664.6, and without affecting
24 the finality of this Judgment in any way, the Court shall retain jurisdiction to construe, interpret,
25 implement and enforce the Agreement and this Judgment.

26 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

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28 Dated: _____

FINAL APPROVAL ORDER AND JUDGMENT

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HON. THEODORE C. ZAYNER
JUDGE, SUPERIOR COURT OF CALIFORNIA

FINAL APPROVAL ORDER AND JUDGMENT