

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE**

Civil Complex Center  
751 W. Santa Ana Blvd  
Santa Ana, CA 92701

**SHORT TITLE:** Oda vs. FCWS, Inc., a Missouri corporation

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE**

CASE NUMBER:  
**30-2020-01122098-CU-OE-CXC**

I certify that I am not a party to this cause. I certify that a true copy of the above Order Granting dated 06/16/21 has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practice and addressed as indicated below. This certification occurred at Santa Ana, California on 6/17/21. Following standard court practice the mailing will occur at Sacramento, California on 6/18/21.

POLARIS LAW GROUP LLP  
501 SAN BENITO STREET 200  
HOLLISTER, CA 95023

Clerk of the Court, by: V Harting, Deputy

I certify that I am not a party to this cause. I certify that the following document(s), Order Granting dated 06/16/21, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on June 17, 2021, at 2:59:43 PM PDT. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

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Clerk of the Court, by: V Harting, Deputy

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE**

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12 Tel: (831) 531-4214  
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14 Attorneys for Plaintiff and the Class

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF ORANGE**

17 STEVEN ODA, as an individual and on  
18 behalf of all others similarly situated,

19 Plaintiffs,

20 vs.

21 FCWS, INC., a Missouri corporation; and  
22 DOES 1 through 50, inclusive,

23 Defendants.

Case No.: 30-2020-01122098-CU-OE-CXC

(Assigned to the Hon. Peter Wilson, Dept. CX  
102)

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT**

Date: June 10, 2021

Time: 2:00 p.m.

Dept.: CX102

Complaint Filed: January 6, 2020

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

**JUN 16 2021**

DAVID H. YAMASAKI, Clerk of the Court

BY: \_\_\_\_\_, DEPUTY

1  
2 Plaintiff Steven Oda's ("Plaintiff") application for an Order Granting Preliminary  
3 Approval of Class Action Settlement was filed with the Court on April 1, 2021, and a hearing  
4 was held before this Court on June 10, 2021. Plaintiff's counsel, Max W. Gavron of Diversity  
5 Law Group, P.C., appeared on behalf of Plaintiff, and Defendant's counsel, Alaya B. Meyers /  
6 Tracy R. Williams of Littler Mendelson, P.C., appeared on behalf of Defendant First Class  
7 Workforce Solutions, Inc. ("Defendant").

8 The Court has considered the Class Action Settlement Agreement and Stipulation  
9 ("Stipulation" or "Settlement Agreement"), Amendment to Class Action Settlement Agreement  
10 and Stipulation ("Amendment"), and all other papers filed in this action. True and correct copies  
11 of the Settlement Agreement and Amendment are attached hereto as **Exhibits A and B**,  
12 respectively, which also includes the approved form of Class Notice.

13 NOW THEREFORE, IT IS HEREBY ORDERED:

14 1. This Court grants preliminary approval of the Settlement Agreement and  
15 Amendment between Plaintiff and Defendant filed herewith. The Settlement Agreement appears  
16 to be fair, adequate, and reasonable to the Class.

17 2. The Class Representative and Defendant (hereafter, "Settling Parties"), through  
18 their counsel of record in the Litigation, have reached an agreement to settle the class and PAGA  
19 claims in the Litigation as set forth in the Settlement Agreement and Amendment, on behalf of  
20 the Class (as defined below and in the Settlement Agreement).

21 3. The Court hereby conditionally certifies the following Class for settlement  
22 purposes only:

23 All current and former California employees who were paid  
24 wages and worked for Defendant during the period of December  
25 16, 2018, to July 16, 2020.

26 Should for whatever reason the Settlement Agreement not become Final, the fact that the  
27 Parties were willing to stipulate to certification of a class as part of the Settlement Agreement  
28 shall have no bearing on, or be admissible in connection with, the Litigation or the issue of  
whether a class should be certified in a non-settlement context.

4. The Court appoints and designates: (a) Plaintiff Steven Oda as the Class

1 Representative and (b) Larry W. Lee and Max W. Gavron of Diversity Law Group, P.C. and  
2 William L. Marder of Polaris Law Group as Class Counsel for the Class. Class Counsel is  
3 authorized to act on behalf of the Class with respect to all acts or consents required by, or which  
4 may be given, pursuant to the Settlement Agreement, and such other acts reasonably necessary to  
5 finalize the Settlement Agreement and its terms. Any Class Member may enter an appearance  
6 through his or her own counsel at such Class Member's own expense. Any Class Member who  
7 does not enter an appearance or appear on his or her own behalf will be represented by Class  
8 Counsel.

9         5.       The Court hereby approves the terms and conditions provided for in the  
10 Settlement Agreement and Amendment. The Court finds that on a preliminary basis the  
11 Settlement Agreement falls within the range of reasonableness of a settlement, including the  
12 amount of the PAGA penalties, and appears to be presumptively valid, subject only to any  
13 objections that may be raised at the final fairness hearing and final approval by the Court. It  
14 appears to the Court on a preliminary basis that the settlement is fair, adequate, and reasonable as  
15 to all potential Class Members when balanced against the probable outcome of further litigation  
16 relating to liability and damages issues. It also appears that investigation, research, and court  
17 proceedings have been conducted so that counsel for the Settling Parties are able to reasonably  
18 evaluate their respective positions. It appears to the Court that settlement at this time will avoid  
19 substantial additional costs by all Settling Parties, as well as avoid the delay and risks that would  
20 be presented by the further prosecution of the Litigation. It also appears that settlement has been  
21 reached as a result of intensive, serious, and non-collusive arm's length negotiations.

22         6.       A final fairness hearing on the question of whether the proposed Settlement  
23 Agreement, the allocation of payments to Settlement Class Members, attorneys' fees and costs to  
24 Class Counsel, the payment to the Settlement Administrator, the payment to the Labor  
25 Workforce & Development Agency, and the Class Representative Enhancement Award should  
26 be finally approved as fair, reasonable, and adequate as to the members of the Class is hereby set  
27 for September 30, 2021 at 2:00 p.m. in this Court.

28         7.       The Court hereby approves, as to form and content, the Notice of Class Action

1 Settlement (“Class Notice”) to be sent to Class Members, which is attached hereto as **Exhibit 1**.  
2 The Court finds that distribution of the Class Notice to Class Members substantially in the  
3 manner and form set forth in the Settlement Agreement and this Order meets the requirements of  
4 due process and shall constitute due and sufficient notice to all parties entitled thereto.

5 8. The Court appoints and designates Phoenix Settlement Administrators as the  
6 Settlement Administrator. The Court hereby directs the Settlement Administrator to provide the  
7 approved Class Notice to Class Members using the procedures set forth in the Settlement  
8 Agreement, including providing Spanish language translations.

9 9. Any Class Member may choose to opt out of and be excluded from the Settlement  
10 as provided in the Settlement Agreement, Amendment, and Class Notice, and by following the  
11 instructions for requesting exclusion. Any person who timely and properly opts out of the  
12 Settlement will not be bound by the Settlement Agreement or have any right to object, appeal, or  
13 comment thereon. Any requests for exclusion must be in writing and signed by each such Class  
14 Member opting out and must otherwise comply with the requirements delineated in the Class  
15 Notice. Class Members who have not requested exclusion by submitting a valid and timely  
16 request by the deadline shall be bound by all determinations of the Court, the Settlement  
17 Agreement, and Judgment.

18 10. Any Class Member may object to the Settlement Agreement or express his or her  
19 views regarding the Settlement Agreement and may present evidence and file briefs or other  
20 papers that may be proper and relevant to the issues to be heard and determined by the Court as  
21 provided in the Notice.

22 11. The Motion for Final Approval shall be filed by the Class Representative no later  
23 than sixteen (16) court days before the Settlement Fairness Hearing. Concurrent with the Motion  
24 for Final Approval, the Class Representative shall submit a declaration by the Settlement  
25 Administrator delineating all objections, disputes (including evidence submitted and resolutions),  
26 and requests for exclusion for the Court’s review.

27 12. The Court reserves the right to adjourn or continue the date of the Settlement  
28 Fairness Hearing and all dates provided for in the Settlement Agreement without further notice to

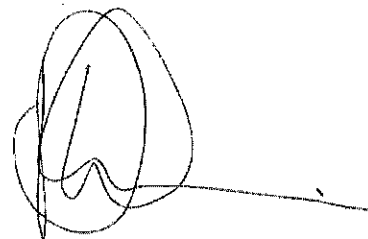
1 the Class, and retains jurisdiction to consider all further applications arising out of or connected  
2 with the Class Settlement Agreement. Plaintiff shall give notice of any continuance of the  
3 Settlement Fairness Hearing to all parties and the LWDA, and shall file a proof of service of  
4 such at least 5 court days prior to the continued hearing.

5 13. The Court sets the following schedule with respect to the administration of the  
6 notice:

- 7 • Defendant to provide data to Settlement Administrator approximately 30 days  
8 after Order (if granted on June 16, 2021: July 16, 2021).
- 9 • Settlement Administrator to mail notice to putative class members within 15 days  
10 after receipt of data (if granted on June 16, 2021: mailed by August 2, 2021);
- 11 • Deadline for class members to submit requests for exclusion or object to the  
12 settlement 45 days after mailing (if notice mailed on August 2, 2021: September  
13 16, 2021);
- 14 • Deadline for class members to submit disputes within 21 days after the date that  
15 the Settlement Administrator first mails the Class Notice (if noticed mailed on  
16 August 2, 2021: August 23, 2021);
- 17 • Date for final approval on September 30, 2021, at 2:00 p.m.

18  
19 IT IS SO ORDERED.

20  
21  
22 DATED: June 16, 2021



23 HON. PETER WILSON  
24 SUPERIOR COURT OF CALIFORNIA

# EXHIBIT A

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9 and on behalf of all others similarly situated

10 ALAYA B. MEYERS, Bar No. 199551  
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Facsimile: 949.724.1201

14 Attorneys for Defendant  
15 FIRST CLASS WORKFORCE SOLUTIONS, INC.  
(ERRONEOUSLY SUED AS FCWS, INC.)  
16

17 SUPERIOR COURT OF CALIFORNIA

18 COUNTY OF ORANGE

19 STEVEN ODA, as an individual and on  
20 behalf of all others similarly situated,

21 Plaintiff,

22 v.

23 FCWS, INC., a Missouri corporation; and  
DOES 1 through 50, inclusive,

24 Defendants.  
25

Case No. 30-2020-01122098-CU-OE-CXC

ASSIGNED FOR ALL PURPOSES TO JUDGE  
PETER WILSON, DEPT. CX-102

**CLASS ACTION SETTLEMENT  
AGREEMENT AND STIPULATION**

Trial Date: None  
Complaint Filed: January 6, 2020

26 This Class Action Settlement Agreement and Stipulation is entered into by and between  
27 Defendant First Class Workforce Solutions, Inc., erroneously sued as FCWS, Inc. ("Defendant") and  
28



1 Plaintiff Steven Oda, as an individual and on behalf of Participating Class Members as defined in  
2 Paragraph 21, below ("Plaintiff").

3 **DEFINITIONS**

4 1. Action. The "Action" means the class action complaint filed on January 6, 2020, in the  
5 Superior Court for the State of California, County of Orange, entitled *STEVEN ODA, as an individual*  
6 *and on behalf of others similarly situated, Plaintiff, vs. FCWS, INC., a Missouri corporation; and*  
7 *DOES 1 through 50, inclusive, Defendants*, Case No. 30-2020-01122098-CU-OE-CXC.

8 2. Agreement. "Agreement" shall refer to the instant Class Action Settlement Agreement  
9 and Stipulation.

10 3. The Class. The "Class" means all Class Members.

11 4. Class Counsel. "Class Counsel" shall mean Larry W. Lee and Max W. Gavron of  
12 Diversity Law Group, P.C., and William L. Marder of Polaris Law Group, LLP.

13 5. Class Counsel's Fees and Expenses. "Class Counsel's Fees and Expenses" means the  
14 total amount of attorneys' fees, litigation costs, and expenses awarded to Class Counsel by the Court  
15 to compensate Class Counsel for representation of the Class Members in this Action, including pre-  
16 filing investigation, filing of the Action, all related litigation activities including discovery, mediation,  
17 this Settlement, and all post-Settlement compliance procedures.

18 6. Class List. "Class List" shall mean a list of Class Members compiled by Defendant  
19 that identifies for each Class Member his/her first and last name, date(s) of employment, full Social  
20 Security number, last-known address, and telephone number (if known). Defendant shall also include  
21 in the Class List the number of Pay Periods for each Class Member, as defined herein.

22 7. Class Members. "Class" or "Class Members" shall be defined as all current and former  
23 California employees who were paid wages and worked for Defendant during the period of December  
24 16, 2018, to July 16, 2020.

25 8. Class Notice. "Class Notice" means the document sent via first class U.S. mail to the  
26 Class following the Preliminary Approval Order, substantially in the form attached hereto as **Exhibit**  
27 **1**, that notifies Class Members of this Agreement and Settlement and includes information as to how  
28

1 the Class Member may opt out of or object to the Settlement, and provides information regarding the  
2 number of Pay Periods worked by the Class Members during the Settlement Period.

3 9. Class Representative Enhancement Award. "Class Representative Enhancement  
4 Award" means the amount awarded by the Court to the Named Plaintiff for his efforts in assisting with  
5 the prosecution and resolution of the Action and in return for executing a general release of all claims,  
6 known and unknown, with Defendant, as set forth herein.

7 10. The Court. The "Court" refers to the Superior Court for the State of California, County  
8 of Orange.

9 11. Defendant. "Defendant" means First Class Workforce Solutions, Inc.

10 12. Defendant's Counsel. "Defendant's Counsel" means Littler Mendelson, P.C.

11 13. Effective Date. The "Effective Date" of this Agreement means the date when all of the  
12 conditions set forth in Paragraph 58 have occurred.

13 14. Employee Taxes. "Employee Taxes" means Participating Class Members' share of all  
14 applicable taxes or withholdings related to benefits received under the Settlement. Plaintiff and  
15 Participating Class Members bear full responsibility for payment of any personal income taxes,  
16 interest, or penalties arising from Settlement Shares or the Class Representative Enhancement Award  
17 paid to them.

18 15. Final Approval Hearing. The "Final Approval Hearing" means the hearing following  
19 Class Notice at which time Plaintiff will request that the Court approve the fairness, reasonableness,  
20 and adequacy of the terms and conditions of the Settlement, enter the Final Judgment (as defined  
21 below), award Class Counsel attorneys' fees and costs, award the Named Plaintiff's Class  
22 Representative Enhancement Award, award the Participating Class Members their Settlement Share,  
23 and take other appropriate or necessary action as described herein.

24 16. Final Judgment. "Final Judgment" means the order or orders entered and filed by the  
25 Court that: (1) finally approves this Settlement, disposes of all issues raised in this Action, and bars  
26 Participating Class Members from reasserting Settled Claims (as defined below) against Released  
27 Parties (as defined below); and (2) awards and orders the payment of all required amounts pursuant to  
28 the terms of this Agreement.

1           17.    Gross Settlement Amount or GSA. The “Gross Settlement Amount” or “GSA” is the  
2 total monetary value of Settlement payable by Defendant as provided herein, which is Two Hundred  
3 Sixty-Three Thousand Two Hundred and Ninety-Six Dollars and No Cents (\$263,296.00). The Gross  
4 Settlement Amount includes all payments to Class Members under the terms of this Agreement, Class  
5 Counsel’s Fees and Expenses, the Settlement Administration Costs, the Class Representative  
6 Enhancement Award, and the payment to the Labor Workforce Development Agency (“LWDA”),  
7 pursuant to the Private Attorneys General Act of the California Labor Code (“PAGA”).

8           18.    Named Plaintiff. “Named Plaintiff” means Plaintiff Steven Oda.

9           19.    Net Settlement Amount or NSA. “Net Settlement Amount” or “NSA” means the Gross  
10 Settlement Amount minus: Class Counsel’s Fees and Expenses, the Settlement Administration Costs,  
11 the Class Representative Enhancement Award, and the payment to the State of California LWDA  
12 pursuant to PAGA.

13           20.    Non-Participating Class Member. “Non-Participating Class Member” means a Class  
14 Member who submits a valid and timely written request to be excluded from the Settlement (aside  
15 from the Release of PAGA), as described herein.

16           21.    Participating Class Members. “Participating Class Members” means Class Members  
17 who do not submit a valid and timely written request to be excluded from the Settlement, as defined  
18 herein.

19           22.    Parties. “Parties” shall mean Named Plaintiff, individually and on behalf of all Class  
20 Members, and Defendant.

21           23.    Pay Period. “Pay Period” shall mean any pay period during the Settlement Period in  
22 which a Class Member received wages from Defendant.

23           24.    Preliminary Approval Order. “Preliminary Approval Order” is the Order entered and  
24 filed by the Court that preliminarily approves the terms and conditions of this Settlement, including  
25 approval of (1) the Class Notice, (2) the Estimated Settlement Share Form, (3) the procedure for opting  
26 out of the Settlement, and (4) the Objection Form.

27           25.    Released Parties. “Released Parties” shall mean Defendant and its past or present  
28 successors and predecessors in interest, acquirers, subsidiaries, affiliates, parents, officers, directors,

1 shareholders, employees, servants, agents, principals, heirs, representatives, accountants, auditors,  
2 consultants, attorneys, trustees, insurers and reinsurers and collectively their respective successors and  
3 predecessors in interest, subsidiaries, affiliates, parents and attorneys.

4 26. Settled Claims. "Settled Claims" mean all claims, demands, rights, liabilities, and  
5 causes of action, whether known or unknown, that were or could have been asserted (whether in tort,  
6 contract, or otherwise) for violation of local, state and federal law arising out, or relating to the claims  
7 or allegations pled in the Action, as well as all claims that arise out of the facts, matters or occurrences  
8 referred to in the Action that could have been alleged as separate claims, causes of action, lawsuits, or  
9 other theories of relief. Settled Claims include all types of relief available for the theories of relief in  
10 the operative complaint, including, without limitation, any claims for inaccurate and/or incomplete  
11 itemized wage statements, late wage payments, failure to record meal periods or maintain accurate  
12 records of the same, damages, restitution, losses, penalties, fines, liens, attorneys' fees, costs,  
13 expenses, debts, interest, penalties, injunctive, or declaratory relief, chargebacks, liquidated damages,  
14 or similar relief, as well as any claims pursuant to PAGA that accrued during the Settlement Period.

15 27. Settlement. "Settlement" shall refer to the agreement of the Parties to settle the claims  
16 as set forth and embodied in this Agreement.

17 28. Settlement Administration Costs. "Settlement Administration Costs" means all fees  
18 and costs owed to the Settlement Administrator in connection with administering the class Settlement  
19 in this Action under the terms of this Agreement, which is currently estimated not to exceed \$9,950.00.

20 29. Settlement Administrator. "Settlement Administrator" shall mean the neutral third-  
21 party administrator, Phoenix Class Action Administration Solutions, mutually agreed upon by the  
22 Parties and to be approved of by the Court.

23 30. Settlement Share. "Settlement Share" means the amount of each Participating Class  
24 Member's share of the Net Settlement Amount, as defined herein, and as determined in accordance  
25 with the terms of this Agreement as set forth in Paragraph 43.

26 31. Settlement Period. "Settlement Period" shall mean the period of December 16, 2018,  
27 to July 16, 2020.

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RECITALS

32. Plaintiff’s employment with Defendant as a temporary services employee began in or around December 2018. On January 6, 2020, while still employed by Defendant, Plaintiff filed a complaint asserting claims for: (1) violation of Cal. Labor Code § 226 (failure to provide accurate itemized wage statements) and (2) violation of Cal. Labor Code § 2698, *et seq.* (for violations of Cal. Labor Code §§ 204, 226, 1174, 1198 and 1199) (hereinafter the “Complaint”).

33. On or about February 6, 2020, Plaintiff purported to file a First Amended Class Action Complaint (the “FAC”), which was rejected by the Court. Since the FAC was rejected by the Court, it is not deemed the operative complaint, and all references herein to the Action are to the claims asserted in the Action.

34. The Parties, through their counsel, agreed to conduct a mediation of this Action with an experienced wage and hour/class action mediator, Kelly Knight, Esq.

35. Class Counsel investigated the facts relating to the Action before the mediation. In preparation for the mediation, the Parties engaged in substantial pre-mediation discovery, sufficient to allow the Parties to evaluate the case, including the exchange of relevant documents, the preparation of sample paystubs and time records, and the exchange of settlement metrics (class size, workweeks/pay periods, hourly pay rates, and so forth).

36. On December 11, 2020, Defendant and Class Counsel, on behalf of Named Plaintiff and the class, attended a full-day mediation with Kelly Knight, Esq., in an attempt to resolve all disputes related to the Action. After lengthy negotiation during which the Class Members, represented by Class Counsel, and Defendant, represented by Defendant’s Counsel, recognized the burdens and risks of continuing with the litigation, the Parties reached an understanding as to the settlement of all of the asserted claims at issue in the Action, subject to final approval of the Court. At mediation, the Parties memorialized the material terms of their agreement to settle the Action in a Memorandum of Understanding (“MOU”), which was fully executed by all Parties. Except as set forth in Paragraph 42.c., herein, this Agreement supersedes the MOU, and the MOU shall have no further force and effect once this Agreement is signed by the Parties.

1 37. Defendant denies and continues to deny that it engaged in any misconduct in  
2 connection with its wage-and-hour practices and policies or the claims asserted in the Action, or that  
3 it has any liability or engaged in wrongdoing of any kind associated with the claims alleged in this  
4 Action. Defendant further contends that at all times it has complied with both federal and state wage-  
5 and-hour laws and with all other laws regulating the employer-employee relationship that relate to the  
6 employment of the Class Members.

7 38. Class Counsel is of the opinion that this Settlement is fair, reasonable, and adequate,  
8 and in the best interest of the Class in light of all known fact and circumstances, including the risk of  
9 significant delay, defenses asserted to the merits and class certification, and the numerous and  
10 significant potential appellate issues. While Defendant specifically denies any liability in the Action,  
11 Defendant has agreed to enter into this Settlement to avoid the cost and business disruption associated  
12 with defending the Action.

13 **TERMS AND CONDITIONS**

14 NOW, THEREFORE, in consideration of the Recitals listed above and the promises and  
15 warranties set forth below, and intending to be legally bound and acknowledging the sufficiency of  
16 the consideration and undertakings set herein, Named Plaintiff, individually and on behalf of the  
17 Participating Class Members, on the one hand, and Defendant, on the other hand, agree that the Action  
18 shall be, and is, finally and fully compromised and settled on the following terms and conditions:

19 39. Non-Admission of Liability. The Parties enter into this Agreement to resolve the  
20 dispute that has arisen between them and to avoid the burden, expense, and risk of continued litigation.  
21 In entering into this Agreement, Defendant does not admit, and specifically denies, that it has violated  
22 any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any  
23 statute or any other applicable laws, regulations, or legal requirements; breached any contract; violated  
24 or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful  
25 conduct with respect to the Class Members. Neither this Agreement, nor any of its terms or provisions,  
26 nor any of the negotiations connected with it, shall be construed as an admission or concession by  
27 Defendant of any such violation(s) or failure(s) to comply with any applicable law. Except as  
28 necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and

1 provisions shall not be offered or received as evidence in any action or proceeding to establish any  
2 liability or admission on the part of Defendant or to establish the existence of any condition  
3 constituting a violation of, or a noncompliance with, federal, state, local, or other applicable law. In  
4 addition, the Parties intend this Settlement to be contingent upon the preliminary and final approval  
5 of this Agreement; and the Parties do not waive, and instead expressly reserve, their respective rights  
6 to prosecute and defend this Action as if this Agreement never existed in the event the Settlement is  
7 not fully and finally approved as set forth herein.

8       40. Participating Class Members' Release of Claims. Upon funding of the GSA, Named  
9 Plaintiff and all Participating Class Members hereby do and shall be deemed to have fully, finally, and  
10 forever released, settled, compromised, relinquished, and discharged any and all of the Released  
11 Parties of and from any and all Settled Claims accrued during the Settlement Period, and shall be  
12 permanently enjoined and forever barred from prosecuting any and all Settled Claims released  
13 pursuant to this Paragraph 40 against the Released Parties. Thus, subject to and in accordance with  
14 this Agreement, even if Named Plaintiff or any Participating Class Member may hereafter discover  
15 facts in addition to or different from those they now know or believe to be true with respect to the  
16 subject matter of the Settled Claims, they shall be deemed to have, and by operation of the Final  
17 Judgment shall have, fully, finally, and forever settled and released the Released Parties from any and  
18 all Settled Claims that accrued during the Settlement Period. The Parties agree for settlement purposes  
19 only that, because the Class Members are so numerous, it is impossible or impracticable to have each  
20 Participating Class Member execute this Agreement. Accordingly, the Class Notice will advise all  
21 Class Members of the binding nature of the release and such notice shall have the same force and  
22 effect as if this Agreement were executed by each Class Member. Named Plaintiff represents,  
23 covenants, and warrants that she has not directly or indirectly assigned, transferred, encumbered, or  
24 purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim,  
25 demand, action, cause of action, or rights herein released and discharged, except as set forth herein.

26       41. Release of PAGA. As of the date of the Final Judgment, Named Plaintiff and all Class  
27 Members who were employed by Defendant in the State of California at any time from December 16,  
28 2018 through July 16, 2020 (the "PAGA Period"), release the Released Parties of and from any and

1 all Settled Claims brought under the PAGA, or that could have been asserted under the PAGA based  
2 on the factual allegations in the Action. Class Members will not have the opportunity to opt out or  
3 object to the PAGA Amount and/or release of PAGA claims set forth in this Agreement, although the  
4 settlement of the Settled Claims under the PAGA will be subject to Court approval. Accordingly, all  
5 Class Members, even Non-Participating Class Members, will receive the PAGA Amount. A copy of  
6 this Agreement will be provided to the LWDA concurrently with submission of the Supplemental  
7 Preliminary Approval Motion.

8 42. Full Release by Named Plaintiff. In exchange for receipt of his Class Representative  
9 Enhancement Award, Named Plaintiff fully releases and discharges Defendant and the Released  
10 Parties from any and all claims that Named Plaintiff now has or claims to have, or which Named  
11 Plaintiff at any time heretofore had or claimed to have, or which Named Plaintiff at any time hereafter  
12 may have or claim to have, arising out of or related to any act, omission, event, fact, or other thing that  
13 existed or occurred on or before the date of the Preliminary Approval Order.

14 a. Without limiting the generality of the foregoing, and in addition to the foregoing,  
15 Named Plaintiff specifically and expressly releases to the maximum extent permitted by law any  
16 claims against Defendant and the Released Parties occurring prior to the Court's entry of Judgment in  
17 this matter arising out of or related to violations of any federal or state employment discrimination  
18 laws, including the California Fair Employment and Housing Act; Title VII of the Civil Rights Act of  
19 1964; the federal Family and Medical Leave Act; the California Family Rights Act; the Americans  
20 With Disabilities Act; the National Labor Relations Act; the Equal Pay Act; the Employee Retirement  
21 Income Security Act of 1974; as well as Claims arising out of or related to violations of the provisions  
22 of the California Labor Code; the California Government Code; California Wage Orders, the  
23 California Business & Professions Code, including Business & Professions Code Section 17200, *et*  
24 *seq.*; PAGA; state and federal wage and hour laws; breach of contract; fraud; misrepresentation;  
25 common counts; unfair competition; unfair business practices; negligence; defamation; infliction of  
26 emotional distress; invasion of privacy; assault; battery; false imprisonment; wrongful termination;  
27 constructive discharge; retaliation; and any other state or federal law, rule, or regulation.

28



1           b.       This release by Named Plaintiff includes a waiver of his rights under Civil Code  
2 Section 1542, the text of which provides as follows:

3                   A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT  
4                   THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR  
5                   SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF  
6                   EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR  
7                   HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER  
8                   SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

9 Specifically excluded from this Section 1542 release are any claims that cannot be released as a matter  
10 of law, such as claims for workers' compensation benefits.

11           c.       In connection with this release, to the extent he has not already done so, Named  
12 Plaintiff agrees to take all necessary steps to immediately dismiss any pending claims, charges, or  
13 litigation with any local, state, or federal administrative agency, government entity, or court, including,  
14 but not limited to, the rule, or regulation. Plaintiff also expressly confirms that, pursuant to the terms  
15 of the MOU, he has caused to be dismissed and/or withdrawn his retaliation complaint filed with the  
16 Department of Industrial Relations, assigned to its Retaliation Complaint Investigation Unit, State  
17 Case No. RCI-764836.

18           43.     Settlement Payments and Distribution. Subject to final Court approval and the  
19 conditions specified in this Agreement, and in consideration of the mutual covenants and promises set  
20 forth herein, Defendant agrees to pay the GSA as defined above. Except as otherwise provided and/or  
21 required in this Agreement, including without limitation as set forth below in Paragraph 60 regarding  
22 the Escalator Clause, in no event shall Defendant be required to pay any amount above the GSA under  
23 this Settlement and this Agreement. The GSA is non-reversionary. The Parties agree, subject to Court  
24 approval, that the GSA shall be apportioned as follows:

25           a.       Class Counsel will apply to the Court for an award of attorneys' fees of no more  
26 than one-third (1/3) of the GSA, or Eighty-Seven Thousand Seven Hundred Sixty-Five Dollars and  
27 Thirty-Three Cents (\$87,765.33). The attorneys' fees shall come from and be deducted from the GSA.  
28 Defendant will not oppose such application. Defendant also will not oppose a request for up to Twenty  
Thousand Dollars and No Cents (\$20,000.00) in litigation costs and expenses, which will be deducted  
from the GSA. In the event the Court approves less than the Class Counsel's Fees and Expenses

1 requested by Class Counsel, the difference shall be added to the NSA, for distribution to the  
2 Participating Class Members, and will not invalidate this Agreement.

3 b. Class Counsel will also apply to the Court for Settlement Administration Costs,  
4 estimated to be \$9,950.00, which will be deducted from the GSA. Defendant will not oppose such  
5 application.

6 c. At the Final Approval Hearing, Class Counsel will apply to the Court for a Class  
7 Representative Enhancement Award of Ten Thousand Dollars and No Cents (\$10,000.00) to be paid  
8 to the Named Plaintiff for his services, for assuming the risks associated with this litigation, and as  
9 consideration for providing a general release of all claims, known and unknown. Defendant will not  
10 oppose such application. The Class Representative Enhancement Award is included in, and shall be  
11 deducted from, the GSA. The amount of the Class Representative Enhancement Award is left to and  
12 within the Court's sole discretion. In the event the Court approves less than the amount of the Class  
13 Representative Enhancement Award requested, the difference shall be added to the NSA, for  
14 distribution to the Participating Class Members.

15 d. Pursuant to California Labor Code Section 2698, *et seq.*, a payment in the amount  
16 of Ten Thousand Dollars and No Cents (\$10,000.00) shall be made from the GSA to the LWDA and  
17 "aggrieved employees" for penalties under the PAGA, Labor Code section 2698, *et seq.* Seventy-five  
18 percent (75%) of the payment referenced in this subsection shall be distributed from the GSA to the  
19 LWDA and twenty-five percent (25%) shall be distributed to the NSA on behalf of "aggrieved  
20 employees," and paid to Class Members employed during the PAGA Period. The twenty-five percent  
21 (25%), or Two Thousand Five Hundred Dollars and No Cents (\$2,500.00) payable to "aggrieved  
22 employees" is hereinafter referred to as the "PAGA Amount," and the amount payable to each Class  
23 Member is hereinafter referred to as the "PAGA Payment."

24 e. The NSA will be the amount remaining after deducting the amounts specified in  
25 Subparagraphs 43.a. to 43.d., above, with the exception of the PAGA Amount. Subject to the Court's  
26 approval, the NSA will be divided and distributed to Participating Class Members as follows: each  
27 Participating Class Member shall receive a proportionate Settlement Share based upon the number of  
28 Pay Periods he or she worked during the Settlement Period, the numerator of which is the Participating

1 Class Member's total Pay Periods and the denominator of which is the total Pay Periods for all  
2 Participating Class Members during the Settlement Period. Additionally, each Class Member,  
3 including Non-Participating Class Members, shall receive a PAGA Payment from the PAGA Amount  
4 in an amount divided equally among all Class Members during the PAGA Period.

5 f. Any amounts not paid to Class Members because they opt out or cannot be  
6 located despite reasonable efforts (as defined below) shall become part of the NSA to be distributed  
7 to Participating Class Members.

8 44. Returned or Uncashed Checks. Any checks issued by the Settlement Administrator to  
9 Participating Class Members shall be negotiable for one hundred and eighty (180) calendar days.  
10 Those funds represented by Settlement checks returned as undeliverable and those Settlement checks  
11 remaining uncashed for more than one hundred and eighty (180) calendar days after issuance  
12 (collectively, "Voided Settlement Checks") shall be distributed to the Controller of the State of  
13 California to be held pursuant to the Unclaimed Property Law, California Civil Code Section 1500, *et*  
14 *seq.*, for the benefits of those Participating Class Members who did not cash their checks until such  
15 time they claim their property. The Parties agree that this disposition results in no "unpaid residue"  
16 under California Civil Procedure Code Section 384, as the entire NSA will be paid out to Participating  
17 Class Members, whether or not they all cash their settlement checks. Defendant will have fully  
18 discharged its obligations under this Agreement through the mailing of a settlement check to the  
19 Participating Class Members regardless of whether such checks are actually received and/or negotiated  
20 by the Participating Class Members. Additionally, any checks issued by the Settlement Administrator  
21 for PAGA Payments to Non-Participating Class Members shall be negotiable for one hundred and  
22 eighty (180) calendar days, and any such checks returned as undeliverable and/or remaining uncashed  
23 for more than one hundred and eighty (180) calendar days after issuance shall be paid to the LWDA.

24 45. No Credit Toward Benefit Plans. The Settlement Payments made to Participating Class  
25 Members under this Agreement shall not be utilized to calculate any additional benefits under any  
26 benefit plans to which any Participating Class Member may be eligible, including, but not limited to:  
27 profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans,  
28 PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Agreement will not

1 affect any rights, contributions, or amounts to which any Participating Class Member may be entitled  
2 under any benefit plans.

3 46. Taxation of Settlement Proceeds. All Settlement Payments paid to Participating Class  
4 Members and the Named Plaintiff, as set forth in this Agreement, as well as all PAGA Payments, shall  
5 be deemed penalties and/or interest in light of the claims and issues asserted and/or raised by Plaintiff  
6 in the Action, and shall be reported as such to each Class Member and Named Plaintiff on an IRS  
7 Form 1099.

8 a. All Parties represent that they have not received, and shall not rely on, advice  
9 or representations from Class Counsel or Defendant's Counsel regarding the tax treatment of payments  
10 under federal, state, or local law. In this regard, Defendant makes no representations regarding the  
11 taxability of the Settlement Payments.

12 b. Class Counsel will be issued an IRS Form 1099 for any and all fees and costs  
13 awarded by the Court pursuant to this Agreement. Except as provided in Paragraph 43, each of the  
14 Parties shall bear his, her, their, or its own attorneys' fees, costs, and expenses incurred in the  
15 prosecution, defense, or settlement of the Action. Class Counsel agrees that any allocation of fees  
16 between or among each of the Class Counsel or among the Class Counsel and any other attorney who  
17 may be representing Named Plaintiff or the Class shall be the sole responsibility of Class Counsel.  
18 Class Counsel agree to hold harmless Defendant from any claims or liability by any other party  
19 claiming or seeking to claim any attorneys' fees or costs.

20 c. Named Plaintiff will be issued an IRS Form 1099 for the Class Representative  
21 Enhancement Award approved by the Court pursuant to Paragraph 43. The Class Representative  
22 Enhancement award payable to Named Plaintiff shall be in addition to any payment he may receive  
23 pursuant to subparagraphs 43.d. and 43.e., above.

24 47. Notice Procedure.

25 a. The Parties shall use a mutually agreed-upon Settlement Administrator to  
26 distribute the Class Notices, Settlement Shares, and PAGA Payments, to administer appropriate tax  
27 reporting, to field questions from Class Members with a telephonic hotline, and to otherwise  
28 administer the terms of the Settlement. The Settlement Administrator (along with any of its agents)

1 shall represent and warrant that it will: (a) provide reasonable and appropriate administrative, physical,  
2 and technical safeguards for any personally identifiable information ("PII") which it receives from  
3 Defendant; (b) not disclose the PII to third parties, including agents or subcontractors, without  
4 Defendant's consent; (c) not disclose or otherwise use the PII other than to carry out its duties as set  
5 forth herein; (d) promptly provide Defendant with notice if PII is subject to unauthorized access, use,  
6 disclosure, modification, or destruction; and (e) return or destroy the PII upon termination of its  
7 services.

8           b.     Within thirty (30) calendar days after entry of the Preliminary Approval Order,  
9 Defendant shall provide the Class List to the Settlement Administrator. Defendant agrees to consult  
10 with the Settlement Administrator as required to provide the Class List in a format reasonably  
11 acceptable for the duties of the Settlement Administrator. The Settlement Administrator will keep the  
12 Class List confidential, use it only for the purposes described herein, take adequate safeguards to  
13 protect confidential or private information, and return or certify the destruction of the information  
14 upon completion of the Settlement Administration process.

15           c.     Within fifteen (15) calendar days after receipt of the Class List from Defendant,  
16 the Settlement Administrator shall send the Class Notice and Estimated Settlement Share Form to each  
17 Class Member via first class U.S. mail, using the last known address information provided by  
18 Defendant, unless such address is modified by any updated address information that the Settlement  
19 Administrator obtains in the course of administration of the Settlement.

20           d.     The Settlement Administrator will perform one skip trace if necessary using  
21 Social Security Numbers provided by Defendant and National Change of Address searches, as needed,  
22 to verify the accuracy of the addresses provided and will conduct a second round of mailings by first  
23 class U.S. mail within seven (7) calendar days for any forms returned to sender within fifteen (15)  
24 calendar days of the initial mailing by the Settlement Administrator.

25           The Settlement Administrator shall re-mail by first class U.S. mail any Class Notice  
26 and Estimated Settlement Share Form returned by the Post Office with a forwarding address. If the  
27 Class Notice and Estimated Settlement Share Form is re-mailed, the Settlement Administrator will note  
28 for its own records the date and address of each such re-mailing and so notify Class Counsel and

1 Defendant's Counsel. The obligation to trace and resend returned Class Notices and Estimated  
2 Settlement Share Forms shall cease after two mailings to the Class Member or thirty (30) calendar days  
3 after the initial mailing, whichever occurs first. The time period to respond may not be extended on  
4 account of a returned or undeliverable mailing. If the Class Notice is returned as undeliverable for a  
5 second time, it shall be conclusively presumed that the Class Member is unreachable and their  
6 Settlement Share shall be added to the NSA for distribution to the remaining Participating Class  
7 Members. Unless they submit a Request for Exclusion, Class Members who cannot be reached after a  
8 second mailing as discussed in this Subsection d will still be bound by the Release of Claims set forth  
9 in Paragraph 40, above.

10 e. Class Counsel shall provide to the Court at or before the Final Approval Hearing  
11 a declaration from the Settlement Administrator confirming that the Class Notice and related forms  
12 were mailed to all Class Members as required by this Agreement, as well as any additional information  
13 Class Counsel, with the input of Defendant, deems appropriate to provide to the Court.

14 48. Opt Out Procedure. Class Members who wish to exclude themselves from the  
15 Settlement (*i.e.*, "opt out" of the Settlement) must mail to the Settlement Administrator, not later than  
16 forty-five (45) calendar days after the date that the Settlement Administrator first mails the Class  
17 Notice ("Exclusion Deadline"), a signed written request to be excluded from the Settlement ("Request  
18 for Exclusion"). A Class Member will not be entitled to opt out of the Settlement established by this  
19 Agreement unless the Request for Exclusion contains his or her (i) name; (ii) address and telephone  
20 number; (iii) last four digits of his/her social security number; and (iv) signature.

21 a. Unless a Class Member submits a Request for Exclusion as described in this  
22 Agreement, he/she shall be considered a Participating Class Member, and shall be bound by the terms  
23 and conditions of this Agreement, and shall also be bound by the releases set forth in this Agreement,  
24 and by the Final Judgment.

25 Eligible Class Members who submit a timely, complete and valid Request for  
26 Exclusion in the manner and by the Exclusion Deadline specified above will be considered Non-  
27 Participating Class Members and will not participate in, or be bound by, the Settlement or the Final  
28 Judgment in any respect except as to the PAGA Claims and PAGA Payment, and will not be permitted

1 to file Objections to the Settlement or appear at the Final Approval Hearing to voice any objections to  
2 the Settlement.

3 The Settlement Administrator shall not review or consider any Request for Exclusion  
4 postmarked after the end of the Exclusion Deadline. It shall be conclusively presumed that, if a  
5 Request for Exclusion is not postmarked on or before the end of the Exclusion Deadline, the Class  
6 Member did not make the request in a timely manner. A declaration submitted by any Class Member  
7 attesting to the mailing of a Request for Exclusion on or before the expiration of the Exclusion  
8 Deadline shall be insufficient to overcome the conclusive presumption that the Request for Exclusion  
9 was not postmarked on or before the expiration of the Exclusion Deadline. Under no circumstances  
10 shall the Settlement Administrator have the authority to extend the deadline for Class Members to  
11 submit a Request for Exclusion. No later than ten (10) calendar days after the deadline for submission  
12 of Requests for Exclusion from the Settlement, the Settlement Administrator will provide Defendant's  
13 Counsel with a complete and accurate list of all Non-Participating Class Members.

14 b. If ten percent (10%) or more of the Class Members timely opt out of the  
15 Settlement pursuant to this Paragraph, Defendant shall have the sole and absolute discretion to  
16 withdraw from this Agreement within ten (10) calendar days after expiration of the Exclusion  
17 Deadline. Defendant shall provide written notice of such withdrawal to Class Counsel. In the event  
18 that Defendant elects to so withdraw, the withdrawal shall have the same effect as a termination of  
19 this Agreement for failure to satisfy a condition of Settlement and this Agreement shall become null  
20 and void and have no further force or effect. If Defendant chooses to terminate this Agreement under  
21 this provision, it shall be responsible to pay the Settlement Administrator's fees and costs to date. If  
22 this Agreement is terminated or breached in any way by Named Plaintiff, then Class Counsel shall be  
23 responsible to pay the Settlement Administrator's fees and costs to date.

24 49. Objections to Settlement. Any Participating Class Member may object to the  
25 Settlement by mailing a written objection stating his or her (i) name; (ii) address and telephone  
26 number; (iii) last four digits of his/her social security number; (iv) signature; and (v) reasons for  
27 objecting ("Objection Form"). The Objection Form must be served on the Settlement Administrator,  
28 Class Counsel, and Counsel for Defendant not later than forty-five (45) calendar days after the date

1 that the Settlement Administrator first mails the Class Notice (“Objection Deadline”), and be  
2 completely filled out and signed by the Participating Class Member (the “Objection”). The Objection  
3 must indicate whether the Participating Class Member intends to appear and object to the Settlement  
4 at the Final Approval Hearing.

5 Absent good cause found by the Court, a Class Member who does not file and timely serve an  
6 Objection in the manner and by the Objection Deadline specified above will be deemed to have waived  
7 all objections and will be foreclosed from making any objections to the Settlement, whether by appeal  
8 or otherwise. Non-Participating Class Members (i.e., Class Members who submit valid Requests for  
9 Exclusion) may not submit an Objection to the Settlement. If a Class Member submits both a Request  
10 for Exclusion and an Objection, the Objection shall be ignored and the Request for Exclusion will be  
11 deemed controlling.

12 50. No Solicitation or Requests for Exclusion. Neither the Parties nor their respective  
13 counsel will solicit or otherwise encourage any Class Member, directly or indirectly, to request  
14 exclusion from the Settlement, object to the Settlement, or appeal from the Final Judgment. Defendant  
15 will not retaliate against any Class Member who participates in the Settlement.

16 51. Resolution of Class Member Disputes Regarding Compensation. If a Class Member  
17 disputes the amount of Pay Periods stated for that Class Member in the Class Notice, the Class Member  
18 must ask the Settlement Administrator to resolve the matter by submitting, under penalty of perjury,  
19 an explanation for why and how the Class Member disputes the number of Pay Periods. The Class  
20 Member must submit all supporting evidence and/or documentation he or she has to support the  
21 dispute. If Defendant can show that the Class Member’s dispute is inaccurate, then Defendant’s  
22 records shall govern. If there is a dispute as between the Class Member’s records and Defendant’s  
23 records, the Settlement Administrator will make a determination regarding the dispute.

24 52. Distribution of Settlement. Within five (5) calendar days of the Effective Date, the  
25 Settlement Administrator will notify Class Counsel and Defendant’s Counsel of the account  
26 information to which Defendant shall wire the GSA. Defendant shall wire the GSA to the Settlement  
27 Administrator within thirty (30) calendar days of the Effective Date. The remittance of the GSA to  
28 the Settlement Administrator shall constitute the full and complete discharge of the entire obligation



1 of Defendant under this Agreement. No Released Party shall have any further obligation or liability  
2 to Class Counsel, Named Plaintiff, or to Participating Class Members under this Agreement after  
3 delivery of the GSA to the Settlement Administrator. In no event will Defendant have any obligation  
4 to pay the GSA, or any portion thereof, prior to thirty (30) calendar days after the Effective Date.

5 a. The Parties agree that the GSA will qualify as a settlement fund pursuant to the  
6 requirements of Section 468(B)(g) of the Internal Revenue Code of 1986, as amended, and Section  
7 1.468B-1, *et seq.* of the income tax regulations. Furthermore, the Settlement Administrator is hereby  
8 designated as the “Administrator” of the qualified settlement funds for purposes of Section 1.46B-2(k)  
9 of the income tax regulations. As such, all taxes imposed on the gross income of the GSA and any  
10 tax-related expenses arising from any income tax return or other reporting document that may be  
11 required by the Internal Revenue Service or any state or local taxing body will be paid by the  
12 Settlement Administrator.

13 b. Within fifteen calendar (15) days of Defendant wiring the GSA to the Settlement  
14 Administrator, the Settlement Administrator will distribute checks to: (a) the Participating Class  
15 Members (for their Settlement Shares and PAGA Payments); (b) the LWDA (for PAGA penalties);  
16 (c) Named Plaintiff (for the Class Representative Enhancement Award approved by the Court); and  
17 (d) Class Counsel (for the Class Counsel’s Fees and Expenses approved by the Court). No person  
18 shall have any claim against the Settlement Administrator, Defendant, Class Counsel, Defendant’s  
19 Counsel, or any other agent designated by Named Plaintiff or Defendant based upon the distribution  
20 of Settlement Payments made substantially in accordance with this Agreement or further orders of the  
21 Court.

22 c. Defendant shall not be obligated to make any payments contemplated by this  
23 Agreement unless and until the Court enters Final Judgment, and after the Effective Date of this  
24 Agreement, and no amounts will be owed or payable until all appeals or other collateral attack have  
25 been lapsed or have been favorably resolved in favor of the Settlement and no further challenge to the  
26 Settlement is possible.

27 53. Binding Effect of Agreement on Participating Class Members. Subject to final Court  
28 approval, all Participating Class Members shall be bound by this Agreement and the Action and the

1 Settled Claims shall be released as against the Released Parties. In addition, unless the Class Member  
2 opts out of the Settlement through the process described in this Agreement, he/she shall be bound by  
3 the Court's Order enjoining all Participating Class Members from pursuing, or seeking to reopen  
4 Settled Claims against the Released Parties.

5 54. Motion for Preliminary Approval of Settlement. Following execution of this  
6 Agreement, Named Plaintiff shall prepare and file a motion in the Action requesting that the Court  
7 enter the Preliminary Approval Order (the "Preliminary Approval Motion") based on an agreed-upon  
8 Settlement schedule:

- 9 a. Preliminarily approving the proposed Settlement and this Agreement;
- 10 b. Preliminarily approving the appointment of Named Plaintiff as representative of  
11 the Class for settlement purposes, if not otherwise accomplished by class certification;
- 12 c. Preliminarily approving the appointment of Class Counsel as counsel for the  
13 Class;
- 14 d. Appointing and approving the Settlement Administrator to administer the  
15 procedures required by this Agreement;
- 16 e. Approving the form of the Class Notice;
- 17 f. Scheduling the Final Approval Hearing for consideration of class certification  
18 and final approval of this Agreement;
- 19 g. Approving the procedure for Class Members to submit by first class U.S. mail  
20 any Requests for Exclusion and setting a date after which no Class Members shall be allowed to submit  
21 to opt out; and
- 22 h. Approving the procedure for Class Members to object to the Settlement.
- 23 i. Defendant shall not oppose Class Counsel's Preliminary Approval Motion so  
24 long as it and its supporting papers are consistent with the terms of this Agreement. Class Counsel  
25 shall provide Defendant with a reasonable opportunity to review, and provide comments to, the  
26 Preliminary Approval Motion before filing it with the Court. Notwithstanding the foregoing,  
27 Defendant may, without opposing the Preliminary Approval Motion, advise the Court if Defendant  
28

1 disagrees with or wishes to clarify any of the factual statements included by Named Plaintiff in the  
2 Preliminary Approval Motion.

3 55. Final Approval and Order. As soon as practicable following the Objection Deadline  
4 and Exclusion Deadline, as defined above, Class Counsel will file with the Court a motion for final  
5 approval of the Settlement (the "Motion for Final Approval") and a memorandum in support of the  
6 motion. Class Counsel shall provide Defendant's Counsel with reasonable opportunity to review,  
7 provide any comments to, and approve the Motion for Final Approval prior to filing it with the Court.  
8 Upon providing approval, Defendant's Counsel may elect to file a notice of non-opposition to the  
9 Motion for Final Approval. Named Plaintiff will request that the Court enter Final Judgment and find  
10 that this Agreement and Settlement is fair, just, equitable, reasonable, adequate, and in the best  
11 interests of the Class, and require the Parties to carry out the provisions of this Agreement.

12 56. Waiver of Appeal. Subject to preliminary and final approval of this Settlement, each  
13 Party expressly waives its right to appeal this Settlement, with the sole and limited exception that  
14 Named Plaintiff reserves the right to appeal from an order awarding a total amount of attorneys' fees,  
15 costs, and enhancement award under this Settlement that is less than the total amount sought by Named  
16 Plaintiff under this Agreement. The issue raised on appeal will be limited and confined to the amount  
17 allocated to Class Counsel and/or Named Plaintiff under Subparagraphs 43.a., 43.b., and 43.c.

18 57. Entry of Final Judgment. At the Final Approval Hearing, Named Plaintiff will request,  
19 and Defendant will concur in said request, that the Court enter Final Judgment in this Action.

20 58. Effective Date of Agreement. The "Effective Date" of this Agreement shall be  
21 conditioned upon all of the following occurring:

22 a. This Agreement has been signed by the Parties, Class Counsel, Defendant, and  
23 Defendant's Counsel;

24 b. The Court has entered a preliminary approval order substantially similar to the  
25 Preliminary Approval Order;

26 c. The Court-approved Class Notice has been mailed to the Class Members as  
27 ordered by the Court in this Action;

28 d. The Court has entered an order granting the Motion for Final Approval;

1 e. The Court has entered the Final Judgment; and

2 f. All appeals or other collateral attack have been lapsed or have been favorably  
3 resolved in favor of the Settlement and no further challenge to the Settlement is possible. No amounts  
4 will be owed or payable until all appeals or other collateral attack have been lapsed or have been  
5 favorably resolved in favor of the Settlement and no further challenge to the Settlement is possible.

6 59. Confidentiality and Non-Disparagement.

7 a. Named Plaintiff and Class Counsel will not initiate nor respond to public  
8 relations or media inquiries about the Settlement, and will not directly or indirectly engage in any  
9 publicity with regard to the Settlement. Named Plaintiff and Class Counsel further agree to maintain  
10 the confidentiality of any documents produced, formally or informally, during the course of the Action.  
11 Class Counsel retains the ability to respond to inquiries regarding the Settlement from Class Members  
12 in furtherance of administering the Settlement.

13 b. Named Plaintiff agrees not to disparage the Released Parties, whether verbally  
14 or in writing, including but not limited to on any social media platforms.

15 60. Escalator Clause. As of the date of mediation with Kelly Knight, Esq. on December  
16 11, 2020, Defendant represented that the total number of Pay Periods from December 16, 2018 to July  
17 16, 2020 was 7,089. If the number of Pay Periods at issue during that time period, as provided in the  
18 Class List, is higher than 7,089, then the GSA will increase by a proportionate amount – *i.e.*, if the  
19 number of Pay Periods at issue increases by one (1) percent, then the GSA will increase by one (1)  
20 percent.

21 61. Defendant's Financial Condition. Defendant's financial condition, including but not  
22 limited to the fact that it was forced to close its California operations as of July 16, 2020, has been  
23 discussed throughout the settlement process. To the extent Defendant has provided or will provide  
24 copies of financial records to Class Counsel during or subsequent to the negotiation of this Settlement,  
25 and to the extent that Defendant's financial condition is part of the basis for the amount and nature of  
26 this Agreement, Plaintiff's Preliminary Approval Motion, and/or Plaintiff's Motion for Final Approval  
27 of the Settlement, Class Counsel shall make every effort to avoid publicly filing the financial records  
28 and will rely upon an expert declaration and/or a summary of its observations regarding Defendant's

1 financial condition. To the extent Class Counsel wishes to disclose the financial records, or portions  
2 thereof, that Class Counsel relied on in reaching the Settlement, Class Counsel shall meet and confer  
3 in good faith with Defendant's Counsel as to how best to present that information, including the  
4 possibility of submitting such documents for *in camera* review. In the event that the Court orders or  
5 requests public disclosure of the financial records in order to preliminarily or finally approve the  
6 settlement, Defendant and Defendant's Counsel will not oppose the Court's order or request.

7 62. Notices. All notices, requests, demands, and other communications required or  
8 permitted to be given pursuant to this Agreement shall be in writing, and shall be delivered by first  
9 class U.S. mail to the attorneys listed in the caption above and the Settlement Administrator.

10 63. Modification in Writing. This Agreement may be altered, amended, modified, or  
11 waived, in whole or in part, only in a writing signed by all signatories to this Agreement. This  
12 Agreement may not be amended, altered, modified, or waived, in whole or in part, orally.

13 64. Ongoing Cooperation. Named Plaintiff and Defendant and each respective counsel  
14 shall execute all documents and perform all acts necessary and proper to effectuate the terms of this  
15 Agreement. The executing of documents must take place prior to the date for the Final Approval  
16 Hearing.

17 65. Binding on Successors. This Agreement shall be binding on and shall inure to the  
18 benefit of the Parties and their respective successors, assigns, executors, administrators, heirs, and  
19 legal representatives.

20 66. Entire Agreement. Except as set forth in Paragraphs 36 and 42.c., this Agreement  
21 constitutes the full, complete, and entire understanding, agreement, and arrangement between Named  
22 Plaintiff and the Class Members on the one hand and Defendant on the other hand with respect to the  
23 settlement of the Action and the Settled Claims against the Released Parties. Except as set forth in  
24 Paragraphs 36 and 42.c., this Agreement supersedes any and all prior oral or written understandings,  
25 agreements, and arrangements between the Parties with respect to the settlement of the Action and the  
26 Settled Claims against the Released Persons. Except as to those set forth and included expressly in  
27 this Agreement, there are no other agreements, covenants, promises, representations, or arrangements  
28 between the Parties with respect to the settlement of the Action and the Settled Claims against the

1 Released Persons. The Parties explicitly recognize California Civil Code Section 1625 and California  
2 Code of Civil Procedure Section 1856(a), which provide that a written agreement is to be construed  
3 according to its terms, and may not be varied or contradicted by extrinsic evidence, and agree that no  
4 such extrinsic oral or written representations or terms shall modify, vary, or contradict the terms of  
5 this Agreement.

6 67. Execution in Counterparts. This Agreement may be signed in one or more counterparts.  
7 All executed copies of this Agreement, and photocopies thereof (including facsimile copies of the  
8 signature pages), shall have the same force and effect and shall be as legally binding and enforceable  
9 as the original.

10 68. Captions. The captions and paragraph numbers in this Agreement are inserted for the  
11 reader's convenience and in no way define, limit, construe, or describe the scope or intent of the  
12 provisions of this Agreement.

13 69. Governing Law. This Agreement shall be interpreted, construed, enforced, and  
14 administered in accordance with the laws of the state of California, without regard to conflict of law  
15 rules.

16 70. Reservation of Jurisdiction. Notwithstanding entry and filing of Final Judgment, the  
17 Court shall retain jurisdiction for purposes of interpreting and enforcing the terms of this Agreement.

18 71. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and  
19 conditions of this Agreement. Accordingly, this Agreement shall not be construed more strictly  
20 against one Party than another merely by virtue of the fact that it may have been prepared by counsel  
21 for one of the Parties, it being recognized that, because of the arm's-length negotiations between the  
22 Parties, all Parties have contributed to the preparation of this Agreement.

23 72. Warranties and Representations. With respect to themselves, each of the Parties to this  
24 Agreement and/or their agents or counsel represent, covenant, and warrant that (a) they have full  
25 power and authority to enter into and consummate all transactions contemplated by this Agreement  
26 and have duly authorized the execution, delivery, and performance of this Agreement and (b) the  
27 person executing this Agreement has the full right, power, and authority to enter into this Agreement  
28 on behalf of the Party for whom he/she has executed this Agreement, and the full right, power, and

1 on behalf of the Party for whom he/she has executed this Agreement, and the full right, power, and  
2 authority to execute any and all necessary instruments in connection herewith, and to fully bind such  
3 Party to the terms and obligations of this Agreement.

4 73. Representation by Counsel. The Parties acknowledge that they have been represented  
5 by counsel throughout all negotiations that preceded the execution of this Agreement and that this  
6 Agreement has been executed with the consent and advice of counsel. Further, Named Plaintiff and  
7 Class Counsel warrant and represent, to their knowledge, that there are no liens on this Agreement,  
8 and that after entry by the Court of the Final Judgment, Defendant may distribute funds to Participating  
9 Class Members, Class Counsel, and Named Plaintiff as provided by this Agreement.


10 74. Authorization by Named Plaintiff. Named Plaintiff authorizes Class Counsel to sign  
11 this Agreement and further agrees not to request to be excluded from the Class and not to object to  
12 any terms of this Agreement. Any such request for exclusion or objection shall therefore be void and  
13 of no force or effect.

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Dated: March 18, 2021

  
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Steven Matthew Oda (Mar 10, 2021 17:22 PST)  
STEVEN ODA

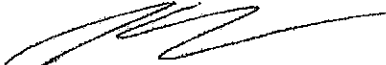
Dated: March 18, 2021

By:   
\_\_\_\_\_  
Name: Kir Timonov  
Title: President

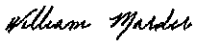
On Behalf of Defendant FIRST CLASS WORKFORCE SOLUTIONS, INC. (erroneously sued as FCWS, INC.)

1 APPROVED AS TO FORM

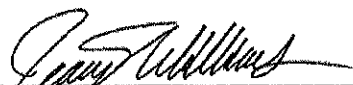
2 Dated: March 11, 2021

  
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LARRY W. LEE  
MAX W. GAVRON  
DIVERSITY LAW GROUP, P.C.  
Attorneys for Plaintiff  
STEVEN ODA

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8 Dated: March 11, 2021

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\_\_\_\_\_  
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WILLIAM L. MARDER  
POLARIS LAW GROUP LLP  
Attorneys for Plaintiff  
STEVEN ODA

9  
10  
11  
12 Dated: March 18, 2021

  
\_\_\_\_\_  
ALAYA B. MEYERS  
TRACY R. WILLIAMS  
LITTLER MENDELSON, P.C.  
Attorneys for Defendant  
FIRST CLASS WORKFORCE SOLUTIONS, INC.  
(erroneously sued as FCWS, INC.)

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# EXHIBIT B

1 LARRY W. LEE, Bar No. 228175  
MAX W. GAVRON, Bar No. 291697  
2 DIVERSITY LAW GROUP, P.C.  
515 S. Figueroa Street, Suite 1250  
3 Los Angeles, CA 90071  
Telephone: 213.488.6555  
4 Facsimile: 213.488.6554

5 WILLIAM L. MARDER, Bar No. 170131  
POLARIS LAW GROUP, LLP  
6 501 San Benito Street, Suite 200  
Hollister, CA 95023  
7 Telephone: 831.531.4214  
Facsimile: 831.634.0333  
8

9 Attorneys for Plaintiff STEVEN ODA, as an individual  
and on behalf of all others similarly situated

10 ALAYA B. MEYERS, Bar No. 199551  
TRACY R. WILLIAMS, Bar No. 278429  
11 LITTLER MENDELSON, P.C.  
18565 Jamboree Road  
12 Suite 800  
Irvine, CA 92612  
13 Telephone: 949.705.3000  
Facsimile: 949.724.1201  
14

15 Attorneys for Defendant  
FIRST CLASS WORKFORCE SOLUTIONS, INC.  
(ERRONEOUSLY SUED AS FCWS, INC.)  
16

17 SUPERIOR COURT OF CALIFORNIA

18 COUNTY OF ORANGE

19 STEVEN ODA, as an individual and on  
behalf of all others similarly situated,  
20

21 Plaintiff,

22 v.

23 FCWS, INC., a Missouri corporation; and  
DOES 1 through 50, inclusive,  
24

25 Defendants.

Case No. 30-2020-01122098-CU-OE-CXC

ASSIGNED FOR ALL PURPOSES TO JUDGE  
PETER WILSON, DEPT. CX-102.

**AMENDMENT TO CLASS ACTION  
SETTLEMENT AGREEMENT AND  
STIPULATION**

Trial Date: None  
Complaint Filed: January 6, 2020

26 This Amendment to Class Action Settlement Agreement and Stipulation ("Amendment") is  
27 entered into by and between Defendant First Class Workforce Solutions, Inc., erroneously sued as  
28

1 FCWS, Inc. (“Defendant”) and Plaintiff Steven Oda, as an individual and on behalf of Participating  
2 Class Members (“Plaintiff”).

3 This Amendment incorporates the same definitions as those used in the Class Action  
4 Settlement Agreement and Stipulation (the “Stipulation”) submitted to the Court for preliminary  
5 approval as Exhibit A to the Declaration of Max W. Gavron on April 1, 2021. (ROA # 57.) The  
6 Parties agree to amend the Stipulation such that the paragraphs identified below will replace those  
7 originally identified in the Stipulation, as follows:

8

9 25. Released Parties. “Released Parties” shall mean Defendant and its past or present  
10 successors and predecessors in interest, acquirers, subsidiaries, affiliates, parents, officers, owners,  
11 directors, shareholders, employees, servants, agents, principals, heirs, representatives, accountants,  
12 auditors, consultants, attorneys, trustees, insurers and reinsurers..

13

14 41. Release of PAGA. Upon funding of the GSA, Named Plaintiff and all Class Members  
15 who were employed by Defendant in the State of California at any time from December 16, 2018  
16 through July 16, 2020 (the “PAGA Period”), release the Released Parties of and from any and all  
17 claims brought under the PAGA for violation of Labor Code §§ 204, 226, 1174, 1198 and 1199, or  
18 that could have been asserted under the PAGA based on the factual allegations in the Action. Class  
19 Members will not have the opportunity to opt out or object to the PAGA Amount and/or release of  
20 PAGA claims set forth in this Agreement, although the settlement of these claims under the PAGA  
21 will be subject to Court approval. Accordingly, all Class Members, even Non-Participating Class  
22 Members, will receive the PAGA Amount. A copy of this Agreement will be provided to the LWDA  
23 concurrently with submission of the Supplemental Preliminary Approval Motion.

24 46. Taxation of Settlement Proceeds. All Settlement Payments paid to Participating Class  
25 Members and the Named Plaintiff, as set forth in this Agreement, as well as all PAGA Payments, shall  
26 be deemed 75% penalties and 25% interest in light of the claims and issued asserted and/or raised by  
27 Plaintiff in the Action, and shall be reported as such to each Class Member and Named Plaintiff on an  
28 IRS Form 1099.

1 a. All Parties represent that they have not received, and shall not rely on, advice  
2 or representations from Class Counsel or Defendant’s Counsel regarding the tax treatment of payments  
3 under federal, state, or local law. In this regard, Defendant makes no representations regarding the  
4 taxability of the Settlement Payments.

5 b. Class Counsel will be issued an IRS Form 1099 for any and all fees and costs  
6 awarded by the Court pursuant to this Agreement. Except as provided in Paragraph 43, each of the  
7 Parties shall bear his, her, their, or its own attorneys’ fees, costs, and expenses incurred in the  
8 prosecution, defense, or settlement of the Action. Class Counsel agrees that any allocation of fees  
9 between or among each of the Class Counsel or among the Class Counsel and any other attorney who  
10 may be representing Named Plaintiff or the Class shall be the sole responsibility of Class Counsel.  
11 Class Counsel agree to hold harmless Defendant from any claims or liability by any other party  
12 claiming or seeking to claim any attorneys’ fees or costs.

13 c. Named Plaintiff will be issued an IRS Form 1099 for the Class Representative  
14 Enhancement Award approved by the Court pursuant to Paragraph 43. The Class Representative  
15 Enhancement award payable to Named Plaintiff shall be in addition to any payment he may receive  
16 pursuant to subparagraphs 43.d. and 43.e., above.

17 48. Opt Out Procedure. Class Members who wish to exclude themselves from the  
18 Settlement (*i.e.*, “opt out” of the Settlement) must mail to the Settlement Administrator, not later than  
19 forty-five (45) calendar days after the date that the Settlement Administrator first mails the Class  
20 Notice (“Exclusion Deadline”), a signed written request to be excluded from the Settlement (“Request  
21 for Exclusion”). A Class Member will not be entitled to opt out of the Settlement established by this  
22 Agreement unless the Request for Exclusion contains his or her (i) name; (ii) address and telephone  
23 number; (iii) last four digits of his/her social security number; and (iv) signature.

24 a. Unless a Class Member submits a Request for Exclusion as described in this  
25 Agreement, he/she shall be considered a Participating Class Member, and shall be bound by the terms  
26 and conditions of this Agreement, and shall also be bound by the releases set forth in this Agreement,  
27 and by the Final Judgment.

1 Eligible Class Members who submit a timely, complete and valid Request for  
2 Exclusion in the manner and by the Exclusion Deadline specified above will be considered Non-  
3 Participating Class Members and will not participate in, or be bound by, the Settlement or the Final  
4 Judgment in any respect except as to the PAGA Claims and PAGA Payment, and will not be permitted  
5 to file Objections to the Settlement or appear at the Final Approval Hearing to voice any objections to  
6 the Settlement.

7 The Settlement Administrator shall not review or consider any Request for Exclusion  
8 postmarked after the end of the Exclusion Deadline. It shall be conclusively presumed that, if a  
9 Request for Exclusion is not postmarked on or before the end of the Exclusion Deadline, the Class  
10 Member did not make the request in a timely manner. A declaration submitted by any Class Member  
11 attesting to the mailing of a Request for Exclusion on or before the expiration of the Exclusion  
12 Deadline shall be insufficient to overcome the conclusive presumption that the Request for Exclusion  
13 was not postmarked on or before the expiration of the Exclusion Deadline. Under no circumstances  
14 shall the Settlement Administrator have the authority to extend the deadline for Class Members to  
15 submit a Request for Exclusion. No later than ten (10) calendar days after the deadline for submission  
16 of Requests for Exclusion from the Settlement, the Settlement Administrator will provide both Parties'  
17 counsel with a complete and accurate list of all Non-Participating Class Members.

18 49. Objections to Settlement. Any Participating Class Member may object to the  
19 Settlement by mailing a written objection stating his or her (i) name; (ii) address and telephone  
20 number; (iii) last four digits of his/her social security number; (iv) signature; and (v) reasons for  
21 objecting ("Objection Form"), or appearing at the Final Approval Hearing. The Objection Form must  
22 be served on the Settlement Administrator, Class Counsel, and Counsel for Defendant not later than  
23 forty-five (45) calendar days after the date that the Settlement Administrator first mails the Class  
24 Notice ("Objection Deadline"), and be completely filled out and signed by the Participating Class  
25 Member (the "Objection").

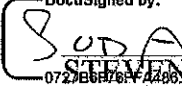
26 Non-Participating Class Members (i.e., Class Members who submit valid Requests for  
27 Exclusion) may not submit an Objection to the Settlement. If a Class Member submits both a Request  
28

1 for Exclusion and an Objection, the Objection shall be ignored and the Request for Exclusion will be  
2 deemed controlling.

3 51. Resolution of Class Member Disputes Regarding Compensation. If a Class Member  
4 disputes the amount of Pay Periods stated for that Class Member in the Class Notice, the Class Member  
5 must ask the Settlement Administrator to resolve the matter by submitting, under penalty of perjury,  
6 an explanation for why and how the Class Member disputes the number of Pay Periods within 21 days  
7 after the date that the Settlement Administrator first mails the Class Notice. The Class Member must  
8 submit all supporting evidence and/or documentation he or she has to support the dispute. If Defendant  
9 can show that the Class Member's dispute is inaccurate, then Defendant's records shall govern. If  
10 there is a dispute as between the Class Member's records and Defendant's records, the Settlement  
11 Administrator will make a determination regarding the dispute. The Court shall have the right to  
12 review any decision made by the Settlement Administrator regarding the dispute, and may do so at the  
13 Final Approval Hearing.

14 70. Reservation of Jurisdiction. Notwithstanding entry and filing of Final Judgment, the  
15 Court shall retain jurisdiction for purposes of interpreting and enforcing the terms of this Agreement,  
16 pursuant to Code of Civil Procedure § 664.6.

17 Dated: May 27, 2021

DocuSigned by:  
  
STEVEN ODA  
072B66767A2001

21 Dated: May \_\_, 2021

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

On Behalf of Defendant FIRST CLASS WORKFORCE SOLUTIONS, INC. (erroneously sued as FCWS, INC.)

1 for Exclusion and an Objection, the Objection shall be ignored and the Request for Exclusion will be  
2 deemed controlling.

3 51. Resolution of Class Member Disputes Regarding Compensation. If a Class Member  
4 disputes the amount of Pay Periods stated for that Class Member in the Class Notice, the Class Member  
5 must ask the Settlement Administrator to resolve the matter by submitting, under penalty of perjury,  
6 an explanation for why and how the Class Member disputes the number of Pay Periods within 21 days  
7 after the date that the Settlement Administrator first mails the Class Notice. The Class Member must  
8 submit all supporting evidence and/or documentation he or she has to support the dispute. If Defendant  
9 can show that the Class Member's dispute is inaccurate, then Defendant's records shall govern. If  
10 there is a dispute as between the Class Member's records and Defendant's records, the Settlement  
11 Administrator will make a determination regarding the dispute. The Court shall have the right to  
12 review any decision made by the Settlement Administrator regarding the dispute, and may do so at the  
13 Final Approval Hearing.

14 70. Reservation of Jurisdiction. Notwithstanding entry and filing of Final Judgment, the  
15 Court shall retain jurisdiction for purposes of interpreting and enforcing the terms of this Agreement,  
16 pursuant to Code of Civil Procedure § 664.6.

17 Dated: May \_\_, 2021

18 \_\_\_\_\_  
STEVEN ODA

19  
20  
21 Dated: May 27, 2021

22 By: 


23 Name: Kit Timmons

24 Title: President

25 On Behalf of Defendant FIRST CLASS WORKFORCE  
26 SOLUTIONS, INC. (erroneously sued as FCWS, INC.)  
27  
28

1 **APPROVED AS TO FORM**

2 Dated: May 27, 2021

3   
LARRY W. LEE  
MAX W. GAVRON  
DIVERSITY LAW GROUP, P.C.  
Attorneys for Plaintiff  
STEVEN ODA

7  
8 Dated: May 27, 2021

9   
WILLIAM L. MARDER  
POLARIS LAW GROUP LLP  
Attorneys for Plaintiff  
STEVEN ODA

11  
12 Dated: May \_\_, 2021

13 ALAYA B. MEYERS  
14 TRACY R. WILLIAMS  
LITTLER MENDELSON, P.C.  
Attorneys for Defendant  
15 FIRST CLASS WORKFORCE SOLUTIONS, INC.  
(erroneously sued as FCWS, INC.)

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APPROVED AS TO FORM


Dated: May \_\_, 2021

\_\_\_\_\_  
LARRY W. LEE  
MAX W. GAVRON  
DIVERSITY LAW GROUP, P.C.  
Attorneys for Plaintiff  
STEVEN ODA

Dated: May \_\_, 2021

\_\_\_\_\_  
WILLIAM L. MARDER  
POLARIS LAW GROUP LLP  
Attorneys for Plaintiff  
STEVEN ODA

Dated: May 27, 2021

  
\_\_\_\_\_  
ALAYA B. MEYERS  
TRACY R. WILLIAMS  
LITTLER MENDELSON, P.C.  
Attorneys for Defendant  
FIRST CLASS WORKFORCE SOLUTIONS, INC.  
(erroneously sued as FCWS, INC.)

# EXHIBIT 1

**NOTICE OF CLASS ACTION SETTLEMENT**

*Steven Oda v. FCWS, Inc.*  
**Superior Court of California – County of Orange**  
**Case No. 30-2020-01122098-CU-OE-CXC**

**IF YOU WERE AN EMPLOYEE OF FIRST CLASS WORKFORCE SOLUTIONS, INC. (“FIRST CLASS”) IN CALIFORNIA, AND WERE PAID WAGES AND WORKED FOR FIRST CLASS FROM DECEMBER 16, 2018 TO JULY 16, 2020, YOU ARE ENTITLED TO RECEIVE MONEY FROM A CLASS AND REPRESENTATIVE ACTION SETTLEMENT.**

*The Court approved this notice. This is not an advertisement.*

You are not being sued. However, your legal rights are affected whether you act or not.

**PLEASE READ THIS NOTICE.**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>INCLUDE THE FOLLOWING:</b>	
<b>DO NOTHING</b>	You will receive a payment from the Settlement. No action is required for you to receive a share of this Settlement.
<b>EXCLUDE YOURSELF</b>	You will not receive a payment from the Settlement. <sup>1</sup>
<b>OBJECT</b>	If you choose, you may object to this Settlement. The Court may or may not agree with your objection. Objecting to the Settlement will not exclude you from receiving a portion of the Settlement.  You may not object <b>and</b> exclude yourself from the Settlement. If you do both, you will be deemed to have excluded yourself from the Settlement.

***1. Why Should You Read This Notice?***

You have received this Notice because records indicate that you are a member of the settlement Class<sup>2</sup> in this action.

<sup>1</sup> Regardless of whether you exclude yourself from the Settlement, you will still receive a portion of the settlement for release of the penalty claims pursuant to the California Private Attorneys General Act, Labor Code sections 2698-2699.6.

<sup>2</sup> All defined terms in this Notice are pursuant to the Parties’ Class Action Settlement Agreement and Stipulation (the “Agreement”) and the Amendment to Class Action Settlement Agreement and Stipulation (the “Amendment”). Instructions on how to obtain more information about, and view, the Agreement and Amendment are provided in this Notice.

The Class includes all employees of First Class who were paid wages and worked for First Class during the period of December 16, 2018 to July 16, 2020.

This Notice tells you of your rights to participate in, and share in, the Settlement. There was a Preliminary Approval hearing on June 10, 2021, at 2:00 p.m., in the Orange County Superior Court. Judge Peter Wilson determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate and reasonable and that a final determination of the issues will be made at the final approval hearing. Judge Wilson also ordered that you receive this Notice.

The Court will hold a Final Approval Hearing concerning the proposed Settlement on [REDACTED], 2021, at [REDACTED] a.m./p.m. in Department CX-102 of the Orange County Superior Court – Complex Division, located at 751 W. Santa Ana Blvd., Santa Ana, CA 92701. The Final Approval Hearing may be continued to another date without further notice. Class Members may appear remotely for the Final Approval Hearing and should check the court website (<http://www.occourts.org/directory/civil/complex-civil/>) for information about current COVID-19 procedures and how to appear remotely.

## **2. *What is the Class Action Settlement?***

The Court must approve the terms of the Settlement as fair, adequate, and reasonable to the Class Members. The Settlement will affect all members of the Class. You may get money from the Class and Representative Action Settlement. This Notice explains the terms of the Settlement and the amount of money you may receive under the Settlement.

## **3. *What Is the Case About?***

Plaintiff contends, in a Class Action Complaint filed on January 6, 2020 (the “Action”), that First Class (a) failed to provide accurate itemized wage statements and (b) failed to pay wages in a timely manner under the California Labor Code. Plaintiff also seeks civil penalties under the Private Attorneys General Act (“PAGA”) as set forth in Labor Code sections 2698-2699.6, which allows a private citizen to pursue civil penalties on behalf of the State of California Labor Workforce Development Agency (“LWDA”) related only to the above Released Claims.

First Class denies the allegations raised in the Action. First Class believes that it has no liability for any of Plaintiff’s or the Class Members’ claims under any statute, wage order, common law, or equitable theory.

The Parties reached a Settlement with the help of a private mediator, Kelly Knight, Esq., subject to Court approval as represented in their Agreement. Class Counsel believes that the Settlement is fair, reasonable, and adequate, and that it is in the best interests of Class Members. Likewise, First Class has decided that settlement is favorable because it avoids the time, risk, and expense of a lengthy lawsuit, and settlement immediately resolves, finally and completely, the pending and potential claims. By settling this lawsuit, First Class does not admit, concede, or imply that it has done anything wrong or unlawful – and, in fact, First Class expressly denies that it has engaged in any wrongdoing.



**4. How Much Can I Expect to Receive?**

First Class will pay a total sum of \$263,296.00 (the “Gross Settlement Amount” or “GSA”), which includes all settlement payments to Class Members, Class Counsel’s fees and costs, costs of administering the Settlement, a payment to the LWDA under PAGA, and a Class Representative Enhancement. The amount remaining will be the “Net Settlement Amount” or “NSA.”

**Each Participating Class Member will receive approximately \$ [REDACTED] for each Pay Period worked during the Class Period (defined in the Settlement as any pay period during the Settlement Period in which a Class Member received wages from First Class). Based on First Class’s records, you worked [REDACTED] pay periods.**

**Additionally, each Class Member, including Non-Participating Class Members, shall receive a PAGA Payment in the amount of approximately \$ [REDACTED].**

If you believe the number of pay periods listed above is incorrect, you must submit an explanation to the Settlement Administrator within 21 days of the date of mailing shown on this Notice. The explanation must be signed under penalty of perjury, and must describe why and how you dispute the number of pay periods and include any supporting evidence or documentation to support your dispute. In the event of a dispute, the Settlement Administrator will decide the applicable number of Class Member pay periods after review of all records. Class Member pay period disputes may be reviewed and modified by the Court at the Final Approval Hearing.

It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your payment under the Settlement.

**5. Will Any Taxes be Deducted from My Individual Settlement Payment?**

No. There will be no payroll withholding from your payment because the entirety of your Individual Settlement Payment will be treated as penalties (75%) and interest (25%) and reported as non-wage income on an IRS Form 1099. The Settlement Administrator will issue 1099 Forms to all Participating Class Members who cash their checks.

The fact that payroll withholdings will not be made does not mean that the payment is not taxable income to you. You are responsible for the appropriate payment of any federal, state, and/or local income or payroll taxes due on the settlement payment you receive. You are advised to obtain tax advice from your own tax advisor with respect to any payments resulting from this settlement. This Notice does not constitute legal or tax advice regarding any federal, state, or local tax issue, and nothing in this Notice is intended to or should be used by any person for the purpose of avoiding any tax liability or tax penalties.

**6. Why Did First Class Join in This Notice?**

First Class does not admit any claim alleged in the Action and denies that it owes money for any of the claims in this matter. First Class is settling the Action as a compromise. First Class reserves the right to object to and defend itself against any claim(s) if, for any reason, the Settlement fails. The Court file has the Settlement documents with more information on the Action.

**7. *Who Is the Plaintiff in This Class Action?***

Steven Oda is the Plaintiff and Class Representative in this Class Action lawsuit. He is acting on behalf of himself and on behalf of other members of the Class.

**8. *Who Are the Attorneys Representing the Parties?***

**Class Counsel**

Larry W. Lee  
Max W. Gavron  
DIVERSITY LAW GROUP, P.C.  
515 S. Figueroa Street, Suite 1250  
Los Angeles, CA 90071  
Tel.: (213) 488-6555

William L. Marder  
POLARIS LAW GROUP LLP  
501 San Benito Street, Suite 200  
Hollister, CA 95023  
Tel.: (831) 531-4214

**Defense Counsel**

Alaya B. Meyers  
Tracy R. Williams  
LITTLER MENDELSON P.C.  
18565 Jamboree Road, Suite 800  
Irvine, CA 92612

**9. *What are my Rights? How Will My Rights Be Affected?***

Class Counsel, appointed and approved by the Court for Settlement purposes only, will represent you.

**Participating in the Settlement**

Under the Settlement, you **do not need to do anything**, and will **automatically receive a settlement payment** unless you opt-out by following the opt-out procedure set forth below.

This Notice of Settlement states the total number of Pay Periods you worked for First Class during the Class Period (*i.e.*, any Pay Period in which you received wages). Your individual settlement payment as a Class Member will be based on that number. You do not need to take any further action to receive your settlement payment.

Additionally, regardless of what action you take, you will receive a PAGA Payment.

**Objecting to the Settlement**



**If you wish to object to the Settlement**, you may submit a written objection to the Settlement Administrator and/or appear at the Final Approval Hearing and state why you object to the Settlement. The written Objection must be signed by you and include your full name, address, telephone number, and last four digits of your Social Security number. The written Objection must be mailed or faxed to the Settlement Administrator (whose address is listed below) and must be postmarked no later than [REDACTED], 2021. If you do not submit a written Objection, you may still appear at the Final Approval Hearing.

**IF YOU OBJECT TO THE SETTLEMENT, YOU WILL STILL RECEIVE YOUR SHARE OF THE SETTLEMENT AND THE PAGA PAYMENT IF THE COURT APPROVES THE SETTLEMENT.**

### **Opting-Out of the Settlement**

**If you wish to be excluded from participating in the Settlement**, you must submit a written request to Opt-Out to the Settlement Administrator via fax or at the address below requesting to be excluded from the Settlement. To be considered valid, your Opt-Out must be signed by you, and contain your name, address, telephone number, and the last four digits of your Social Security number. Your Opt-Out also must clearly indicate that you desire to be excluded from the Settlement. To be considered timely, your Opt-Out must be faxed or postmarked no later than [REDACTED], 2021. Late Opt-Outs will not be considered.

If you timely mail a complete and valid Opt-Out, you will not be a Participating Class Member and you will not be eligible to object to the terms of the Settlement or receive money under the Settlement (except for that portion of the settlement allocated to PAGA penalty payments – *i.e.*, the PAGA Payment). You will not be bound by the terms of the Settlement, including the release. **However**, you will still receive the PAGA Payment, and will still be bound by the PAGA release.

If you submit a written objection **and** an Opt-Out request, your Opt-Out request will take precedence and you will not be a Participating Class Member. As such, your objection will not be considered.

### **Effect of the Settlement on Your Rights**

Upon the final approval of the settlement by the Court, all Class Members (other than those who submit a valid opt-out/request for exclusion), will release all claims against the “Released Parties” within the definition of “Settled Claims,” as set forth in the parties’ Settlement Agreement. “Released Parties” means First Class and its past or present successors and predecessors in interest, acquirers, subsidiaries, affiliates, parents, officers, owners, directors, shareholders, employees, servants, agents, principals, heirs, representatives, accountants, auditors, consultants, attorneys, trustees, insurers and reinsurers. “Settled Claims” mean all claims, demands, rights, liabilities, and causes of action, whether known or unknown, that were or could have been asserted (whether in tort, contract, or otherwise) for violation of local, state and federal law arising out, or relating to the claims or allegations pled in the Action, as well as all claims that arise out of the facts, matters or occurrences referred to in the Action that could have been alleged as separate claims, causes of action, lawsuits, or other theories of relief. Settled Claims include all types of relief available for the theories of relief in the operative complaint, including, without limitation, any claims for inaccurate and/or incomplete itemized

wage statements, late wage payments, failure to record meal periods or maintain accurate records of the same, damages, restitution, losses, penalties, fines, liens, attorneys' fees, costs, expenses, debts, interest, penalties, injunctive, or declaratory relief, chargebacks, liquidated damages, or similar relief, as well as any claims pursuant to PAGA that accrued during the Settlement Period. All Class Members, regardless of whether they opt-out, shall waive claims under PAGA for penalties.

**10. How Will the Attorneys for the Classes Be Paid?**

The attorneys for the Class Representative and the Class Members (Class Counsel) will be paid from the GSA. Class Counsel are seeking fees in the amount of 1/3 of the GSA, or \$87,765.33. Class Counsel are also seeking reimbursement of their costs, in an amount up to \$20,000. Plaintiff is seeking a Representative Enhancement Award of \$10,000 from the Settlement for his service as a Class Representative. The Parties have agreed that \$10,000 shall be allocated to settle the PAGA claim, with \$7,500 to be paid to the LWDA, and the remaining \$2,500 to be divided equally among the Class Members (the PAGA Payment). The Settlement Administrator estimates that the cost of administration will not exceed \$9,950. All of these amounts are to be deducted from the GSA, with the remainder available for distribution to Class Members who do not opt-out.

**11. How Will I Know Whether the Settlement Has Been Approved?**

The Court has preliminarily approved the Settlement and will hold a Final Approval Hearing on [REDACTED], 2021, at [REDACTED] a.m./p.m. in Department CX-102 of the Orange County Superior Court – Complex Division, to determine whether the Settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court. The Final Approval Hearing may be continued to another date without further notice.

During the Final Approval Hearing, the Court will hear arguments for and against the proposed settlement and consider any objections. Once final approval is granted by the Court, the Court will enter judgment against First Class. Class Members may view a copy of the Final Judgment on the Settlement Administrator's website, [REDACTED], when it becomes available.

**IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS**, you may call Class Counsel (see contact information in Section 8, above), review the Settlement website, or call the Settlement Administrator at the telephone number listed below, toll free.

**First Class Settlement Administrator**  
[ADDRESS]  
[PHONE NUMBER]  
[WEBSITE]

You can find a copy of the Agreement as well as the Motions for Preliminary and Final Approval on the website of the Settlement Administrator, which is [REDACTED].



You may also access the Court's records at the website below:

<https://www.occourts.org/online-services/case-access/>

Select "Civil Case & Document Access", accept terms, enter case number "01122098" and year filed "2020", authenticate reCAPTCHA, and search. Records for this case are listed under the Register of Actions tab.

**PLEASE DO NOT CONTACT OR TELEPHONE THE COURT, FIRST CLASS, OR FIRST CLASS'S COUNSEL FOR LEGAL ADVICE OR FOR INFORMATION ABOUT THIS SETTLEMENT.**

By Order of the Orange County Superior Court, the Honorable Peter Wilson.