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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF LOS ANGELES – SPRING STREET

18 JOSE JESUS MARTINEZ, individually, and
on behalf of others similarly situated,

19 Plaintiff,

20 v.

21 DESERT CONCEPTS CONSTRUCTION,
22 INC., a California Corporation; and DOES 1
through 10, inclusive,

23 Defendants.
24
25
26
27
28

Case No.: 20STCV08933

CLASS ACTION

*[Assigned for All Purposes to Honorable William
F. Highberger, Department 10]*

**CLASS ACTION AND PAGA SETTLEMENT
AGREEMENT AND CLASS NOTICE**

Complaint filed: March 5, 2020

Trial date: Not set

1 **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE**

2 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between
3 plaintiff Jose Jesus Martinez (“Plaintiff”) and defendant Desert Concepts Construction, Inc. (“Defendant”).
4 The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as
5 “Party.”

6
7 **1. DEFINITIONS.**

- 8 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant
9 captioned *Martinez v. Desert Concepts Construction, Inc.* initiated on March 5, 2020 and
10 pending in Superior Court of the State of California, County of Los Angeles.
- 11 1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to
12 appoint to administer the Settlement.
- 13 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid
14 from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
15 accordance with the Administrator’s “not to exceed” bid submitted to the Court in
16 connection with Preliminary Approval of the Settlement.
- 17 1.4. “Aggrieved Employee” means a person employed by Defendant in California and
18 classified as a non-exempt hourly paid employee who worked for Defendant during the
19 PAGA Period from March 5, 2016 through the date of the Court’s approval of this
20 settlement. Excluded from this definition are any of Defendant’s employees who worked
21 exclusively on prevailing wage projects and time spent by Defendant’s employees working
22 on prevailing wage projects.
- 23 1.5. “Class” means all persons employed by Defendant in California and classified as non-
24 exempt hourly paid employee who worked for Defendant during the Class Period.
25 Excluded from this definition are any employees who worked exclusively on prevailing
26 wage projects.
- 27 1.6. “Class Counsel” means Moon Law Group, PC.
- 28 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean

1 the amounts allocated to Class Counsel for reimbursement of reasonable attorneys' fees
2 and expenses, respectively, incurred to prosecute the Action.

- 3 1.8. "Class Data" means Class Member identifying information in Defendant's possession
4 including the Class Member's name, last-known mailing address, Social Security number,
5 and number of Class Period Workweeks and PAGA Pay Periods. Excluded from the Class
6 Period Workweeks and PAGA Pay Period counts are any such workweeks or portions
7 thereof or pay other periods where Class Members worked exclusively on prevailing wage
8 projects.
- 9 1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as either a
10 Participating Class Member or Non-Participating Class Member (including a Non-
11 Participating Class Member who qualifies as an Aggrieved Employee).
- 12 1.10. "Class Member Address Search" means the Administrator's investigation and search for
13 current Class Member mailing addresses using all reasonably available sources, methods
14 and means including, but not limited to, the National Change of Address database, skip
15 traces, and direct contact by the Administrator with Class Members.
- 16 1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION
17 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be
18 mailed to Class Members in English [with a Spanish translation, if applicable] in the form,
19 without material variation, attached as Exhibit A and incorporated by reference into this
20 Agreement.
- 21 1.12. "Class Period" means the period from March 5, 2016 to March 14, 2023.
- 22 1.13. "Class Representative" means the named Plaintiff in the operative complaint in the Action
23 seeking Court approval to serve as a Class Representative.
- 24 1.14. "Class Representative Service Payment" means the payment to the Class Representative
25 for initiating the Action and providing services in support of the Action.
- 26 1.15. "Court" means the Superior Court of California, County of Los Angeles.
- 27 1.16. "Defendant" means named Defendant Desert Concepts Construction, Inc.
- 28 1.17. "Defense Counsel" means Coleman Frost LLP.

- 1 1.18. "Effective Date" means the date by when both of the following have occurred: (a) the
2 Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b)
3 the Judgment is final. The Judgment is final as of the latest of the following occurrences:
4 (a) if no Participating Class Member objects to the Settlement, the day the Court enters
5 Judgment; (b) if one or more Participating Class Members objects to the Settlement, the
6 day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal
7 from the Judgment is filed, the day after the appellate court affirms the Judgment and
8 issues a remittitur.
- 9 1.19. "Final Approval" means the Court's order granting final approval of the Settlement.
- 10 1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of
11 the Settlement.
- 12 1.21. "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval
13 of the Settlement.
- 14 1.22. "Gross Settlement Amount" means \$300,000.00 which is the total amount Defendant
15 agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross
16 Settlement Amount will be used to pay Individual Class Payments, Individual PAGA
17 Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses,
18 Class Representative Service Payment and the Administrator's Expenses.
- 19 1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of the
20 Net Settlement Amount calculated according to the number of Workweeks worked during
21 the Class Period.
- 22 1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of
23 the PAGA Penalties calculated according to the number of Workweeks worked during the
24 PAGA Period.
- 25 1.25. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 26 1.26. "LWDA" means the California Labor and Workforce Development Agency, the agency
27 entitled, under Labor Code § 2699(i).
- 28 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA

1 under Labor Code § 2699(i).

- 2 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following
3 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA
4 PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment,
5 Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment.
6 The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 7 1.29. "Non-Participating Class Member" means any Class Member who opts out of the
8 Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 9 1.30. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked
10 for Defendant for at least one day during the PAGA Period.
- 11 1.31. "PAGA Period" means the period from March 5, 2019 to March 14, 2023 .
- 12 1.32. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).
- 13 1.33. "PAGA Notice" means Plaintiff's March 3, 2020 letter to Defendant and the LWDA
14 providing notice pursuant to Labor Code § 2699.3(a).
- 15 1.34. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the
16 Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$7,500.00) and the
17 75% to LWDA (\$22,500.00) in settlement of PAGA claims.
- 18 1.35. "Participating Class Member" means a Class Member who does not submit a valid and
19 timely Request for Exclusion from the Settlement.
- 20 1.36. "Plaintiff" means Jose Jesus Martinez, the named plaintiff in the Action.
- 21 1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the
22 Settlement.
- 23 1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval
24 and Approval of PAGA Settlement.
- 25 1.39. "Released Class Claims" means the claims being released as described in Paragraph 5.2
26 below.
- 27 1.40. "Released PAGA Claims" means the claims being released as described in Paragraph 5.2
28 below.

- 1 1.41. "Released Parties" means: Defendant and each of its former and present directors, officers,
2 shareholders, owners, [members], attorneys, insurers, predecessors, successors, assigns,
3 subsidiaries, and affiliates.
- 4 1.42. "Request for Exclusion" means a Class Member's submission of a written request to be
5 excluded from the Class Settlement signed by the Class Member.
- 6 1.43. "Response Deadline" means 60 days after the Administrator mails Notice to Class
7 Members and Aggrieved Employees, and shall be the last date on which Class Members
8 may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email,
9 or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are
10 resent after having been returned undeliverable to the Administrator shall have an
11 additional 14 calendar days beyond the Response Deadline has expired.
- 12 1.44. "Settlement" means the disposition of the Action effected by this Agreement and the
13 Judgment.
- 14 1.45. "Workweek" means any week during which a Class Member worked for Defendant for at
15 least one day, during the Class Period.

16
17 **2. RECITALS.**

- 18 2.1. On March 5, 2020, Plaintiff commenced this Action by filing a Complaint alleging causes
19 of action against Defendant for (1) Failure to Pay Minimum and Regular Rate Wages [Cal.
20 Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal.
21 Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7,
22 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]; (5) Failure to
23 Indemnify Necessary Business Expenses [Cal. Lab. Code § 2802]; (6) Failure to Timely Pay
24 Final Wages at Termination [Cal. Lab. Code §§ 201-203]; (7) Failure to Provide Accurate
25 Itemized Wage Statements [Cal. Lab. Code § 226]; and (8) Unfair Business Practices [Cal. Bus.
26 & Prof. Code §§ 17200, et seq.][On November 12, 2020, Plaintiff filed a First Amended
27 Complaint alleging an additional cause of action against Defendant for Civil Penalties
28 Under PAGA [Cal. Lab. Code § 2699, et seq.]. The First Amended Complaint is the

1 operative complaint in the Action (the “Operative Complaint.”)] Defendant denies the
2 allegations in the Operative Complaint, denies any failure to comply with the laws
3 identified in in the Operative Complaint and denies any and all liability for the causes of
4 action alleged.

5 2.2. Pursuant to Labor Code § 2699.3(a), Plaintiff gave timely written notice to Defendant and
6 the LWDA by sending the PAGA Notice.

7 2.3. On April 12, 2022, the Parties participated in an all-day mediation presided over by Hon.
8 Carl West (Ret.) , and while the Action was not resolved during the mediation, the mediator’s
9 continued efforts ultimately led to this Agreement to settle the Action.

10 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, a sample of time and
11 payroll records, policy documents, and information regarding the class statistics. Plaintiff’s
12 investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v.*
13 *Foot Locker Retail, Inc.*, 48 Cal. App. 4th 1794, 1801 (1996) and *Kullar v. Foot Locker*
14 *Retail, Inc.*, 168 Cal. App. 4th 116, 129-130 (2008) (“*Dunk/Kullar*”).

15 2.5. The Court has not granted class certification.

16 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any
17 other pending matter or action asserting claims that will be extinguished or affected by the
18 Settlement.

19
20 **3. MONETARY TERMS.**

21 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant
22 promises to pay \$300,000.00 and no more as the Gross Settlement Amount, and to
23 separately pay any and all employer payroll taxes owed on the Wage Portions of the
24 Individual Class Payments up to a maximum aggregate total of \$2,818.70, which
25 represents the estimated amount of employer’s side payroll taxes for all Wage Portions
26 owed on Individual Class Payments. Any amount due in excess of \$2,818.70, shall be paid
27 from the Gross Settlement Amount.. Defendant has no obligation to pay the Gross
28 Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 6.1 of

1 this Agreement. The Administrator will disburse the entire Gross Settlement Amount
2 without asking or requiring Participating Class Members or Aggrieved Employees to
3 submit any claim as a condition of payment. None of the Gross Settlement Amount will
4 revert to Defendant.

5 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the
6 following payments from the Gross Settlement Amount, in the amounts specified by the
7 Court in the Final Approval:

8 3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of
9 not more than \$10,000.00 (in addition to any Individual Class Payment and any
10 Individual PAGA Payment the Class Representative is entitled to receive as a
11 Participating Class Member). Defendant will not oppose Plaintiff's request for a
12 Class Representative Service Payment that does not exceed this amount. As part of
13 the motion for Class Counsel Fees Payment and Class Litigation Expenses
14 Payment, Plaintiff will seek Court approval for any Class Representative Service
15 Payments no later than 16 court days prior to the Final Approval Hearing. If the
16 Court approves a Class Representative Service Payment less than the amount
17 requested, the Administrator will retain the remainder in the Net Settlement
18 Amount. The Administrator will pay the Class Representative Service Payment
19 using IRS Form 1099. Plaintiff assumes full responsibility and liability for
20 employee taxes owed on the Class Representative Service Payment.

21 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33 1/3%,
22 which is currently estimated to be \$100,000.00 and a Class Counsel Litigation
23 Expenses Payment of not more than \$20,000.00. Defendant will not oppose
24 requests for these payments provided that do not exceed these amounts. Plaintiff
25 and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class
26 Litigation Expenses Payment no later than 16 court days prior to the Final
27 Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a
28 Class Counsel Litigation Expenses Payment less than the amounts requested, the

1 Administrator will allocate the remainder to the Net Settlement Amount. Released
2 Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel
3 arising from any claim to any portion any Class Counsel Fee Payment and/or Class
4 Counsel Litigation Expenses Payment. The Administrator will pay the Class
5 Counsel Fees Payment and Class Counsel Expenses Payment using one or more
6 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes
7 owed on the Class Counsel Fees Payment and the Class Counsel Litigation
8 Expenses Payment and holds Defendant harmless, and indemnifies Defendant,
9 from any dispute or controversy regarding any division or sharing of any of these
10 Payments.

11 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$15,000
12 except for a showing of good cause and as approved by the Court. To the extent
13 the Administration Expenses are less or the Court approves payment less than
14 \$15,000.00, the Administrator will retain the remainder in the Net Settlement
15 Amount.

16 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by
17 (a) dividing the Net Settlement Amount by the total number of Workweeks worked
18 by all Participating Class Members during the Class Period and (b) multiplying the
19 result by each Participating Class Member's Workweeks.

20 3.2.4.1. Tax Allocation of Individual Class Payments. 10% of each Participating
21 Class Member's Individual Class Payment will be allocated to settlement
22 of wage claims (the "Wage Portion"). The Wage Portions are subject to tax
23 withholding and will be reported on an IRS W-2 Form. The 90% of each
24 Participating Class Member's Individual Class Payment will be allocated
25 to settlement of claims for interest and penalties (the "Non-Wage
26 Portion").^{vi} The Non-Wage Portions are not subject to wage withholdings
27 and will be reported on IRS 1099 Forms. Participating Class Members
28 assume full responsibility and liability for any employee taxes owed on

1 their Individual Class Payment.

2 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual
3 Class Payments. Non-Participating Class Members will not receive any
4 Individual Class Payments. The Administrator will retain amounts equal to
5 their Individual Class Payments in the Net Settlement Amount for
6 distribution to Participating Class Members on a pro rata basis.

7 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
8 \$\$30,000.00 to be paid from the Gross Settlement Amount, with 75% (\$22,500.00)
9 allocated to the LWDA PAGA Payment and 25% (\$7,500.00) allocated to the
10 Individual PAGA Payments.

11 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a)
12 dividing the amount of the Aggrieved Employees' 25% share of PAGA
13 Penalties \$7,500.00 by the total number of PAGA Period Pay Periods
14 worked by all Aggrieved Employees during the PAGA Period and (b)
15 multiplying the result by each Aggrieved Employee's PAGA Period Pay
16 Periods. Aggrieved Employees assume full responsibility and liability for
17 any taxes owed on their Individual PAGA Payment.

18 3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested,
19 the Administrator will allocate the remainder to the Net Settlement
20 Amount. The Administrator will report the Individual PAGA Payments on
21 IRS 1099 Forms.

22
23 **4. SETTLEMENT FUNDING AND PAYMENTS.**

24 4.1. Class Data. Not later than 30 days after the Court grants Preliminary Approval of the
25 Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in
26 the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
27 Administrator must maintain the Class Data in confidence, use the Class Data only for
28

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

9 4.2. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement
10 Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll
11 taxes by transmitting the funds to the Administrator based on the following schedule:

- 12 a. An initial payment of \$100,000.00 within 5 business days of the Court's order
13 granting final approval of the settlement; and
14 b. Six equal monthly payments starting 30 calendar days after the initial payment
15 due date.

16 4.3. Payments from the Gross Settlement Amount. Within 14 days after Defendant fully funds
17 the Gross Settlement Amount, the Administrator will mail checks for all Individual Class
18 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the
19 Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel
20 Litigation Expenses Payment, and the Class Representative Service Payment.
21 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
22 Payment and the Class Representative Service Payment shall not precede disbursement of
23 Individual Class Payments and Individual PAGA Payments.

24 4.3.1. The Administrator will issue checks for the Individual Class Payments and/or
25 Individual PAGA Payments and send them to the Class Members via First Class
26 U.S. Mail, postage prepaid. The face of each check shall prominently state the
27 date (not less than 180 days after the date of mailing) when the check will be
28 voided. The Administrator will cancel all checks not cashed by the void date. The

1 Administrator will send checks for Individual Settlement Payments to all
2 Participating Class Members (including those for whom Class Notice was returned
3 undelivered). The Administrator will send checks for Individual PAGA Payments
4 to all Aggrieved Employees including Non-Participating Class Members who
5 qualify as Aggrieved Employees (including those for whom Class Notice was
6 returned undelivered). The Administrator may send Participating Class Members a
7 single check combining the Individual Class Payment and the Individual PAGA
8 Payment. Before mailing any checks, the Settlement Administrator must update
9 the recipients' mailing addresses using the National Change of Address Database.

10 4.3.2. The Administrator must conduct a Class Member Address Search for all other
11 Class Members whose checks are returned undelivered without USPS forwarding
12 address. Within 7 days of receiving a returned check the Administrator must re-
13 mail checks to the USPS forwarding address provided or to an address ascertained
14 through the Class Member Address Search. The Administrator need not take
15 further steps to deliver checks to Class Members whose re-mailed checks are
16 returned as undelivered. The Administrator shall promptly send a replacement
17 check to any Class Member whose original check was lost or misplaced, requested
18 by the Class Member prior to the void date.

19 4.3.3. For any Class Member whose Individual Class Payment check or Individual
20 PAGA Payment check is uncashed and cancelled after the void date, the
21 Administrator shall transmit the funds represented by such checks [to the
22 California Controller's Unclaimed Property Fund in the name of the Class Member
23 thereby leaving no "unpaid residue" subject to the requirements of California Code
24 of Civil Procedure § 384(b).]

25 4.3.4. The payment of Individual Class Payments and Individual PAGA Payments shall
26 not obligate Defendant to confer any additional benefits or make any additional
27 payments to Class Members (such as 401(k) contributions or bonuses) beyond
28 those specified in this Agreement.

1
2 **5. RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire**
3 **Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of**
4 **the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release**
5 **claims against all Released Parties as follows:**

6 5.1. Plaintiff's Release. Plaintiff and his or her respective former and present spouses,
7 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally,
8 release and discharge Released Parties from all claims, transactions, or occurrences,
9 including, but not limited to: (a) all claims that were, or reasonably could have been,
10 alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims
11 that were, or reasonably could have been, alleged based on facts contained in the Operative
12 Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under
13 6.2, below. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or
14 actions to enforce this Agreement, or to any claims for vested benefits, unemployment
15 benefits, disability benefits, social security benefits, workers' compensation benefits that
16 arose at any time, or based on occurrences outside the Class Period. Plaintiff
17 acknowledges that Plaintiff may discover facts or law different from, or in addition to, the
18 facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that
19 Plaintiff's Release shall be and remain effective in all respects, notwithstanding such
20 different or additional facts or Plaintiff's discovery of them.

21 5.1.1. Plaintiff's Waiver of Rights Under California Civil Code § 1542. For purposes of
22 Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions,
23 rights, and benefits, if any, of Section 1542 of the California Civil Code, which
24 reads:

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

5.2. Release by Participating Class Members Who Are Not Aggrieved Employees: All

1 Participating Class Members, on behalf of themselves and their respective former and
2 present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
3 release Released Parties from (i) all claims that were alleged, or reasonably could have
4 been alleged, based on the Class Period facts stated in the Operative Complaint and
5 ascertained in the course of the Action including, all statutes/ordinances referenced in the
6 Operative Complaint and corresponding provisions of the California Industrial Welfare
7 Commission Wage Orders and the California Code of Regulations, including but not
8 limited to (1) the California Code of Regulations, Title 8, §11050, (2) Labor Code Sections
9 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2,
10 1198, 2802, and 2698 *et seq.*, as related to the above claims; (3) the Fair Labor Standards
11 Act, 29 U.S.C. § 201 *et seq.*, Participating Class Members who negotiate or otherwise
12 deposit their Settlement Payment Check will be deemed to have opted into the Action for
13 purposes of the Fair Labor Standards Act (“FLSA”) and as to those Class Members, they
14 expressly waive and release any FLSA claims arising during the Class Period and
15 reasonably related to the claims and allegations in the Operative Complaint. This release
16 excludes the release of claims not permitted by law. The following language will be
17 printed on the reverse of each Settlement Payment Check, or words to this effect: “By
18 endorsing or otherwise negotiating this check, I acknowledge that I read, understood, and
19 agree to the terms set forth in the Notice of Class Action Settlement and I consent to join in
20 the FLSA portion of the Action, elect to participate in the settlement of the FLSA claims,
21 and agree to release all of my FLSA claims that are covered by the Settlement,” and (4) all
22 related federal, state or local statutes, common law, ordinances, regulations, or provisions
23 relating to the facts and claims in the Action, including claims for continuing wages, failure
24 to pay wages, failure to pay wages in a timely manner, failure to pay minimum wages,
25 failure to pay overtime, failure to provide allegedly required wage statements, failure to
26 provide meal or rest breaks, liquidated damages, civil penalties, premium wages, claims for
27 injunctive relief and restitution under California Business & Professions Code § 17200,
28 interest, costs and attorneys’ fees, including Labor Code Sections 218.5 and 218.6, Code of

1 Civil Procedure Section 1021.5 and Civil Code Section 3287. Except as set forth in
2 Section 5.3 of this Agreement, Participating Class Members do not release any other
3 claims, including claims for vested benefits, wrongful termination, violation of the Fair
4 Employment and Housing Act, unemployment insurance, disability, social security,
5 workers' compensation, or claims based on facts occurring outside the Class Period.

6 5.3. Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-
7 Participating Class Members who are Aggrieved Employees are deemed to release, on
8 behalf of themselves and their respective former and present representatives, agents,
9 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all
10 claims for PAGA penalties that were alleged, or reasonably could have been alleged, based
11 on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice and
12 ascertained in the course of the Action including, all statutes/ordinances referenced in the
13 Operative Complaint and corresponding provisions of the California Industrial Welfare
14 Commission Wage Orders and the California Code of Regulations, including but not
15 limited to (1) the California Code of Regulations, Title 8, §11050, and (2) Labor Code
16 Sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194,
17 1194.2, 1198, 2802, and 2698 *et seq.*, as related to the above claims.

18
19 **6. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare**
20 **and file a motion for preliminary approval ("Motion for Preliminary Approval") that**
21 **complies with the Court's current checklist for Preliminary Approvals.**

22 6.1. Defendant's Declaration in Support of Preliminary Approval. Within 30 days of the full
23 execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed
24 Declaration from Defendant and Defense Counsel disclosing all facts relevant to any actual
25 or potential conflicts of interest with the Administrator and Cy Pres Recipient. In their
26 Declarations, Defense Counsel and Defendant shall aver that they are not aware of any
27 other pending matter or action asserting claims that will be extinguished or adversely
28 affected by the Settlement.

1 6.2. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all
2 documents necessary for obtaining Preliminary Approval, including: (i) a draft of the
3 notice, and memorandum in support, of the Motion for Preliminary Approval that includes
4 an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA
5 Settlement under Labor Code § 2699(f)(2)); (ii) a draft proposed Order Granting
6 Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class
7 Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid
8 for administering the Settlement and attesting to its willingness to serve; competency;
9 operative procedures for protecting the security of Class Data; amounts of insurance
10 coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant
11 to any actual or potential conflicts of interest with Class Members [and/or the proposed Cy
12 Pres]; and the nature and extent of any financial relationship with Plaintiff, Class Counsel
13 or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and
14 competency to serve and disclosing all facts relevant to any actual or potential conflicts of
15 interest with Class Members, [and/or] the Administrator [and/or the proposed *Cy Pres*]; (v)
16 a signed declaration from each Class Counsel firm attesting to its competency to represent
17 the Class Members; its timely transmission to the LWDA of all necessary PAGA
18 documents (initial notice of violations (Labor Code § 2699.3(a)), Operative Complaint
19 (Labor Code § 2699(l)(1)), this Agreement (Labor Code § 2699(l)(2)); (vi) a redlined
20 version of the parties' Agreement showing all modifications made to the Model Agreement
21 ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict
22 of interest with Class Members, the Administrator and/or the Cy Pres Recipient. In their
23 Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of
24 any other pending matter or action asserting claims that will be extinguished or adversely
25 affected by the Settlement.

26 6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible
27 for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30
28 days after the full execution of this Agreement; obtaining a prompt hearing date for the

1 Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the
2 Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's
3 Preliminary Approval to the Administrator.

4 6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
5 Preliminary Approval and/or the supporting declarations and documents, Class Counsel
6 and Defense Counsel will expeditiously work together on behalf of the Parties by meeting
7 in person or by telephone, and in good faith, to resolve the disagreement. If the Court does
8 not grant Preliminary Approval or conditions Preliminary Approval on any material
9 change to this Agreement, Class Counsel and Defense Counsel will expeditiously work
10 together on behalf of the Parties by meeting in person or by telephone, and in good faith, to
11 modify the Agreement and otherwise satisfy the Court's concerns.

12
13 **7. SETTLEMENT ADMINISTRATION.**

14 7.1. Selection of Administrator. The Parties have jointly selected _ to serve as the
15 Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to
16 be bound by this Agreement and to perform, as a fiduciary, all duties specified in this
17 Agreement in exchange for payment of Administration Expenses. The Parties and their
18 Counsel represent that they have no interest or relationship, financial or otherwise, with the
19 Administrator other than a professional relationship arising out of prior experiences
20 administering settlements.

21 7.2. Employer Identification Number. The Administrator shall have and use its own Employer
22 Identification Number for purposes of calculating payroll tax withholdings and providing
23 reports state and federal tax authorities.

24 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
25 the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation §
26 468B-1.

27 7.4. Notice to Class Members.

28 7.4.1. No later than three (3) business days after receipt of the Class Data, the

1 Administrator shall notify Class Counsel that the list has been received and state
2 the number of Class Members, PAGA Members, Workweeks, and Pay Periods in
3 the Class Data.

4 7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14 days
5 after receiving the Class Data, the Administrator will send to all Class Members
6 identified in the Class Data, via first-class United States Postal Service (“USPS”)
7 mail, the Class Notice with Spanish translation substantially in the form attached to
8 this Agreement as Exhibit A. The first page of the Class Notice shall prominently
9 estimate the dollar amounts of any Individual Class Payment and/or Individual
10 PAGA Payment payable to the Class Member, and the number of Workweeks and
11 PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing
12 Class Notices, the Administrator shall update Class Member addresses using the
13 National Change of Address database.

14 7.4.3. Not later than 3 business days after the Administrator’s receipt of any Class Notice
15 returned by the USPS as undelivered, the Administrator shall re-mail the Class
16 Notice using any forwarding address provided by the USPS. If the USPS does not
17 provide a forwarding address, the Administrator shall conduct a Class Member
18 Address Search, and re-mail the Class Notice to the most current address obtained.
19 The Administrator has no obligation to make further attempts to locate or send
20 Class Notice to Class Members whose Class Notice is returned by the USPS a
21 second time.

22 7.4.4. The deadlines for Class Members’ written objections, Challenges to Workweeks
23 and/or Pay Periods, and Requests for Exclusion will be extended an additional 14
24 days beyond the 60 days otherwise provided in the Class Notice for all Class
25 Members whose notice is re-mailed. The Administrator will inform the Class
26 Member of the extended deadline with the re-mailed Class Notice.

27 7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
28 discovers any persons who believe they should have been included in the Class

1 Data and should have received Class Notice, the Parties will expeditiously meet
2 and confer in person or by telephone, and in good faith, in an effort to agree on
3 whether to include them as Class Members. If the Parties agree, such persons will
4 be Class Members entitled to the same rights as other Class Members, and the
5 Administrator will send, via email or overnight delivery, a Class Notice requiring
6 them to exercise options under this Agreement not later than 14 days after receipt
7 of Class Notice, or the deadline dates in the Class Notice, which ever are later.

8 **7.5. Requests for Exclusion (Opt-Outs).**

9 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement
10 must send the Administrator, by fax, email, or mail, a signed written Request for
11 Exclusion not later than 60 days after the Administrator mails the Class Notice
12 (plus an additional 14 days for Class Members whose Class Notice is re-mailed).

13 A Request for Exclusion is a letter from a Class Member or his/her representative
14 that reasonably communicates the Class Member's election to be excluded from
15 the Settlement and includes the Class Member's name, address and email address
16 or telephone number. To be valid, a Request for Exclusion must be timely faxed,
17 emailed, or postmarked by the Response Deadline.

18 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it
19 fails to contain all the information specified in the Class Notice. The Administrator
20 shall accept any Request for Exclusion as valid if the Administrator can reasonably
21 ascertain the identity of the person as a Class Member and the Class Member's
22 desire to be excluded. The Administrator's determination shall be final and not
23 appealable or otherwise susceptible to challenge. If the Administrator has reason to
24 question the authenticity of a Request for Exclusion, the Administrator may
25 demand additional proof of the Class Member's identity. The Administrator's
26 determination of authenticity shall be final and not appealable or otherwise
27 susceptible to challenge.

28 7.5.3. Every Class Member who does not submit a timely and valid Request for

1 Exclusion is deemed to be a Participating Class Member under this Agreement,
2 entitled to all benefits and bound by all terms and conditions of the Settlement,
3 including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3
4 of this Agreement, regardless whether the Participating Class Member actually
5 receives the Class Notice or objects to the Settlement.

6 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a
7 Non-Participating Class Member and shall not receive an Individual Class
8 Payment or have the right to object to the class action components of the
9 Settlement. Because future PAGA claims are subject to claim preclusion upon
10 entry of the Judgment, Non-Participating Class Members who are Aggrieved
11 Employees are deemed to release the claims identified in Paragraph 6.4 of this
12 Agreement and are eligible for an Individual PAGA Payment.

13 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have 60 days after the
14 Administrator mails the Class Notice (plus an additional 14 days for Class Members whose
15 Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay
16 Periods (if any) allocated to the Class Member in the Class Notice. The Class Member
17 may challenge the allocation by communicating with the Administrator via fax, email or
18 mail. The Administrator must encourage the challenging Class Member to submit
19 supporting documentation. In the absence of any contrary documentation, the
20 Administrator is entitled to presume that the Workweeks contained in the Class Notice are
21 correct so long as they are consistent with the Class Data. The Administrator's
22 determination of each Class Member's allocation of Workweeks and/or Pay Periods shall
23 be final and not appealable or otherwise susceptible to challenge. The Administrator shall
24 promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods
25 to Defense Counsel and Class Counsel and the Administrator's determination the
26 challenges.

27 7.7. Objections to Settlement.

28 7.7.1. Only Participating Class Members may object to the class action components of

1 the Settlement and/or this Agreement, including contesting the fairness of the
2 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
3 Counsel Litigation Expenses Payment and/or Class Representative Service
4 Payment.

5 7.7.2. Participating Class Members may send written objections to the Administrator, by
6 fax, email, or mail. In the alternative, Participating Class Members may appear in
7 Court (or hire an attorney to appear in Court) to present verbal objections at the
8 Final Approval Hearing. A Participating Class Member who elects to send a
9 written objection to the Administrator must do so not later than [60] days after the
10 Administrator's mailing of the Class Notice (plus an additional 14 days for Class
11 Members whose Class Notice was re-mailed).

12 7.7.3. Non-Participating Class Members have no right to object to any of the class action
13 components of the Settlement.

14 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
15 performed or observed by the Administrator contained in this Agreement or otherwise.

16 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will establish
17 and maintain and use an internet website to post information of interest to Class
18 Members including the date, time and location for the Final Approval Hearing and
19 copies of the Settlement Agreement, Motion for Preliminary Approval, the
20 Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion
21 for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and
22 Class Representative Service Payment, the Final Approval and the Judgment. The
23 Administrator will also maintain and monitor an email address and a toll-free
24 telephone number to receive Class Member calls, faxes and emails.

25 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
26 promptly review on a rolling basis Requests for Exclusion to ascertain their
27 validity. Not later than 5 days after the expiration of the deadline for submitting
28 Requests for Exclusion, the Administrator shall email a list to Class Counsel and

1 Defense Counsel containing (a) the names and other identifying information of
2 Class Members who have timely submitted valid Requests for Exclusion
3 (“Exclusion List”); (b) the names and other identifying information of Class
4 Members who have submitted invalid Requests for Exclusion; (c) copies of all
5 Requests for Exclusion from Settlement submitted (whether valid or invalid).

6 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written
7 reports to Class Counsel and Defense Counsel that, among other things, tally the
8 number of: Class Notices mailed or re-mailed, Class Notices returned undelivered,
9 Requests for Exclusion (whether valid or invalid) received, objections received,
10 challenges to Workweeks and/or Pay Periods received and/or resolved, and checks
11 mailed for Individual Class Payments and Individual PAGA Payments (“Weekly
12 Report”). The Weekly Reports must include provide the Administrator’s
13 assessment of the validity of Requests for Exclusion and attach copies of all
14 Requests for Exclusion and objections received.

15 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to
16 address and make final decisions consistent with the terms of this Agreement on all
17 Class Member challenges over the calculation of Workweeks and/or Pay Periods.
18 The Administrator’s decision shall be final and not appealable or otherwise
19 susceptible to challenge.

20 7.8.5. Administrator’s Declaration. Not later than 14 days before the date by which
21 Plaintiff is required to file the Motion for Final Approval of the Settlement, the
22 Administrator will provide to Class Counsel and Defense Counsel, a signed
23 declaration suitable for filing in Court attesting to its due diligence and compliance
24 with all of its obligations under this Agreement, including, but not limited to, its
25 mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing
26 of Class Notices, attempts to locate Class Members, the total number of Requests
27 for Exclusion from Settlement it received (both valid or invalid), the number of
28 written objections and attach the Exclusion List. The Administrator will

1 supplement its declaration as needed or requested by the Parties and/or the Court.
2 Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

3 7.8.6. Final Report by Settlement Administrator. Within 10 days after the Administrator
4 disburses all funds in the Gross Settlement Amount, the Administrator will provide
5 Class Counsel and Defense Counsel with a final report detailing its disbursements
6 by employee identification number only of all payments made under this
7 Agreement. At least 15 days before any deadline set by the Court, the
8 Administrator will prepare, and submit to Class Counsel and Defense Counsel, a
9 signed declaration suitable for filing in Court attesting to its disbursement of all
10 payments required under this Agreement. Class Counsel is responsible for filing
11 the Administrator's declaration in Court.
12

13 **8. CLASS SIZE ESTIMATES [and ESCALATOR CLAUSE]**

14 If the number of Workweeks is 22,000 or more, i.e. 10% more than this estimate, the Gross Settlement
15 Amount shall be increased by the percentage that that actual number of pay periods exceeds 22,000. In the
16 alternative, Defendant can elect to end the Class Period on the date on which the escalator provision is
17 triggered such that the gross settlement amount is not increased.
18

19 **9. DEFENDANT'S RIGHT TO WITHDRAW.**

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

1 **10. MOTION FOR FINAL APPROVAL.**

2 Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a
3 motion for final approval of the Settlement that includes a request for approval of the PAGA settlement
4 under Labor Code § 2699(I), a Proposed Final Approval Order and a proposed Judgment (collectively
5 “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not
6 later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel
7 will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any
8 disagreements concerning the Motion for Final Approval.

9 10.1. Response to Objections. Each Party retains the right to respond to any objection raised by
10 a Participating Class Member, including the right to file responsive documents in Court no
11 later than [five] court days prior to the Final Approval Hearing, or as otherwise ordered or
12 accepted by the Court.

13 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
14 Approval on any material change to the Settlement (including, but not limited to, the scope
15 of release to be granted by Class Members), the Parties will expeditiously work together in
16 good faith to address the Court’s concerns by revising the Agreement as necessary to
17 obtain Final Approval. The Court’s decision to award less than the amounts requested for
18 the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
19 Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute
20 a material modification to the Agreement within the meaning of this paragraph.

21 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the
22 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
23 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
24 administration matters, and (iii) addressing such post-Judgment matters as are permitted by
25 law.

26 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
27 conditions of this Agreement, specifically including the Class Counsel Fees Payment and
28 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the

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

10 10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
11 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
12 material modification of this Agreement (including, but not limited to, the scope of release
13 to be granted by Class Members), this Agreement shall be null and void. The Parties shall
14 nevertheless expeditiously work together in good faith to address the appellate court's
15 concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis,
16 any additional Administration Expenses reasonably incurred after remittitur. An appellate
17 decision to vacate, reverse, or modify the Court's award of the Class Representative
18 Service Payment or any payments to Class Counsel shall not constitute a material
19 modification of the Judgment within the meaning of this paragraph, as long as the Gross
20 Settlement Amount remains unchanged.

21
22 **11. AMENDED JUDGMENT.**

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

25
26 **12. ADDITIONAL PROVISIONS.**

27 12.1. No Admission of Liability, Class Certification or Representative Manageability for Other
28 Purposes. This Agreement represents a compromise and settlement of highly disputed

1 claims. Nothing in this Agreement is intended or should be construed as an admission by
2 Defendant that any of the allegations in the Operative Complaint have merit or that
3 Defendant has any liability for any claims asserted; nor should it be intended or construed
4 as an admission by Plaintiff that Defendant's defenses in the Action have merit. The
5 Parties agree that class certification and representative treatment is for purposes of this
6 Settlement only. If, for any reason the Court does grant Preliminary Approval, Final
7 Approval or enter Judgment, Defendant reserves the right to contest certification of any
8 class for any reasons, and Defendant reserves all available defenses to the claims in the
9 Action, and Plaintiff reserves the right to move for class certification on any grounds
10 available and to contest Defendant's defenses. The Settlement, this Agreement and Parties'
11 willingness to settle the Action will have no bearing on, and will not be admissible in
12 connection with, any litigation (except for proceedings to enforce or effectuate the
13 Settlement and this Agreement).

14 12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and
15 Defense Counsel separately agree that, until the Motion for Preliminary Approval of
16 Settlement is filed, they and each of them will not disclose, disseminate and/or publicize,
17 or cause or permit another person to disclose, disseminate or publicize, any of the terms of
18 the Agreement directly or indirectly, specifically or generally, to any person, corporation,
19 association, government agency, or other entity except: (1) to the Parties' attorneys,
20 accountants, or spouses, all of whom will be instructed to keep this Agreement
21 confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to
22 appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in
23 response to an inquiry or subpoena issued by a state or federal government agency. Each
24 Party agrees to immediately notify each other Party of any judicial or agency order,
25 inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and
26 Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or
27 other communication, before the filing of the Motion for Preliminary Approval, any with
28 third party regarding this Agreement or the matters giving rise to this Agreement except to

1 respond only that “the matter was resolved,” or words to that effect. This paragraph does
2 not restrict Class Counsel’s communications with Class Members in accordance with Class
3 Counsel’s ethical obligations owed to Class Members.

4 12.3. No Solicitation. The Parties separately agree that they and their respective counsel and
5 employees will not solicit any Class Member to opt out of or object to the Settlement, or
6 appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
7 Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s
8 ethical obligations owed to Class Members.

9 12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
10 together with its attached exhibits shall constitute the entire agreement between the Parties
11 relating to the Settlement, superseding any and all oral representations, warranties,
12 covenants, or inducements made to or by any Party.

13 12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
14 represent that they are authorized by Plaintiff and Defendant, respectively, to take all
15 appropriate action required or permitted to be taken by such Parties pursuant to this
16 Agreement to effectuate its terms, and to execute any other documents reasonably required
17 to effectuate the terms of this Agreement including any amendments to this Agreement.

18 12.6. Cooperation. The Parties and their counsel will cooperate with each other and use their
19 best efforts, in good faith, to implement the Settlement by, among other things, modifying
20 the Settlement Agreement, submitting supplemental evidence and supplementing points
21 and authorities as requested by the Court. In the event the Parties are unable to agree upon
22 the form or content of any document necessary to implement the Settlement, or on any
23 modification of the Agreement that may become necessary to implement the Settlement,
24 the Parties will seek the assistance of a mediator and/or the Court for resolution.

25 12.7. No Prior Assignments. The Parties separately represent and warrant that they have not
26 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
27 encumber to any person or entity and portion of any liability, claim, demand, action, cause
28 of action, or right released and discharged by the Party in this Settlement.

- 1 12.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are
2 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be
3 relied upon as such within the meaning of United States Treasury Department Circular 230
4 (31 CFR Part 10, as amended) or otherwise.
- 5 12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended,
6 modified, changed, or waived only by an express written instrument signed by all Parties
7 or their representatives, and approved by the Court.
- 8 12.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the
9 benefit of, the successors of each of the Parties.
- 10 12.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
11 governed by and interpreted according to the internal laws of the state of California,
12 without regard to conflict of law principles.
- 13 12.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
14 this Agreement. This Agreement will not be construed against any Party on the basis that
15 the Party was the drafter or participated in the drafting.
- 16 12.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
17 during Action and in this Agreement relating to the confidentiality of information shall
18 survive the execution of this Agreement.
- 19 12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to
20 Evidence Code § 1152, and all copies and summaries of the Class Data provided to Class
21 Counsel by Defendant in connection with the mediation, other settlement negotiations, or
22 in connection with the Settlement, may be used only with respect to this Settlement, and no
23 other purpose, and may not be used in any way that violates any existing contractual
24 agreement, statute, or rule of court. Not later than 90 days after the date when the Court
25 discharges the Administrator's obligation to provide a Declaration confirming the final pay
26 out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class
27 Data received from Defendant unless, prior to the Court's discharge of the Administrator's
28 obligation, Defendant makes a written request to Class Counsel for the return, rather than

1 the destructions, of Class Data.

2 12.15. Headings. The descriptive heading of any section or paragraph of this Agreement is
3 inserted for convenience of reference only and does not constitute a part of this
4 Agreement.

5 12.16. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be
6 to calendar days. In the event any date or deadline set forth in this Agreement falls on a
7 weekend or federal legal holiday, such date or deadline shall be on the first business day
8 thereafter.

9 12.17. Notice. All notices, demands or other communications between the Parties in connection
10 with this Agreement will be in writing and deemed to have been duly given as of the third
11 business day after mailing by United States mail, or the day sent by email or messenger,
12 addressed as follows:

13
14 To Plaintiff:

15 Kane Moon (SBN 249834)
16 Allen Feghali (SBN 301080)
17 Charlotte Mikat-Stevens (SBN 327047)
18 MOON LAW GROUP, PC
19 1055 W. Seventh St., Suite 1880
20 Los Angeles, California 90017
21 Telephone: (213) 232-3128
22 Facsimile: (213) 232-3125
23 E-mail: kmoon@moonlawgroup.com
24 E-mail: afeghali@moonlawgroup.com
25 E-mail: cmikat-stevens@moonlawgroup.com

26 To Defendant:

27 DERRICK F. COLEMAN
28 derrick@colemanfrost.com
TRISTAN F. MACKPRANG
tristan@colemanfrost.com
COLEMAN FROST LLP
201 Nevada Street
El Segundo, California 90245-4211
Telephone: (424) 277-1650
Facsimile: (310) 648-8739

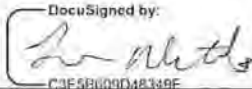
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12.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and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

12.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to 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.

Plaintiff & Class Representative:

Dated: 8/22/2023

By: 
Jose Jesus Martinez

Plaintiff's Counsel:

Dated: 8/22/2023

MOON LAW GROUP, PC
By: Charlotte Mikat-Stevens
Kane Moon
Allen Feghali
Charlotte Mikat-Stevens
Attorneys for Plaintiff

Defendant:

Dated:

Desert Concepts Construction, Inc.
By: _____
Print Name

Signature

Title

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

12.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to 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.

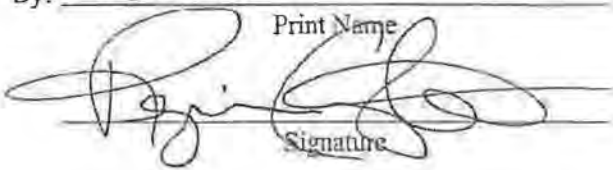
Plaintiff & Class Representative:

Dated: _____ By: _____
Jose Jesus Martinez

Plaintiff's Counsel:

Dated: _____ MOON LAW GROUP, PC
By: _____
Kane Moon
Allen Feghali
Charlotte Mikat-Stevens
Attorneys for Plaintiff

Defendant:

Dated: 10-9-23 Desert Concepts Construction, Inc.
By: Regina Castro
Print Name

Signature
Vice President
Title

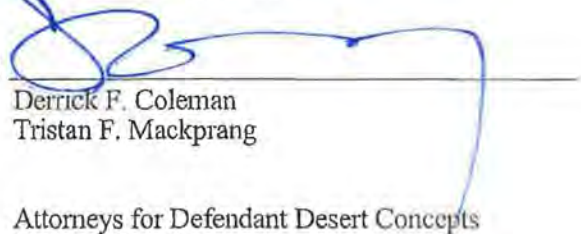
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Defendant's Counsel:

Dated: 9.25.23

COLEMAN FROST LLP

By:



Derrick F. Coleman
Tristan F. Mackprang

Attorneys for Defendant Desert Concepts
Construction, Inc.

EXHIBIT A

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

Martinez v. Desert Concepts Construction, Inc.
Los Angeles Superior Court Case No. 20STCV08933

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

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Desert Concepts Construction, Inc. (“DCCI”) for alleged wage and hour violations. The Action was filed by an former DCCI employee Jose Jesus Martinez (“Plaintiff”) and seeks payment of (1) back wages and other relief for a class of hourly employees (“Class Members”) who worked for DCCI during the Class Period (March 5, 2016 to <<DATE>>); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all hourly employees who worked for DCCI during the PAGA Period (March 5, 2019 to <<DATE>>) (“Aggrieved Employees”). Employees who only worked on prevailing wage projects are not Class Members or Aggrieved Employees.

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

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

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

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

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

- (1) **Do Nothing.** You don’t have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against DCCI.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against DCCI, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

<p>You Don't Have to Do Anything to Participate in the Settlement</p>	<p>If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against DCCI that are covered by this Settlement (Released Claims).</p>
<p>You Can Opt-out of the Class Settlement but not the PAGA Settlement</p> <p>The Opt-out Deadline is [REDACTED]</p>	<p>If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.</p> <p>You cannot opt-out of the PAGA portion of the proposed Settlement. DCCI must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).</p>
<p>Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement</p> <p>Written Objections Must be Submitted by [REDACTED]</p>	<p>All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.</p>
<p>You Can Participate in the [REDACTED] Final Approval Hearing</p>	<p>The Court’s Final Approval Hearing is scheduled to take place on [REDACTED]. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.</p>
<p>You Can Challenge the Calculation of Your Workweeks/Pay Periods</p> <p>Written Challenges Must be Submitted by [REDACTED]</p>	<p>The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to DCCI’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [REDACTED]. See Section 4 of this Notice.</p>

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former DCCI employee. The Action accuses DCCI of violating California labor laws by failing to pay minimum and regular rate wages, overtime compensation, wages due upon termination, and reimbursable business expenses, failing to provide meal periods, rest breaks, and accurate itemized wage statements, and committing unfair business practices. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action: Kane Moon, Allen Feghali, and Charlotte Mikat-Stevens (“Class Counsel”).

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

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

So far, the Court has made no determination whether DCCI or Plaintiff is correct on the merits. In the meantime, Plaintiff and DCCI hired an experienced, neutral mediator who is a retired judge, Hon. Carl West (Ret.), in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and DCCI have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, DCCI does not admit any violations or concede the merit of any claims.

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

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

1. DCCI Will Pay \$300,000.00 as the Gross Settlement Amount (Gross Settlement). DCCI has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorneys’ fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, DCCI will fund the Gross Settlement in accordance with the following schedule:
 - i. An initial payment of \$100,000.00 within 5 days of the Court’s order granting final approval of the settlement; and
 - ii. Six equal monthly payments starting 30 calendar days after the initial payment due date.

All payments will be mailed within 14 days after the last payment is made.

2. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
3. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$100,000.00 (33 1/3% of the Gross Settlement) to Class Counsel for attorneys’ fees and up to \$20,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$10,000.00 as a Class Representative Award to Plaintiff for filing the Action, working with Class Counsel, and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff’s Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$15,000.00 to the Administrator for services administering the Settlement.

- D. Up to \$30,000.00 for PAGA Penalties, allocated 75% (\$22,500.00) to the LWDA PAGA Payment and 25% (\$7,500.00) in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.
- E. DCCI will also be responsible for paying employer side payroll taxes on the wage portion of the settlement in addition to the Gross Settlement Amount. This amount is estimated to be \$2,818.70; however, if the amount owed in employer side payroll taxes exceeds this estimate, any amount in excess of \$2,818.70 will be paid from the Gross Settlement Amount.

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

- 4. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
- 5. Taxes Owed on Payments to Class Members. Plaintiff and DCCI are asking the Court to approve an allocation of 10% of each Individual Class Payment to taxable wages (“Wage Portion”) and 90% to interest and penalties (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. DCCI will separately pay employer payroll taxes (estimated not to exceed \$2,818.70) it owes on the Wage portion. If the amount due in employer payroll taxes exceeds \$2,818.70, any overage will be paid from the Gross Settlement Amount. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

- 6. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller’s Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.
- 7. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, address, and email address or telephone number, and a simple statement that communicates your election to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against DCCI.

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

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

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

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

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action including, all statutes/ordinances referenced in the Operative Complaint and corresponding provisions of the California Industrial Welfare Commission Wage Orders and the California Code of Regulations, including but not limited to (1) the California Code of Regulations, Title 8, §11050, (2) Labor Code Sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1198, 2802, and 2698 *et seq.*, as related to the above claims; (3) the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, Participating Class Members who negotiate or otherwise deposit their Settlement Payment Check will be deemed to have opted into the Action for purposes of the Fair Labor Standards Act (“FLSA”) and as to those Class Members, they expressly waive and release any FLSA claims arising during the Class Period and reasonably related to the claims and allegations in the Operative Complaint. This release excludes the release of claims not permitted by law. The following language will be printed on the reverse of each Settlement Payment Check, or words to this effect: “By endorsing or otherwise negotiating this check, I acknowledge that I read, understood, and agree to the terms set forth in the Notice of Class Action Settlement and I consent to join in the FLSA portion of the Action, elect to participate in the settlement of the FLSA claims, and agree to release all of my FLSA claims that are covered by the Settlement,” and (4) all related federal, state or local statutes, common law, ordinances, regulations, or provisions relating to the facts and claims in the Action, including claims for continuing wages, failure to pay wages, failure to pay wages in a timely manner, failure to pay minimum wages, failure to pay overtime, failure to provide allegedly required wage statements, failure to provide meal or rest breaks, liquidated damages, civil penalties, premium wages, claims for

injunctive relief and restitution under California Business & Professions Code § 17200, interest, costs and attorneys' fees, including Labor Code Sections 218.5 and 218.6, Code of Civil Procedure Section 1021.5 and Civil Code Section 3287. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

11. Aggrieved Employees' PAGA Release. Effective on the date when DCCI fully funds the entire Gross Settlement and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all Aggrieved Employees will be barred from asserting PAGA claims against DCCI, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against DCCI or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

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

All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice and ascertained in the course of the Action including, all statutes/ordinances referenced in the Operative Complaint and corresponding provisions of the California Industrial Welfare Commission Wage Orders and the California Code of Regulations, including but not limited to (1) the California Code of Regulations, Title 8, §11050, and (2) Labor Code Sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1198, 2802, and 2698 *et seq.*, as related to the above claims.

12. Released Parties. The "Released Parties" means: Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Work weeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$7,500.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in DCCI's records, are stated in the first page of this Notice. You have until _____ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your

challenge by signing and sending a letter to the Administrator via mail, email, or fax. Section 9 of this Notice has the Administrator's contact information.

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

5. HOW WILL I GET PAID?

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

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

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

Submit a written and signed letter with your name, present address, and email address or telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Martinez v. Desert Concepts Construction, Inc.* (Case No. 20STCV08933), and include your identifying information (full name, address, and email address or telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself or your representative. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and DCCI are asking the Court to approve. At least 16 court days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses, and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____ or the Court's website _____.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses, and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is [REDACTED]**. 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 *Martinez v. Desert Concepts Construction, Inc.* (Case No. 20STCV08933) and include your name, current address, telephone number, and approximate dates of employment for DCCI and sign the objection. Section 9 of this Notice has the Administrator's contact information.

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

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at _____ in Department 10 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

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

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything DCCI and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to ILYM Group, Inc.'s website at _____. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action, Case No. 20STCV08933. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

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

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E-mail: ekamarzarian@moonlawgroup.com

Settlement Administrator:

Name of Company: ILYM Group, Inc.

Email Address: <<INSERT>>

Mailing Address: <<INSERT>>

Telephone: <<INSERT>>

Fax Number: <<INSERT>>

Website: <<INSERT>>

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund https://www.sco.ca.gov/upd_contact.html or by calling (800) 992-4647 for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

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