

1 CHANTAL MCCOY PAYTON, ESQ. (SBN: 293215)  
JOHNNY DARNELL GRIGGS, ESQ. (SBN: 110640)  
2 **PAYTON EMPLOYMENT LAW, PC**  
3807 W. Sierra Highway, Suite 206  
3 Acton, California 93510  
Telephone: (661) 434-1144  
4 Facsimile: (661) 434-1144  
CPayton@PaytonEmploymentLaw.com  
5 JGriggs@PaytonEmploymentLaw.com

**FILED**  
Superior Court of California  
County of Los Angeles

10/25/2024

David W. Slayton, Executive Officer / Clerk of Court

By:           A. Morales           Deputy

6 Attorneys for Plaintiff Jeremy Hartwell, and the putative class

7  
8  
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF LOS ANGELES**

12 JEREMY HARTWELL, an individual; and on  
13 behalf of all others similarly situated,

14 Plaintiff,

15 vs.

16 KINETIC CONTENT, LLC, a Delaware limited  
17 liability company; NETFLIX, INC., a Delaware  
18 Corporation; DELIRIUM TV, LLC, a Delaware  
19 limited liability company; DOES 1-10, business  
20 entities, forms unknown; DOES 11-20,  
21 individuals; and DOES 21-30, inclusive,

22 Defendant.

**Case No.: 22STCV21223**

CLASS ACTION CASE

~~[PROPOSED]~~ **ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT AND  
CERTIFICATION OF A SETTLEMENT  
CLASS, AND APPROVING CLASS  
REPRESENTATIVE, CLASS COUNSEL,  
AND CLASS NOTICE**

Date: October 21, 2024

Time: 11:00 a.m.

Dept.: 7

Judge: Hon. Lawrence O. Riff

Action Filed: June 29, 2022

Trial Date: Not Set

1           **ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION**  
2 **SETTLEMENT**

3           The Motion for Preliminary Approval of a Settlement came before this Court, on October 21,  
4 2024. The Court, having considered the proposed Settlement Agreement, attached hereto as **Exhibit 1**,  
5 (hereafter collectively, the “Settlement Agreement”); having considered the Motion for Preliminary  
6 Approval of Class Action Settlement filed by Plaintiff (to which Defendants did not object); having  
7 considered the respective points and authorities and declarations submitted by the parties in support  
8 thereof; and good cause appearing, **HEREBY ORDERS THE FOLLOWING:**

9           The Court grants preliminary approval of the settlement as set forth in the Settlement Agreement  
10 and finds the terms to be within the range of reasonableness of a settlement that ultimately could be  
11 granted approval by the Court at the final Fairness Hearing. For purposes of the settlement, the Court  
12 finds that the proposed settlement class is ascertainable and that there is a sufficiently well-defined  
13 community of interest among the Class in questions of law and fact. Therefore, for settlement purposes  
14 only, the Court grants conditional certification of the following “Settlement Class” defined as follows:

15           *All participants who participated in the production of any of the following reality television*  
16 *productions in the State of California: Love is Blind seasons 2, 3, 4 and 5 (“LIB”), and Ultimatum*  
17 *seasons 1A and 1B (“Ultimatum”).*

18           A. For purposes of the settlement, the Court further designates named Plaintiff Jeremy  
19 Hartwell as Class Representative, and the law firm of Payton Employment Law, PC as Class Counsel.

20           B. The Court confirms Apex Class Action LLC as the Settlement Administrator.

21           C. A final fairness hearing on the question of whether the proposed settlement should be  
22 finally approved as fair, reasonable and adequate as to the members of the Settlement Class is scheduled  
23 in Department 7 of this Court, located at 312 North Spring Street, Los Angeles, CA 90012, on February  
24 11, 2025, at 10:00 a.m.

25           D. At the final fairness hearing, the Court will consider: (a) whether the settlement should be  
26 approved as fair, reasonable, and adequate for the class; (b) whether a judgment granting approval of the  
27 settlement should be entered; and (c) whether Plaintiff’s application for an award of attorneys’ fees,  
28 reimbursement of litigation expenses, and class representative enhancement should be granted.

1 E. Counsel for the parties shall file memoranda, declarations, or other statements and  
2 materials in support of their request for final approval by no later than January 17, 2025.

3 F. Class Counsel shall file a motion for an award of attorneys' fees, reimbursement of  
4 litigation expenses and class representative enhancement by no later than January 17, 2025.

5 G. The Court approves, as to form and content, the Notice of Class Action Settlement and  
6 Hearing Date for Final Approval ("Notice") which is attached hereto as **Exhibit "2."**

7 H. The Notice Date shall commence no later than 40 calendar days after the date of this  
8 Order.

9 I. The Class Notice shall provide at least 45 calendar days from the Notice Date for a  
10 proposed member of the Class to opt out of settlement or, object to the settlement("Close of Opt  
11 Out/Objection Period").

12 J. The Court directs the mailing of the Notice by first class mail to the members of the  
13 Settlement Class on the Notice Date.

14 K. On or before the Notice Date, the Notice shall be made available on an internet website.

15 L. On or before the Notice Date, the parties shall also set up a toll-free telephone number  
16 that Settlement Class members may call to obtain a copy of the Notice.

17 M. The Court finds that the forms of notice to the Settlement Class regarding the pendency  
18 of the action and of this settlement, and the methods of giving notice to members of the Settlement Class  
19 constitute the best notice practicable under the circumstances and constitute valid, due, and sufficient  
20 notice to all members of the Settlement Class. They comply fully with the requirements of California  
21 Code of Civil Procedure section 382, California Civil Code section 1781, California Rules of Court 3.766  
22 and 3.769, the California and United States Constitutions, and other applicable law.

23 N. The Court further approves the procedures for Class Members to participate in, opt out of,  
24 or object to the Settlement, as set forth in the Settlement Agreement and Notice of Pendency of Class  
25 Action.

26 O. To validly object to the Settlement Agreement, an objecting settlement class member must  
27 provide the following information in the written objection: (i) the objecting settlement class member's  
28 full name, current address, telephone number, and signature; (ii) the settlement class member's objections

1 to the Settlement Agreement; (iii) the reasons for the settlement class member’s objections; (iv) whether  
2 the settlement class member intends to appear at the Fairness Hearing with or without separate counsel;  
3 and (v) if the settlement class member intends to appear at the Fairness Hearing with separate counsel,  
4 the identities of all attorneys who will separately represent the settlement class member. In addition, any  
5 settlement class member objecting to the Settlement Agreement shall provide a list of any other  
6 objections submitted by the objector, or the objector's separate counsel, to any class action settlements  
7 submitted in any court in the United States, whether state, federal or otherwise, in the previous five years.  
8 If the settlement class member or the settlement class member’s separate counsel has not objected to any  
9 other class action settlement in any court in the United States in the previous five years, the settlement  
10 class member shall affirmatively so state in the written objection.

11 P. The procedures and requirements for filing objections in connection with the Fairness  
12 Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any  
13 Class Member’s objection to the Settlement Agreement, in accordance with the due process rights of all  
14 Class Members.

15 Q. Pending the Fairness Hearing, all proceedings in this action, other than proceedings  
16 necessary to carry out or enforce the terms and conditions of the Settlement Agreement and this Order,  
17 are stayed.

18 R. Counsel for the parties are hereby authorized to utilize all reasonable procedures in  
19 connection with the administration of the settlement which are not materially inconsistent with either this  
20 Order or the terms of the Settlement Agreement.

21 S. To facilitate administration of the Settlement pending final approval, the Court hereby  
22 enjoins all Class Members from filing or prosecuting any claims, suits or administrative proceedings  
23 regarding claims released by the Settlement unless and until such Class Members have filed valid  
24 Requests for Exclusion with the Settlement Administrator and the time for submitting objections with  
25 the Settlement Administrator has elapsed.

26  
27 ///

28 ///

T. The Court orders the following Implementation Schedule for further proceedings.

Event	Timing
Last day for Defendants to provide class member data for preparation of the Notice.	November 10, 2024 (20 days after Preliminary Approval)
Notice Date: (i) last day for settlement administrator to mail class notice to class members; (ii) last day to set-up and make settlement website available to public; and (iii) last day to set up and make available toll-free telephone number.	November 30, 2024 (40 days after Preliminary Approval)
Last day for settlement administrator to complete publication notice to class.	January 9, 2024 (40 days after Notice Date)
Last day for class counsel to file motion for award of attorneys' fees, reimbursement of litigation expenses and class representative enhancement.	December 30, 2024 (30 days after Notice Date)
Close of Opt Out/Objection Period: (i) last day for class members to submit opt-outs and (ii) last day for class members to submit objections.	January 14, 2025 (45 days after Notice Date)
Close of Opt/Out Objection Period: (i) last day for class members to submit opt-outs and (ii) last day for class members to submit objections for those class members whose initial Class Notice was returned as undeliverable.	14 days after Class Notice is remailed to class members whose initial Class Notice was returned as undeliverable
Last day for Plaintiff to respond to objections.	February 3, 2024 (20 days after receipt of objection)
Last day for settlement administrator to provide declaration of mailing of class notice.	January 3, 2025 (14 days before filing of Final Approval Motion)
Last day for parties to file motion and supporting documents for final approval of class action settlement.	January 17, 2025 (16 court days before hearing on Final Approval)
Hearing on final approval of class action settlement.	February 11, 2025 at 10:00 a.m. (approximately 95 days after Preliminary Approval)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

U. The Fairness Hearing and related prior deadlines set forth above may, from time to time and without further notice to the Settlement Class (except those who have filed timely and valid objections), be continued or adjourned by Order of the Court.

**IT IS SO ORDERED.**

Dated: 10/25/2024



Lawrence P. Riff / Judge

---

Hon. Lawrence P. Riff,  
Judge of the Superior Court

# **EXHIBIT 1**

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

This Class Action and PAGA Settlement Agreement (“Agreement”) is entered into by and between Plaintiff Jeremy Hartwell (“Plaintiff”) and Defendants Kinetic Content, LLC, Delirium TV, LLC, and Netflix, Inc. (“Defendants”). The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

### **1. DEFINITIONS.**

1.1 “Action” means Plaintiff’s lawsuit alleging wage and hour violations against Defendants and Netflix US, LLC captioned *Jeremy Hartwell vs. Kinetic Content, LLC, et al.*, initiated on June 29, 2022, and pending in Superior Court of the State of California, County of Los Angeles. During the Action, Defendants have maintained that Plaintiff and the putative class members were not Defendants’ employees.

1.2 “Administrator” means Apex Class Action LLC, the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.4 “Putative Aggrieved Employee” means, for purposes of this Agreement only, all participants who participated in the production of any of the following reality television productions in the State of California: *Love is Blind* seasons 2, 3, 4 and 5 (“*LIB*”), and *Ultimatum* seasons 1A and 1B (“*Ultimatum*”). During the Action, Defendants have maintained that Plaintiff and the Putative Aggrieved Employees were not Defendants’ employees.

1.5 “Class” means all participants who participated in the production of any of the following reality television productions in the State of California: *LIB* seasons 2, 3, 4 and 5, and *Ultimatum* seasons 1A and 1B. During the Action, Defendants have maintained that Plaintiff and members of the Class were not Defendants’ employees.

1.6 “Class Counsel” means Chantal McCoy Payton of Payton Employment Law, PC.

1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

1.8 “Class Data” means Class Member identifying information in Defendants’ possession including the Class Member’s name, last-known mailing address, Social Security number, and number of weeks the Participating Class Member participated on *LIB* or *Ultimatum* in the State of California during the Class Period and PAGA Period.



1.9 “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as a Putative Aggrieved Employee).

1.10 “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.11 “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12 “Class Period” means the period from June 29, 2018, to the date of Preliminary Approval.

1.13 “Class Representative” means Jeremy Hartwell, the named Plaintiff in the Action seeking Court approval to serve as the Class Representative.

1.14 “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.15 “Court” means the Superior Court of California, County of Los Angeles.

1.16 “Defendants” mean named Defendants Kinetic Content, LLC, Delirium TV, LLC, and Netflix, Inc.

1.17 “Defense Counsel” means Timothy M. Keegan of Ogletree, Deakins, Nash, Smoak & Stewart on behalf of Kinetic Content, LLC and Delirium TV, LLC, and Emma Luevano of Mitchell Silberberg & Knupp LLP on behalf of Netflix, Inc.

1.18 “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.19 “Final Approval” means the Court’s order granting final approval of the Settlement.

1.20 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

1.21 “Final Judgment” means the Judgment entered by the Court upon granting Final Approval of the Settlement.

1.22 “Gross Settlement Amount” means \$1,395,000, which is the total amount Defendants agree to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Litigation Expenses, the Class Representative Service Payment, and the Administration Expenses Payment.

1.23 “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount based on the number of weeks the Participating Class Member participated on *LIB* or *Ultimatum* in the State of California during the Class Period (“Participation Weeks”).

1.24 “Individual PAGA Payment” means the Putative Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties based on the number of weeks the Participating Class Member participated on *LIB* or *Ultimatum* in the State of California during the PAGA Period.

1.25 “Judgment” means the judgment entered by the Court based upon the Final Approval.

1.26 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled under Labor Code section 2699, subdivision (i).

1.27 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subdivision (i).

1.28 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.29 “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.30 “PAGA Participation Period” means any purported pay period during which a Putative Aggrieved Employee participated on *LIB* or *Ultimatum* in the State of California for at least one day during the PAGA Period.

1.31 “PAGA Period” means the period from April 22, 2021, to the date of Preliminary Approval.

1.32 “PAGA” means the Private Attorneys General Act (Lab. Code § 2698, *et seq.*).

1.33 “Plaintiff’s PAGA Notice” means Plaintiff’s April 22, 2022, letter to the LWDA providing notice pursuant to Labor Code section 2699.3, subdivision (a).

1.34 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Putative Aggrieved Employees (\$5,000) and 75% to LWDA (\$15,000) in settlement of PAGA claims.

1.35 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. During the Action, Defendants have maintained that Plaintiff and the Participating Class Members were not Defendants’ employees.

1.36 “Plaintiff” means Jeremy Hartwell, the named plaintiff in the Action.

1.37 “Preliminary Approval” means the Court’s order granting preliminary approval of the Settlement.

1.38 “Preliminary Approval Order” means the Order Granting Preliminary Approval and Approval of PAGA Settlement.

1.39 “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.

1.40 “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.

1.41 “Released Parties” means Defendants and each and all of their present and former partners, parents, subsidiaries, affiliates, and related entities (including, but not limited to Netflix US, LLC), and all of their officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, payroll companies, staffing agencies, successors and assigns, and any other persons acting by, through, under, or in concert with any of them (including any alleged joint employers).

1.42 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Settlement signed by the Class Member.

1.43 “Response Deadline” means 45 days after the Administrator mails Notice to Class Members and Putative Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his, her, or their Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

1.44 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

## **2. RECITALS.**

2.1 On or about June 29, 2022, Plaintiff Jeremy Hartwell commenced the class action by filing a Complaint against Defendants and Netflix US, LLC. On or about April \_\_, 2024, Plaintiff filed his First Amended Complaint and that First Amended Complaint is the operative Complaint in the Action (the “Operative Complaint”). The Operative Complaint alleges wage and hour violations including failure to pay all wages due (including minimum wage and overtime wages), failure to provide meal or rest periods, failure to timely pay wages and final wages, failure to furnish accurate wage statements, failure to keep payroll records showing total

hours worked and wages paid to employees, and unfair business practices (including claims derivative and/or related to these claims, including PAGA Penalties). Defendants deny the allegations in the Operative Complaint, deny that the laws identified in the Operative Complaint apply to Plaintiff or any other putative class member, deny that Plaintiff or any other putative class member is an “aggrieved employee,” and deny any and all liability for the causes of action alleged.

2.2 On or about March 22, 2023, the Parties participated in an all-day mediation presided over by Chris Barnes and subsequent discussions, which led to this Agreement to settle the Action.

2.3 Prior to negotiating the Settlement, Plaintiff obtained informal discovery which included, among other things, the total number of Class Members and Putative Aggrieved Employees at issue and a sample of records, including statements showing payments made to Class Members, sample contracts (including arbitration agreements) that the Class Members signed, and records of production hours. Plaintiff’s investigation was sufficient to satisfy the criteria for Court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

2.4 The Court has not granted class certification. The Parties stipulate to class certification for purposes of settlement only. If the Court does not grant Preliminary and Final Approval of this Agreement despite the Parties’ good faith efforts to address the Court’s concerns without increasing the Gross Settlement Amount, the Parties shall return to status quo ante.

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

### **3. MONETARY TERMS.**

3.1 Gross Settlement Amount. Defendants promise to pay \$1,395,000 and no more as the Gross Settlement Amount and to separately pay any and all putative employer payroll taxes owed on the “wage portions” of the Individual Class Payments, even though Defendants deny that Plaintiff or any members of the Class were Defendants’ employees. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Putative Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

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

3.2.1 To Plaintiff: A Class Representative Service Payment to the Class Representative of not more than \$10,000 (in addition to any Individual Class Payment and any

Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member or Putative Aggrieved Employee). Defendants will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than 35% of the Gross Settlement Amount, which is estimated to be \$488,250 and a Class Counsel Litigation Expenses Payment of not more than \$14,000.00. Defendants will not oppose requests for these payments provided they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's counsel arising from any claim to any portion of any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3 To the Administrator: An Administration Expenses Payment not to exceed \$5,500.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$5,500.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4 To the LWDA and Putative Aggrieved Employees: PAGA Penalties in the amount of \$20,000 to be paid from the Gross Settlement Amount, with 75% (\$15,000) allocated to the LWDA PAGA Payment and 25% (\$5,000) allocated to the Individual PAGA Payments.

3.2.4.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Putative Aggrieved Employees' 25% share of PAGA Penalties (\$5,000) by the total number of PAGA Participation Periods during the PAGA Period and (b) multiplying the result by each Putative Aggrieved Employee's PAGA Participation Periods. Putative Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

3.2.4.3 If the Court requires a PAGA allocation higher than the foregoing, such determination shall not increase the amount of the Gross Settlement Amount, and the amounts that constitute the Gross Settlement Amount shall be reallocated as necessary.

3.3 Payments from the Net Settlement Amount. Payment will be made to Participating Class Members from the Net Settlement Amount as follows:

3.3.1 Individual Class Payment. Each Participating Class Member will receive an Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Participation Weeks during the Class Period and (b) multiplying the result by each Participating Class Member's Participation Weeks.

3.3.2 Tax Allocation of Payments. 33.33% of each Participating Class Member's Individual Class Payment will be allocated to settlement of putative wage claims (*e.g.*, the "wage claim portions"). The wage claim portions will be subject to tax withholding and will be reported on an IRS W-2 Form. 66.66% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (*e.g.*, the "non-wage portion"). The non-wage claim portions will not be subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payments.

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

3.3.4 If the Court disapproves of the payment structure in this Agreement, then the Parties will negotiate in good faith to adjust the structure, but in no event will Defendants be required to pay more than the Gross Settlement Amount on the basis of the payment structure.

#### **4. SETTLEMENT FUNDING AND PAYMENTS.**

4.1 Class Members. Based on a review of its records to date, Defendants estimate there are 144 Class Members who collectively participated in a total of 738 Participation Weeks, and 144 Putative Aggrieved Employees who participated in a total of 738 PAGA Participation Periods.

4.2 Class Data. Not later than 20 days after the Court grants Preliminary Approval of the Settlement, Defendants will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a

continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3 Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount, by transmitting the funds to the Administrator no later than 21 calendar days after the Effective Date.

4.4 Payments from the Gross Settlement Amount. Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

4.4.1 The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Class Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Putative Aggrieved Employees including Non-Participating Class Members who qualify as Putative Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2 The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without United States Postal Service ("USPS") forwarding address. Within 10 days of receiving a returned check, the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, if requested by the Class Member prior to the void date.

4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's

Unclaimed Property Fund in the name of the Class Member, thereby leaving no “unpaid residue” subject to the requirements of California Code of Civil Procedure section 384, subdivision (b).

4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to Class Members beyond those specified in this Agreement.

**5. RELEASES OF CLAIMS.** Effective on the date when Defendants fully fund the entire Gross Settlement Amount, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1 Plaintiff’s Release. Plaintiff and his former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorneys’ fees, damages, actions or causes of action of whatever kind or nature, contingent or accrued, that occurred in connection with his participation on *LIB* and *Ultimatum*, including, but not limited to: (a) all claims that were or reasonably could have been alleged based on the facts contained in the Operative Complaint; and (b) all PAGA claims that were or reasonably could have been alleged based on facts contained in the Operative Complaint, Plaintiff’s PAGA Notice, or ascertained during the Action and released under Paragraph 5.3, below, including under any legal theory that was alleged or that could have been alleged for any failure to pay all wages due (including minimum wage and overtime wages), failure to provide meal or rest periods, failure to timely pay wages and final wages, failure to furnish accurate wage statements, and failure to keep payroll records showing total hours worked and wages paid to employees (“Plaintiff’s Release”). This Plaintiff’s Release shall include all claims and theories that were, or could have been asserted in the Operative Complaint in the Action arising under the California Labor Code, the Fair Labor Standards Act, California wage orders, and applicable regulations, including California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 232, 256, 432.5, 432.7, 432.8, 510, 512, 558, 980, 1019.1, 1024.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 3700, 3708, 6400, 6402, as well as claims under Business and Professions Code section 17200, *et seq.*, Government Code sections 12940 and 12964.5, Civil Code section 1671, and/or California Labor Code section 2698, *et seq.*, based on alleged violations of the above Labor Code provisions, as alleged in the Action. Plaintiff’s Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers’ compensation benefits that arose at any time, or based on occurrences outside of his participation on *LIB* or *Ultimatum*. Plaintiff acknowledges that he may discover facts or law different from, or in addition to, the facts or law that he now knows or believes to be true but agrees, nonetheless, that Plaintiff’s Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff’s discovery of them.

5.2 Release by Participating Class Members. All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and ascertained in the course of the Action, including failure to pay all wages due (including minimum wage and overtime wages), failure to provide meal or rest periods, failure to



timely pay wages and final wages, failure to furnish accurate wage statements, and failure to keep payroll records showing total hours worked and wages paid to employees. This Release shall include all claims and theories that were, or could have been asserted in the Operative Complaint in the Action arising under the California Labor Code, the Fair Labor Standards Act, California wage orders, and applicable regulations, including California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 232, 256, 432.5, 432.7, 432.8, 510, 512, 558, 980, 1019.1, 1024.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 3700, 3708, 6400, 6402, as well as claims under Business and Professions Code section 17200, *et seq.*, Government Code sections 12940 and 12964.5, Civil Code section 1671, and/or California Labor Code section 2698, *et seq.*, based on alleged violations of the above Labor Code provisions, as alleged in the Action. Except as set forth in Paragraph 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, other violations of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.3 Release by Putative Aggrieved Employees. All Putative Aggrieved Employees (regardless of whether they are Participating Class Members) are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA Penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint during the PAGA Period, Plaintiff's PAGA Notice, and ascertained in the course of the Action, including failure to pay all wages due (including minimum wage and overtime wages), failure to provide meal or rest periods, failure to timely pay wages and final wages, failure to furnish accurate wage statements, and failure to keep payroll records showing total hours worked and wages paid to employees.

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

6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code section 2699, subdivision (f)(2); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel, or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Lab. Code § 2699.3, subdivision (a)), Complaints (Lab. Code § 2699, subdivision (l)(1)), and this

Agreement (Lab. Code § 2699, subdivision (1)(2)); (vi) a redlined version of the Parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members and/or the Administrator. In their Declarations, Plaintiff and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person, by video conference, or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person, by video conference, or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns; provided, however, that the Parties shall be under no obligation to proceed with the Settlement if the required material changes are unacceptable to the Parties or would require Defendants to pay more than the Gross Settlement Amount.

## 7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected Apex Class Action LLC to serve as the Administrator and verified that, as a condition of appointment, Apex Class Action LLC agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings, if any, and providing reports to state and federal tax authorities.

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

### 7.4 Notice to Class Members.

7.4.1 Not later than 3 business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of

Class Members, Putative Aggrieved Employees, Participation Weeks, and PAGA Participation Periods in the Class Data.

7.4.2 Using best efforts to perform as soon as possible, and in no event later than 20 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class USPS mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Participation Weeks and PAGA Participation Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

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

7.4.4 The deadlines for Class Members' written objections, challenges to Participation Weeks and/or PAGA Participation Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.4.5 If the Administrator, Defendants, or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person, by video conference, or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

## 7.5 Requests for Exclusion (Opt-Outs).

7.5.1 Class Members who wish to exclude themselves (opt-out) of the Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her/their representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address, and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

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

7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Putative Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

7.6 Challenges to Calculation of Participation Weeks. Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Participation Weeks and PAGA Participation Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Participation Weeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Participation Weeks and/or PAGA Participation Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Participation Weeks and/or PAGA Participation Periods to Defense Counsel and Class Counsel and the Administrator's determination of the challenges.

#### 7.7 Objections to Settlement.

7.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Class Representative Service Payment.

7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present oral objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so no later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

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

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

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

7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing: (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; and (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must provide the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

7.8.4 Participation Week and/or PAGA Participation Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Participation Weeks and/or PAGA Participation Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.

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

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

**8. CLASS SIZE AND PARTICIPATION WEEK ESTIMATE.** Based on their records, Defendants estimate that there are approximately 144 Class Members and 738 Participation Weeks during the Class Period of June 29, 2018 to the date of Preliminary Approval.

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

**10. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA Settlement under Labor Code section 2699, subdivision (1), a Proposed Final Approval Order, and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than 14 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person, by video conference, or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

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

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

10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval; provided, however, that the Parties shall be under no obligation to proceed with the Settlement if the required material changes are unacceptable to the Parties or would require Defendants to pay more than the Gross Settlement Amount. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Administration Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this Paragraph.

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

10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, and the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs, or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final.

10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address, if possible, the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur; provided, however, that at no time will Defendants be required to pay more than the Gross Settlement Amount. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this Paragraph, as long as the Gross Settlement Amount remains unchanged.

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

## 12. ADDITIONAL PROVISIONS.

12.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason, the Court does not grant Preliminary Approval, Final Approval, or enter Judgment, Defendants reserve the right to contest certification of any class for any reasons, as well as the representative treatment or manageability of any PAGA claim, and Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendants' defenses. The Settlement, this Agreement, and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendants, and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to Plaintiff's attorneys, accountants, or spouse, all of whom will be instructed to keep this Agreement confidential; (2) as for Defendants, as needed for legal, accounting, tax, or other business reasons; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendants, and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. Plaintiff and Class Counsel shall not publicize the settlement on their websites, in advertising/marketing materials, or on social media, other than filing documents with the Court. This Paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

12.2.1 No Public Statements by Plaintiff Prior to Final Approval: Plaintiff and his counsel also separately agree not to make any public statements about this Action, the factual allegations alleged in the Complaint or Operative Complaint, or the Settlement or this Agreement through the date the Court grants Final Approval of the Settlement.

12.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this Paragraph shall be construed to restrict Class



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

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

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

12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, and submitting supplemental evidence or supplementing points and authorities as requested by the Court. Plaintiff will not opt out of the Settlement. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of the Court for resolution.

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

12.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendants, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the State of California, without regard to conflict of law principles.

12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during the Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to California Evidence Code section 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and for no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or California Rules of Court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Class Data received from Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants make a written request to Class Counsel for the return, rather than the destruction, of Class Data.

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

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

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

To Plaintiff:

Chantal McCoy Payton  
PAYTON EMPLOYMENT LAW, PC  
3807 W. Sierra Highway, Suite 206  
Acton, California 93510

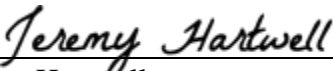
To Defendants:


Timothy M. Keegan  
OGLETREE, DEAKINS, NASH, SMOAK & STEWART  
15 West South Temple St., Suite 950  
Salt Lake City, Utah 84101

Emma Luevano  
MITCHELL SILBERBERG & KNUPP LLP  
2049 Century Park East, 18th Floor  
Los Angeles, California 90067


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


12.19 Stay of Litigation. The Parties agree that, upon the execution of this Agreement, the Action shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree, upon the signing of this Agreement and pursuant to California Code of Civil Procedure section 583.330, to extend the date to bring a case to trial under California Code of Civil Procedure section 583.310 for the entire period of this settlement process.

  
\_\_\_\_\_  
Jeremy Hartwell

  
\_\_\_\_\_  
Chantal McCoy Payton  
Payton Employment Law, PC  
Counsel for Plaintiff

  
\_\_\_\_\_  
For Defendant Kinetic Content, LLC  
By:  
Its:

  
\_\_\_\_\_  
For Defendant Delirium TV, LLC  
By:  
Its:

  
\_\_\_\_\_  
Timothy M. Keegan, Esq.  
Ogletree, Deakins, Nash, Smoak & Stewart  
Counsel for Defendants Kinetic Content, LLC  
and Delirium TV, LLC

\_\_\_\_\_  
For Defendant Netflix, Inc.  
By:  
Its:

\_\_\_\_\_  
Emma Luevano, Esq.  
Mitchell Silberberg & Knupp LLP  
Counsel for Defendant Netflix, Inc.

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

12.19 Stay of Litigation. The Parties agree that, upon the execution of this Agreement, the Action shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree, upon the signing of this Agreement and pursuant to California Code of Civil Procedure section 583.330, to extend the date to bring a case to trial under California Code of Civil Procedure section 583.310 for the entire period of this settlement process.

---

Jeremy Hartwell

---

Chantal McCoy Payton  
Payton Employment Law, PC  
Counsel for Plaintiff

---

For Defendant Kinetic Content, LLC  
By:  
Its:

---

For Defendant Delirium TV, LLC  
By:  
Its:

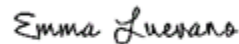
---

Timothy M. Keegan, Esq.  
Ogletree, Deakins, Nash, Smoak & Stewart  
Counsel for Defendants Kinetic Content, LLC  
and Delirium TV, LLC



---

For Defendant Netflix, Inc.  
By:  
Its:



---

Emma Luevano, Esq.  
Mitchell Silberberg & Knupp LLP  
Counsel for Defendant Netflix, Inc.

# **EXHIBIT 2**

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

(case name: *Jeremy Hartwell vs. Kinetic Content, LLC, et al.* and number: 22STCV21223)

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

**You may be eligible to receive money** from a class action lawsuit (“this Action”) against Kinetic Content, LLC, Delirium TV, LLC, Netflix US, LLC, and Netflix, Inc. (“Defendants”) for alleged wage and hour violations. This Action was filed by a participant on *Love is Blind*, Jeremy Hartwell (“Plaintiff”), and seeks payment of (1) putative wages and other relief for a class of participants (“Class Members”) who participated in the production of any of the following reality television productions in the State of California: *Love is Blind* seasons 2, 3, 4 and 5 (“*LIB*”) and *Ultimatum* seasons 1A and 1B (“*Ultimatum*”) during the Class Period (June 29, 2018 to the date of the Court’s order preliminarily approving this Settlement) (The number of weeks You participated on *LIB* or *Ultimatum* in the state of the California will be referred to as “Participation Weeks”); and (2) penalties under the California Private Attorneys General Act (“PAGA”) for all participants who participated in the production of *LIB* or *Ultimatum* during the PAGA Period (April 22, 2021 to the date of the Court’s order preliminarily approving this Settlement (“Putative Aggrieved Employees”). During the Action, Defendants have maintained that Plaintiff and the putative class members were not Defendants’ employees.

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

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

The above estimates are based on Defendants’ records showing that **you have \_\_\_ Participation Weeks** during the Class Period and **you have \_\_\_ PAGA Participation Periods** during the PAGA Period. If you believe that you had more Participation Weeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and his attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendants to make payments

under the Settlement and requires Class Members and Putative Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you participated in *LIB* or *Ultimatum* during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

(1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendants.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendant, and, if you are a Putative Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

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

### SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

<p><b>You Don't Have to Do Anything to Participate in the Settlement</b></p>	<p>If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendants that are covered by this Settlement (Released Claims).</p>
<p><b>You Can Opt-out of the Class Settlement but not the PAGA Settlement</b></p> <p><b>The Opt-out Deadline is January 14, 2025</b></p>	<p>If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Putative Aggrieved Employees and the Putative Aggrieved Employees must give up their rights to pursue Released Claims (defined below).</p>
<p><b>Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement</b></p> <p><b>Written Objections Must be Submitted by January 14, 2025</b></p>	<p>All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.</p>

<p><b>You Can Participate in the <u>February 11, 2025</u> Final Approval Hearing</b></p>	<p>The Court’s Final Approval Hearing is scheduled to take place on February 11, 2025. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.</p>
<p><b>You Can Challenge the Calculation of Your Participation Week / Periods</b></p> <p><b>Written Challenges Must be Submitted by January 14, 2025</b></p>	<p>The amount of your Individual Class Payment and LWDA PAGA payment (if any) depend on how many Participation Weeks you participated at least one day during the Class Period and how many Participation Periods you participated at least one day during the PAGA Participation Period, respectively. The number of Class Period Participation Weeks and number of PAGA Participation Periods you participated according to Defendants’ records are stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by January 14, 2025. See Section 4 of this Notice.</p>

**1. WHAT IS THIS ACTION ABOUT?**

Plaintiff is a former participant of *LIB*. This Action accuses Defendants of violating California labor laws by its alleged failure to pay all wages due (including minimum wage and overtime wages), failure to provide meal or rest periods, failure to timely pay wages and final wages, failure to furnish accurate wage statements, failure to keep payroll records showing total hours worked and wages paid to employees, and unfair business practices (including claims derivative and/or related to these claims). Based on the same claims, Plaintiffs has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in this Action: Chantal McCoy Payton and Johnny Darnell Griggs of Payton Employment Law PC (“Class Counsel”).

During the Action, Defendants have maintained that Plaintiff and the putative class members were not Defendants’ employees. Defendants also strongly deny violating any laws or failing to pay any wages and contend they complied with all applicable laws.

**2. WHAT DOES IT MEAN THAT THIS ACTION HAS SETTLED?**

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

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims (including that putative class members were not employees) and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Putative Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.



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

1. Defendants will pay \$1,395,000.00 as the Gross Settlement Amount (Gross Settlement). Defendants have agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendants will begin to fund the Gross Settlement as follows: Assuming the Court grants Final Approval, Defendants will fund the Gross Settlement not more than 21 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed. Within 14 days of the payment, the Administrator will make a distribution of the Individual Class Payments, Individual PAGA Payments, LWDA PAGA Payment, Class Representative Service Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Administrator's expenses.

2. Disbursements of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment shall not precede disbursement of pro rata portions of the Individual Class Payments and Individual PAGA Payments.

3. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

A. Up to 35% of the Gross Settlement to Class Counsel for attorneys' fees and up to \$14,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

B. Up to \$10,000.00 as a Class Representative Award to Plaintiff for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than his Individual Class Payment and any Individual PAGA Payment.

C. Up to \$5,500.00 to the Administrator for services administering the Settlement.

D. Up to \$20,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA payment and 25% in Individual PAGA Payments to the Putative Aggrieved Employees based on their PAGA Participation Periods. Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

4. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Participation Weeks.

5. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking the Court to approve an allocation of 33.33% of each Individual Class Payment to taxable wages (*i.e.*, the "Wage Claim Portion") and 66.66% to interest and penalties (*i.e.*, the "Non-Wage Portion"). The Wage Claim Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately pay putative employer payroll taxes it allegedly owes on the Wage Claim Portion. The

Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

6. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash the check by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

7. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than January 4, 2025, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the January 14, 2025 Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments but will preserve their rights to personally pursue wage and hour claims against Defendants.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members), but are also Putative Aggrieved Employees, shall remain eligible for and will be paid their Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendants based on the PAGA Period facts alleged in the Action.

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

9. Administrator. The Court has appointed a neutral company, Apex Class Action LLC (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Participation Weeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.

10. Participating Class Members' Release. After the Judgment is final and Defendants have fully funded the Gross Settlement (and separately paid all putative employer payroll taxes), Participating Class Members will be legally barred from asserting any of the claims released under the Settlement.

This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

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

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and ascertained in the course of the Action, including failure to pay all wages due (including minimum wage and overtime wages), failure to provide meal or rest periods, failure to timely pay wages and final wages, failure to furnish accurate wage statements, and failure to keep payroll records showing total hours worked and wages paid to employees. This Release shall include all claims and theories that were, or could have been asserted in the Operative Complaint in the Action arising under the California Labor Code, the Fair Labor Standards Act, California wage orders, and applicable regulations, including California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 232, 256, 432.5, 432.7, 432.8, 510, 512, 558, 980, 1019.1, 1024.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 3700, 3708, 6400, 6402, as well as claims under Business and Professions Code section 17200, et seq., Government Code sections 12940 and 12964.5, and Civil Code section 1671, based on alleged violations of the above Labor Code provisions, as alleged in the Action. Except as set forth in Paragraph 5.3 of the Class Action and PAGA Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, other violations of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

11. Putative Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Defendants have paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Putative Aggrieved Employees will be barred from asserting PAGA claims against Defendants, whether or not they exclude themselves from the Settlement. This means that all Putative Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendants or their related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

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

All Putative Aggrieved Employees (regardless of whether they are Participating Class Members) are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA Penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint during the PAGA Period, Plaintiff's PAGA Notice, and ascertained in the course of the Action, including failure to pay all wages due (including minimum wage and overtime wages), failure to provide meal or rest periods, failure to timely pay wages and final wages, failure to furnish accurate wage statements, and failure to keep payroll records showing total hours worked and wages paid to employees.

The "Released Parties" are Defendants and each and all of their present and former partners, parents, subsidiaries, affiliates, and related entities (including, but not limited to Netflix US, LLC), and all of their officers, directors, employees, agents, servants, registered representatives, attorneys, insurers,

payroll companies, staffing agencies, successors and assigns, and any other persons acting by, through, under, or in concert with any of them (including any alleged joint employers).

#### **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Participation Weeks during the Class Period, and (b) multiplying the result by each individual Participating Class Member's Participation Weeks.

2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$5,000.00 by the total number of PAGA Participation Periods during the PAGA Period, and (b) multiplying the result by each individual Putative Aggrieved Employee's PAGA Participation Periods.

3. Participation Week/ Period Challenges. The number of your Participation Weeks during the Class Period and the number of your PAGA Participation Periods during the PAGA Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until January 14, 2025 to challenge the number of Participation Weeks and/or Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

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

#### **5. HOW WILL I GET PAID?**

The Administrator will send, by U.S. Mail, a single check to every Participating Class Member (i.e., every Class Member who does not opt-out).

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

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

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify this Action as Jeremy Hartwell vs. Kinetic Content, LLC, et al. Case no.: 22STCV21223, and include your identifying information (full name, address, telephone number, approximate dates of participation, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The**

**Administrator must be sent your request to be excluded by January 14, 2025, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

## **7. HOW DO I OBJECT TO THE SETTLEMENT?**

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to approve. At least 16 court days before the February 11, 2025 Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating: (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website (<https://www.apexclassaction.com>) or the Court's website (<https://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil>).

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is January 14, 2025.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify this Action, *Jeremy Hartwell vs. Kinetic Content, LLC, et al.*, Los Angeles Superior Court Case no.: 22STCV21223, and include your name, current address, telephone number, and approximate dates of participation and sign the objection. Section 9 of this Notice has the Administrator's contact information.

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

## **8. CAN I ATTEND THE FINAL APPROVAL HEARING?**

You can, but don't have to, attend the Final Approval Hearing on February 11, 2025 at 10:00 a.m. in Department 007 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the Judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via (<https://my.lacourt.org/laccwelcome>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website (<https://www.apexclassaction.com>) beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

## **9. HOW CAN I GET MORE INFORMATION?**

The Agreement sets forth everything Defendants and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement

documents is to go to the Settlement Administrator's website at (<https://apexclassaction.com/>). You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to <https://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for this Action, Case No. 22STCV21223. You can also make an appointment to personally review court documents in the Clerk's Office at the Los Angeles Superior Court Spring Street Courthouse, Civil Division by calling (213) 310-7000.

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

Class Counsel:

CHANTAL MCCOY PAYTON  
CPayton@PaytonEmploymentLaw.com  
JOHNNY DARNELL GRIGGS  
JGriggs@PaytonEmploymentLaw.com  
PAYTON EMPLOYMENT LAW, PC  
3807 W. Sierra Highway, Ste 206  
Acton, CA 93510  
Telephone: (661) 434-1144  
Facsimile: (661) 434-1144

Administrator:

Apex Class Action LLC  
info@apexclassaction.com  
18 Technology Drive, Suite 164  
Irvine, CA 92618  
Telephone: (800)-355-0700

**10. WHAT IF I LOSE MY SETTLEMENT CHECK?**

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund at (800) 992-4647 for instructions on how to retrieve the funds.

**11. WHAT IF I CHANGE MY ADDRESS?**

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

1  
2 **PROOF OF SERVICE**

3 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and  
5 not a party to the within action. My business address is 3807 SIERRA HIGHWAY, SUITE 206,  
6 ACTON, CALIFORNIA 93510.

7 On the date set forth below, I served the document(s) described as:

8 **[PROPOSED] ORDER GRANTING PLAINTIFF’S MOTION FOR PRELIMINARY**  
9 **APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFICATION OF A**  
10 **SETTLEMENT CLASS, AND APPROVING CLASS REPRESENTATIVE, CLASS**  
11 **COUNSEL, AND CLASS NOTICE**

12 on the person(s) listed below:

13 Emma Luevano, Esq.  
14 Sandra Hanian, Esq.  
15 **MITCHELL SILBERBERG**  
16 **& KNUPP LLP**  
17 2049 Century Park East, 18<sup>th</sup> Fl.  
18 Los Angeles, CA 90067  
19 [eyl@msk.com](mailto:eyl@msk.com)  
20 [s3h@msk.com](mailto:s3h@msk.com)

*Attorneys for Defendants Netflix  
Us, LLC and Netflix, Inc.*

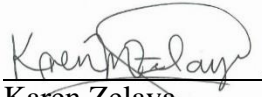
21 Timothy M. Keegan, Esq.  
22 **OGLETREE, DEAKINS, NASH, SMOAK**  
23 **& STEWART**  
24 15 West South Temple St., Suite 950  
25 Salt Lake City, UT 84101  
26 [tim.keegan@ogletree.com](mailto:tim.keegan@ogletree.com)

*Attorneys for Defendants KINETIC  
CONTENT, LLC and DELIRIUM  
TV, LLC*

27  (BY ELECTRONIC SERVICE) Pursuant to the Court’s order authorizing electronic service,  
28 I caused the document(s) described above to be transmitted electronically via CaseAnywhere  
to the addressee(s) as set forth above.

(STATE) I declare under penalty of perjury under the laws of the State of California that the  
above is true and correct.

Dated: October 23, 2024

  
\_\_\_\_\_  
Karen Zelaya