

## CLASS ACTION SETTLEMENT AGREEMENT

Subject to court approval, this Class Action Settlement Agreement (“Agreement”) is made by and between Anthony Davide, individually and on behalf of all others similarly situated (collectively, “Plaintiffs”), and Defendant SFFIT Ventures LLC and ASPYR Holdings, LLC (hereinafter, “Defendant(s)”). The Agreement refers to Plaintiffs and Defendants collectively as “Parties” or individually as a “Party.”

### 1. RECITALS.

This Agreement is made in consideration of the following facts:

1.1. WHEREAS, on October 21, 2022, Plaintiff commenced the Action (defined *infra*) by filing a class action complaint for damages asserting claims including: (1) Failure to Pay Minimum Wage; (2) Failure to Pay Overtime; (3) Meal Period Violations; (4) Rest Period Violations; (5) Final Wages Not Timely Paid; (6) Wages Not Timely Paid During Employment; (7) Non-Compliant Wage Statements; (8) Failure to Provide Sick Leave; (8) Unreimbursed Business Expenses; (9) Violations of California Business & Professions Code Section 17200;

1.2. WHEREAS, on November 7, 2022, Plaintiff filed a First Amended Complaint adding a cause of action for PAGA penalties;

1.3. WHEREAS, the Parties engaged in extensive discovery, exchanging information, documents and reviewing and analyzing extensive data made available by Defendants which enabled the Parties to thoroughly evaluate Plaintiff’s claims and the claims of the putative Class (defined *infra*), Defendants’ defenses, and the likely outcomes, risks and expense of pursuing litigation;

1.4. WHEREAS, the Parties attended a mediation session with professional mediator Todd Smith and reached the terms of this arm’s-length Settlement;

1.5. WHEREAS, a *bona fide* dispute exists as to whether any amount of wages or penalties are due from Defendants to Plaintiff, any putative Class Member (defined *infra*), or to the State of California;

1.6. WHEREAS, the Parties desire to compromise and settle all issues and claims that have been or could have been brought against Defendants based on the factual allegations alleged in the Action, including all claims brought on a putative class and representative basis in the Action;

1.7. WHEREAS, the Parties further agree that this Agreement, the fact of this Settlement (defined *infra*), any of the terms of this Agreement, and any documents filed in connection with the Settlement shall not constitute, or be offered, received, claimed, construed, or deemed as an admission, finding, or evidence of: (i) any wrongdoing by any Released Parties (defined *infra*), (ii) any violation of any statute or law by Released Parties, (iii) any liability on the claims or allegations in the Action on the part of any Released Parties, (iv) any waiver of Defendants’ right to arbitration or the enforceability of any arbitration agreement, or (v) the propriety of certifying a class or pursuing representative relief under the Private Attorneys General

Act in the Action or any other civil or administrative proceeding; and this Agreement shall not be used by any person for any purpose whatsoever in any administrative or legal proceeding, including but not limited to arbitrations, other than a proceeding to enforce the terms of the Agreement;

1.8. IT IS HEREBY STIPULATED, CONSENTED TO, AND AGREED, by Plaintiff for Plaintiff's self and on behalf of the Participating Class Members and by Defendants, that, subject to the approval of the Court, the Action shall be settled and compromised, and the Released Claims (defined *infra*) shall be finally and fully compromised and settled as to the Released Parties (defined *infra*), in the manner and upon the terms and conditions hereafter set forth in this Agreement.

## 2. DEFINITIONS.

2.1. "Action" means Plaintiffs' lawsuit alleging wage and hour violations against Defendants captioned *Anthony Davide et al. v. SFFIT Ventures LLC and ASPYR Holdings, LLC et al.*; Case No. 37-2022-00036078-CU-OE-CTL, pending in San Diego County Superior Court.

2.2. "Administrator" means CPT Group, Inc. the neutral entity the Parties have agreed to appoint to administer the Settlement.

2.3. "Administration Expenses" means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its costs in accordance with the Administrator's bid to be submitted to the Court. The Administration Expenses shall not exceed \$20,500, except for a showing of good cause and as approved by the Court.

2.4. "Class" or "Class Member(s)" means all individuals currently or formerly employed by Defendants in California as hourly, non-exempt employees during the Class Period.

2.5. "Class Counsel" means Ferraro Vega Employment Lawyers, Inc.

2.6. "Class Counsel Attorneys' Fees" and "Class Counsel Litigation Costs" mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action. Class Counsel Attorneys' Fees shall be an amount of up to 35% of the Gross Settlement Amount and Class Counsel Litigation Costs shall not exceed \$30,000.

2.7. "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 Class Period and PAGA Period Workweeks.

2.8. "Class Member Address Search" means the Administrator's search for Class Member mailing addresses using all reasonably available sources, including but not limited to the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

2.9. “Class Notice” means the Notice of Class Action Settlement, attached as **Attachment A** and including the Request for Exclusion, attached as **Attachment B**, to be mailed to Class Members and incorporated by reference into this Agreement.

2.10. “Class Period” means the period from September 8, 2018, through October 31, 2023.

2.11. “Class Representative” refers to Anthony Davide.

2.12. “Class Representative Service Payment(s)” means the payment to the Class Representative(s) for initiating and providing services in support of the Action in an amount up to \$10,000, subject to Court approval.

2.13. “Court” means the San Diego County Superior Court.

2.14. “Defense Counsel” means captioned counsel of record from the law firm of Blank Rome LLP.

2.15. “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 (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

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

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

2.18. “Gross Settlement Amount” means **\$800,000**, which is the total amount Defendant(s) agree(s) to pay under the Settlement, subject to the terms and conditions of this Settlement.

2.19. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount, calculated according to the number of Workweeks worked during the Class Period.

2.20. “Individual PAGA Payment” means the PAGA Members’ pro rata share of the Net PAGA Payment, calculated according to the number of Workweeks worked during the PAGA Period.

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

2.22. “LWDA” means the California Labor Workforce and Development Agency.

2.23. “LWDA Notice” means the notice sent by Plaintiff to the LWDA detailing Plaintiff’s claims and seeking authorization to proceed with an action pursuant to PAGA.

2.24. “LWDA PAGA Payment” means the 75% share of the PAGA Payment paid to the LWDA under Labor Code section 2699, subd. (i).

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

2.26. “Non-Participating Class Member” means any Class Member who submits a valid and timely Request for Exclusion from the Settlement.

2.27. “Operative Complaint” means the most recently filed class action complaint, including amended complaints, filed by Plaintiff.

2.28. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

2.29. “PAGA” means California’s Private Attorneys General Act of 2004.

2.30. “PAGA Members” means all Class Members who worked at any time during the PAGA Period.

2.31. “PAGA Period” means May 6, 2021, through October 31, 2023.

2.32. “PAGA Payment” means the sum of \$16,000, provided in exchange for a release of the PAGA claims addressed in this Settlement, which shall be allocated from the Gross Settlement Amount to pay all applicable penalties under PAGA. 75% of the total PAGA Payment shall be paid to the LWDA, with the remaining 25% to be included in the Net Settlement Amount.

2.33. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

2.34. “Released Claims” means the claims being released in connection with this Settlement, as set forth in full below.

2.35. “Released Parties” means: Defendants and each former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.

2.36. “Request for Exclusion” means a Class Member’s submission of a signed written request to be excluded from the Class Settlement, including on the form provided with the Class Notice.

2.37. “Response Deadline” means 45 days after the Administrator mails Notice to Class Members and shall be the last date on which Class Members may: (a) email or mail Requests for Exclusion from the Settlement, or (b) email or mail their Objection to the Settlement. Class Members to whom the Class Notice is resent after being returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline expiry.

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

2.39. “Workweek” means any week during which a Class Member worked for Defendants for at least one day during the Class Period.

2.40. “Workweek Estimate” means, based on a review of Defendants’ records to date, a total of 120,700 Workweeks worked by Class Members during the Class Period.

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

3.1. Gross Settlement Amount. Subject to all terms of this Agreement, Defendants shall pay the Gross Settlement Amount in connection with this Settlement. The Gross Settlement Amount does not include any employer payroll taxes owed on the Wage Portion of the Individual Class Payments, which shall be paid separately. Under no circumstances, other than the employer payroll taxes set forth above or as set forth in Section 8 below, will Defendants pay more than the Gross Settlement Amount. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members and/or PAGA Members to submit any claim as a condition of payment. The Gross Settlement Amount is non-reversionary.

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 Class Representative(s): The Class Representative Service Payment to the Class Representative(s), in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative(s) may be entitled to receive as a Participating Class Member. 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(s) using IRS Form 1099. An award of less than the requested amount for the Class Representative Service Payment will not give rise to a basis to abrogate the Settlement Agreement and the Court has authority under this Agreement to reduce (or increase) the Class Representative Service Payment, at its discretion at the final approval stage.

3.2.2. To Class Counsel: Class Counsel Attorneys’ Fees and Class Counsel Litigation Costs to Class Counsel. Defendants will not oppose requests for these payments, provided the requests do not exceed these amounts. If the Court approves a Class

Counsel Attorneys' Fees and/or a Class Counsel Litigation Costs less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Costs. The Administrator will pay the Class Counsel Attorneys' Fees and Class Counsel Expenses Payment using one or more IRS 1099 Forms.

3.2.3. To the Administrator: Administration Expenses to the Administrator. To the extent the Administration Expenses are less or the Court approves payment less than the Administration Expenses set forth in this Agreement, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To the LWDA: Subject to Court approval, the PAGA Payment will be allocated to cover any and all claims for civil penalties associated with the Released Claims that were, or could have been, brought in the Actions under PAGA, 75% of which will be paid to the LWDA (i.e., the LWDA PAGA Payment) and the remaining 25% retained in the Net Settlement Amount for distribution to PAGA Members as disputed penalties in exchange for a full and final release of PAGA claims. The Court has authority under this Agreement to increase (or reduce) the PAGA Payment up to and including at the final approval stage, and the Parties respectfully reserve the right to increase (or reduce) the PAGA Payment up to and including at the final approval stage, which may be done only through written amendment fully executed by both Parties. If the Court approves a PAGA Payment 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 IRA 1099 forms.

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

3.2.6. Tax Allocation of Individual Class Payments. 30% of each Participating Class Member's Individual Class Payment will be allocated to settlement of disputed wage claims (the "Disputed Wage Portion"). The Disputed Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining 70% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

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.



#### 4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Delivery of Class Data to Administrator. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendants will simultaneously 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 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 foregoing deadline the Parties and their counsel must expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.2. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount and fund the amounts necessary to fully pay its share of payroll taxes by transmitting the funds as follows:

4.2.1. The First Payment of \$100,000 shall be funded no later than 14 days after the Effective Date ("First Payment").

4.2.2. The Final Payment of \$700,000 shall be funded on or before December 31, 2024, plus Defendants' share of employer side payroll taxes ("Final Payment").

4.3. Default. In the event of the failure by Defendants to make any or all payments of the Settlement pursuant to the terms herein, Plaintiff shall provide written notice of the non-payment to each Defendant (or their counsel of record) by first class, registered or certified mail (the "Non-Payment Notice"). The Non-Payment Notice shall be effective upon the date of mailing. If each Defendant is represented by counsel of record in the above captioned matter, Plaintiff shall also email the Non-Payment Notice to such counsel.

4.3.1. Defendants shall have the opportunity to pay the unpaid balance that is the subject of the Non-Payment Notice within fifteen (15) business days from the effective date of the Non-Payment Notice (the "Grace Period"). If Defendants fail to pay the overdue balance of Defendants' payment obligations within fifteen (15) business days from the effective date of the Non-Payment Notice (such failure referred to herein as a "Default"), Plaintiff will be authorized pursue, in her sole discretion, to declare or do any or all of the following:

4.3.1.1 Declare the entire Gross Settlement Amount, less any payments already made, immediately due and payable, with unpaid amounts bearing the default interest rate at the interest rate set forth in Cal. Code Civ. Proc. § 3289 beginning as of the date of the Court's Order Granting Final Approval until the payment of the remaining balance is made in full; and/or

4.3.1.2 Pursue all available remedies to enforce this Agreement. In the event of a Default as described, Defendants agree not to contest any action to enforce the terms of this Agreement or any other collection action undertaken by Plaintiff under this Agreement, or pursuant to law, provided that Defendants may assert any defense that their failure to make

payments results from a breach of the Agreement by any other party. If Plaintiff prevails in such action, Defendants shall pay Plaintiff all reasonable costs of collection and enforcement of this Agreement, including attorney's attorneys' fees, expenses and court costs.

4.4. Payments from the Gross Settlement Amount. Within 10 days after Defendants complete funding of the total Gross Settlement Amount in the Final Payment, the Administrator will mail checks for all Individual Class Payments, the Administration Expenses, the LWDA's portion of the PAGA Payment, Class Counsel Attorneys' Fees, Class Counsel Litigation Costs, and Class Representative Service Payment(s), to the extent those amounts have not already been funded and paid out from the First Payment. The First Payment may be used to immediately fund the Administration Expenses, the LWDA's portion of the PAGA Payment, Class Counsel Attorneys' Fees, Class Counsel Litigation Costs, and/or Class Representative Service Payment(s), with the balance held in trust by the Administrator to fund the Individual Class Payments (and any other outstanding amounts owed) in a single payment upon receipt of the Final Payment to be made within 10 days after Defendants fund the Final Payment.

4.4.1. The Administrator will issue checks for the Individual Class 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). Before mailing any checks, the Settlement 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 USPS forwarding addresses. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds, in the name of the Participating Class Member, to the State of California's Unclaimed Property Division.

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

4.4.5. The Administrator will send checks for Individual PAGA Payments to all PAGA Members, including Non-Participating Class Members who qualify as PAGA Members (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.



4.5. Payments to the Responsible Tax Authorities. The Administrator will pay the Participating Class Members' portion of normal payroll withholding taxes out of each person's Individual Class Payment. The Administrator shall also pay Defendants' portion of payroll taxes as the current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) to the appropriate local, state, and federal taxing authorities. The Administrator will calculate the amount of the Participating Class Members' and Defendants' portion of payroll withholding taxes and forward those amounts to the appropriate taxing authorities.

## 5. RELEASES OF CLAIMS.

Effective on the date when Defendants fully fund the Gross Settlement Amount and all associated employer payroll taxes owed on the Disputed Wage Portion of the Individual Class Payments, the following releases of claims will take effect:

5.1. Class Representative's General Release. Class Representative's respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint or ascertained during the Action; and (b) any other claims, debts, liabilities, demands, damages, obligations, actions and causes of actions, of any nature whatsoever, whether known or unknown, or suspected or unsuspected, arising out of or in connection with their employment with Defendants, the separation of such employment, or any other act, omission or event occurring between the Parties at any time prior to the date the Class Representative(s) executes this Agreement. This General Release includes, without limitation: (1) all claims for violation of any federal, state or local statute, ordinance or regulation relating to employment benefits, leaves of absence, or discrimination, harassment, retaliation, or whistleblowing in employment, specifically including, without limitation, the California Fair Employment and Housing Act, the California Family Rights Act, Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Genetic Information Nondiscrimination Act, the Americans with Disabilities Act, and the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act, the Securities Act, the Immigration Reform and Control Act the Worker Adjustment and Retraining Notification Act of 1988, the California Worker Adjustment and Retraining Notification Act, the Uniformed Service Employment and Reemployment Rights Act, and any regulation of any administrative agency or governmental authority relating to employment benefits or discrimination or harassment or retaliation in employment; (2) all claims for failure to pay minimum or overtime wages, failure to timely pay wages, failure to provide accurate itemized wage statements, failure to maintain accurate records, failure to reimburse business expenses, failure to provide meal periods or rest breaks, failure to provide paid sick leave, failure to post notice of paydays and time and place of payment, and any claim for violations of the California Labor Code, California's Business and Professions Code § 17200 et seq., and the applicable California Industrial Welfare Commission Wage Order; (3) any non-statutory tort or contractual claim, including all claims for breach of oral, implied or written contract, breach of implied covenant of good faith and fair dealing, negligent or intentional infliction of emotional distress, and conversion; (4) all claims for wrongful termination of employment; (5) all claims for wages, penalties and/or benefits; and (6) all claims for attorneys'

fees and costs. Class Representative's General 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. Class Representative(s) acknowledge that they may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Class Representative's General Release shall be and remain effective in all respects, notwithstanding such different or additional facts or their discovery of them.

5.1.1. Class Representative's Section 1542 Waiver. For purposes of Class Representative's General Release, Class Representative expressly waives and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

5.2. Release by Participating Class Members: All Participating Class Members release Released Parties from any and all claims, damages, and penalties from the claims asserted in the Operative Complaint and/or LWDA Notice, or that could have been asserted therein, predicated on the factual allegations of the Operative Complaint and/or LWDA Notice during the respective Class Period and PAGA Periods, including, without limitation, claims for: (1) failure to pay all minimum wages, (2) failure to pay all overtime wages, (3) meal period violations, (4) rest period violations, (5) failure to reimburse business expenses, (6) untimely payment of wages, (7) wage statement violations, (8) waiting time penalties, (9) sick leave violations, (10) violations of the Unfair Competition Law, and (11) civil penalties under the Private Attorneys General Act. Participating Class Members **do not** release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts outside of the Operative Complaint or outside the Class Period.

5.3. Release by PAGA Members: All PAGA Members and the LWDA release Released Parties from, and are forever barred from pursuing such against Released Parties for, the PAGA claims alleged in and/or arising out of the facts alleged in the Operative Complaint and/or LWDA Notice, or that could have been asserted therein, predicated on the factual allegations of the Operative Complaint and/or LWDA Notice during the respective PAGA Period, including, without limitation penalties predicated on the underlying alleged violations for: (1) overtime and minimum wage violations, (2) meal period violations, (3) rest period violations, (4) failure to reimburse business expenses, (5) sick leave violations, (6) Covid supplemental paid sick leave violations, (7) untimely payment of wages, (8) wage statement violations, (9) waiting time penalties, and (10) failure to maintain accurate records.

## 6. MOTION FOR PRELIMINARY APPROVAL.

6.1. Preliminary Approval. Plaintiffs shall move for an order conditionally certifying the Class for settlement purposes only, granting Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice. Plaintiff will provide

the Draft Motion for Preliminary Approval, including all supporting papers and orders, to Defense Counsel no later than five (5) days before filing. Defendants shall accept service of the Motion for Preliminary Approval (and any other motions, declarations, proposed orders, exhibits, or other documents filed therewith) via electronic service at the addresses set forth in this Agreement or, if an electronic service agreement is already in place, pursuant to the Parties' electronic service agreement.

6.2. In conjunction with the Motion for Preliminary Approval, Plaintiff will submit a proposed order that will:

- a. Conditionally certify the Class for settlement purposes;
- b. Preliminarily appoint Plaintiff as representative of the proposed Settlement Class;
- c. Preliminarily approve Class Counsel to represent the Participating Class Members;
- d. Appoint CPT, Inc. as the settlement administrator, and order the Settlement Administrator to provide notice of the Settlement as outlined below; and
- e. Stay all litigation of the Action pending the Final Approval Hearing, except as necessary to implement and effectuate the Settlement; and
- f. Order that the preliminary approval of the Settlement, conditional certification of the Class, and all actions associated with them, are undertaken on the condition that they shall be vacated if the Settlement Agreement is disapproved in whole or in part by the Court, or any appellate court and/or other court of review in which event the Settlement Agreement and the fact that it was entered into shall not be offered, received, or construed as an admission or as evidence for any purpose, including but not limited to an admission by any Party of liability or non-liability or of the certifiability of a litigation class or the appropriateness of maintaining a representative action.

6.3. Notice of Settlement to LWDA. At the same time that Plaintiff files Plaintiff's Motion for Preliminary Approval, Class Counsel will submit the Settlement Agreement to the LWDA.

6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Settlement or forthcoming Motion for Preliminary Approval, Class Counsel and Defense Counsel will expeditiously work together in good faith on behalf of the Parties 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 in good faith on behalf of the Parties to modify the Agreement and satisfy the Court's concerns. Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement, the Settlement will be null and void, and the Parties will

have no further obligations under it, provided, however, that the amounts of the Class Counsel Attorneys' Fees, Class Counsel Litigation Costs, Administration Expense Payment, and Class Representative Service Payments may be determined by the Court, and the Court's determination on these amounts shall be final and binding.

## 7. SETTLEMENT ADMINISTRATION.

7.1. Selection of Administrator. The Parties have jointly selected the Administrator to administer this Settlement. The Administrator 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 to calculate payroll tax withholdings and report 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 under US Treasury Regulation section 468B-1.

### 7.4. Notice to Class Members.

7.4.1. No 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 and Workweeks in the Class Data.

7.4.2. Using best efforts to perform as soon as possible, and no later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice substantially in the form attached to this Agreement as Attachment A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment payable to the Class Member, and the number of Workweeks 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 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 Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the time 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 a good-faith 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 Class 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 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 paragraph 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, nor shall they have the right to object to the class action components of the Settlement.

7.6. Challenges to Calculation of Workweeks. Each Class Member shall have until the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the



Administrator via fax, email, or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks 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 Settlement, including contesting the fairness of the Settlement.

7.7.2. Participating Class Members may send written objections to the Administrator, by email or mail. Alternatively, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

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, maintain, and use an internet website with their contact information included so that Class Members may find the Administrator on the World Wide Web. 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 Response Deadline, 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; (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 tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks received and/or resolved, and checks mailed for Individual Class Payments. 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. Workweek Challenges. The Administrator has the authority to address and make final decisions, consistent with the terms of this Agreement, on all Class Member challenges over the calculation of Workweeks. 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 Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

7.8.6. Final Report by Settlement 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 of all payments made under this Agreement. At least 15 days before any deadline set by the Court, if applicable and if requested by either Party, 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.

**8. CLASS SIZE ESTIMATES AND ESCALATION CLAUSE.** Based on its records, Defendants have provided a Workweek Estimate of 120,700 workweeks. In the event the total number of Workweeks exceeds this workweeks total by 10% or more (e.g., workweek count x 1.10) ("Escalation Threshold") for the applicable Class Period, the Class Period will end on the date the Escalation Threshold is met. Should the workweeks meet the Escalation Threshold, the Class Period definition will be revised to reflect such.

**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 Class Members, Defendants may, but are not obligated to, elect to withdraw from the Settlement. If Defendants withdraw, the Settlement shall be void ab initio, have no force or effect whatsoever, and neither Party shall have any further obligation to perform under this Agreement; provided, however, Defendants will remain responsible for paying all Settlement Administration Expenses incurred to that point. To elect to withdraw, Defendants must notify Class Counsel and the Court of its election to withdraw not later than 7 days after the Response Deadline or extended Response Deadline in the event the Class Notice re-mailed.

**10. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the Final Approval Hearing, Class Representative will file in Court a motion for final approval of the Settlement that includes a Proposed Final Approval Order and a proposed Judgment, which shall

include a request for approval of the PAGA settlement under Labor Code § 2699, subd. (l) (collectively “Motion for Final Approval”). Class Counsel will provide drafts of these documents to Defense Counsel no less than five days in advance of filing for Defense Counsel’s review. Defendants shall accept service of the Motion for Final Approval (and any other motions, declarations, proposed orders, exhibits, or other documents filed therewith) via electronic service at the addresses set forth in this Agreement or, if an electronic service agreement is already in place, pursuant to the Parties’ electronic service agreement.

10.1. Proposed Final Approval Order. The Proposed Final Approval Order shall at a minimum adjudge:

- a. The Settlement Administrator has fulfilled its initial notice and reporting duties under the Settlement and that the Class Notice (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, and their right to exclude themselves from or object to the proposed Settlement and to appear at the Final Approval Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) met all applicable requirements of due process, and any other applicable rules or law;
- b. The Settlement as fair, reasonable, and adequate;
- c. Plaintiffs and Class Counsel may adequately represent the Settlement Class for the purpose of entering into and implementing the Agreement;
- d. The Settlement Administrator is to execute the distribution of proceeds pursuant to the terms of this Agreement;
- e. The Final Approval Order and Judgment shall be final and entered forthwith;
- f. Without affecting the finality of the Final Approval Order and Judgment, the Court retains continuing jurisdiction over Plaintiff, Defendants, and Participating Class Members, as to all matters concerning the administration, consummation, and enforcement of this Settlement Agreement;
- g. As of the Effective Date, Plaintiff and Participating Class Members, regardless of whether they have received actual notice of the proposed Settlement, have conclusively compromised, settled, discharged, and provided the release of Released Claims, during the applicable time period, against Defendants and the Released Parties during applicable time period, and are bound by the provisions of this Settlement Agreement;
- h. Notwithstanding the submission of a timely request for exclusion, Class Members are still bound by the settlement and release of the PAGA Claims and the State’s claims for civil penalties pursuant to PAGA are also extinguished.

- i. This Settlement Agreement and the Final Approval Order and Judgment to be binding on, and have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings that encompass Plaintiff's and Participating Class Members' claims released herein, and that are maintained by or on behalf of Plaintiff and Participating Class Members;

10.2. 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 prior to the Final Approval Hearing, or as otherwise by the Court.

10.3. 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.

10.4. Continuing Jurisdiction of the Court. The Parties agree, 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.

10.5. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Attorneys' Fees and Class Counsel Litigation Costs set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals.

10.6. 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 agree to expeditiously work together in good faith to address 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.

**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 the Parties that any of the allegations or the defenses in the Operative Complaint

have merit or that there is any liability for any claims asserted. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval, or enter Judgment, all Parties reserve the right to prosecute and/or contest certification of any class for any reason, reserve all available claims and defenses in the Action, among reservation of all other relevant rights. The Settlement, this Agreement, and the 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. 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.

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

12.4. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by the Parties, 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.

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

12.6. 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 and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

12.7. No Tax Advice. Neither the Parties, Class Counsel, 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.

12.8. 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 Class Counsel and Defense Counsel, as their legal representatives.

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

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

12.11. 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.

12.12. 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.

12.13. 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.

12.14. Notice. All notices or other communications between the Parties required in connection with this Agreement shall be in writing and shall be deemed to have been duly given as of the 3<sup>rd</sup> business day after mailing by U.S. Mail or the same day if sent by email, addressed as follows:

To Plaintiffs:

***Ferraro Vega Employment Lawyers, Inc.***

Attn: Nicholas J. Ferraro  
3160 Camino del Rio South, Suite 308  
San Diego, CA 92108 USA  
[nick@ferrarovega.com](mailto:nick@ferrarovega.com) / [classactions@ferrarovega.com](mailto:classactions@ferrarovega.com)  
[www.ferrarovega.com](http://www.ferrarovega.com)

To Defendants:

***Blank Rome LLP***

Attn: Travis K. Jang-Busby  
2029 Century Park East  
6<sup>th</sup> Floor  
Los Angeles, CA 90067  
[Travis.JangBusby@blankrome.com](mailto:Travis.JangBusby@blankrome.com)

12.15. Execution in Counterparts. This Agreement may be executed using physical and/or electronic signatures (i.e. DocuSign, SignRequest, Adobe Sign, etc.), which shall be accepted as originals for purposes of this Agreement. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

**SIGNATURES**

*I have read this Agreement and agree to its terms.*

***Plaintiff Anthony Davide***

Date: Nov 15, 2023



\_\_\_\_\_  
Anthony Davide

***Defendant SFFIT Ventures LLC***

Date: 11/16/2023

DocuSigned by:  
  
72167BCDF78E485...

\_\_\_\_\_  
Name: Marc Thomas

Title: Co-CEO

***Defendant ASPYR Holdings, LLC***

Date: 11/16/2023

DocuSigned by:  
  
72167BCDF78E485...

\_\_\_\_\_  
Name: Marc Thomas

Title: Co-CEO



# **Attachment A**

## **Notice of Class Action Settlement**

## NOTICE OF CLASS ACTION SETTLEMENT

*Anthony Davide et al. v. SFFIT Ventures LLC and ASPYR Holdings, LLC et al.*  
 Superior Court of the State of California for the County of San Diego  
 Case No. 37-2022-00036078-CU-OE-CTL

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*This notice is to the following individuals in connection with a pending class action settlement:*

“Class” or “Class Member(s)” means all individuals currently or formerly employed by Defendants in California as hourly, non-exempt employees during the period from September 8, 2018, through October 31, 2023.

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*Read this notice carefully. Your legal rights could be affected whether you act or not.*

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The Superior Court of the State of California for the County of San Diego (the “Court”) has preliminarily approved this class and representative action lawsuit filed by Anthony Davide (“Class Representative”) against SFFIT Ventures LLC and ASPYR Holdings, LLC (“Defendants”) for alleged wage and hour violations (the “Lawsuit”).

The Lawsuit is based on various causes of action: (1) failure to pay all minimum wages, (2) failure to pay all overtime wages, (3) meal period violations, (4) rest period violations, (5) failure to reimburse business expenses, (6) untimely payment of wages, (7) wage statement violations, (8) waiting time penalties, (9) sick leave violations, (10) violations of the Unfair Competition Law, and (11) civil penalties under the Private Attorneys General Act. Defendants deny all claims and maintain they has fully complied with the law.

Defendants’ records reflect you worked **[[Individual Workweeks]]** workweeks during the Class Period of September 8, 2018, through October 31, 2023. Based on this information, your Individual Class Payment is estimated to be \$**[[Individual Class Payment]]** (less any applicable state and federal withholdings). The actual amount you may receive will likely be different and will depend on multiple factors, such as how many other individuals decide to opt out.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>DO NOTHING</b>	You do not have to do anything in response to this notice. If you do nothing, you will remain eligible to automatically receive an Individual Class Payment if the Court grants final approval of the settlement. In such case, you will be bound by the release provisions in the settlement.
<b>OPT OUT</b>	You may opt out of the Settlement by submitting a Request for Exclusion form. If you opt out, you may not object to the Settlement, you will not receive an Individual Class Payment, and you shall not be bound by the release provisions in the settlement.
<b>OBJECT</b>	You may object to the Settlement by submitting a written objection. If the Court grants final approval of the settlement despite your objection, you will remain eligible to automatically receive an Individual Class Payment if the Court grants final approval of the settlement. In such case, you will be bound by the release provisions in the settlement.

The Court's final approval hearing is scheduled to take place on **[[Final Approval Hearing Date]]** at **[[Final Approval Hearing Time]]** in Dept. 67 of the San Diego Superior Court, located at 330 W Broadway, San Diego, CA 92101. You do not have to attend but you do have the right to appear. *For more information, please carefully read this notice.*

## 1. WHAT IS THE ACTION ABOUT?

The Class Representative is former employee of Defendants. The Class Representative alleged Defendants violated California labor and employment laws as follows: (1) failure to pay all minimum wages, (2) failure to pay all overtime wages, (3) meal period violations, (4) rest period violations, (5) failure to reimburse business expenses, (6) untimely payment of wages, (7) wage statement violations, (8) waiting time penalties, (9) sick leave violations, (10) violations of the Unfair Competition Law, and (11) civil penalties under the Private Attorneys General Act. Plaintiffs are represented by [Ferraro Vega Employment Lawyers](#) ("Class Counsel.")

Defendants contest the claims asserted in the Action. Defendants deny violating any laws or failing to pay any wages and contend it complied with all applicable laws. Defendants view this settlement as a compromise, to which they have agreed in order to avoid the uncertainty, distraction, and inconvenience of litigation. By entering into this settlement, Defendants are not admitting to any allegations in the case and maintain that they have not engaged in any unlawful activity or failed to comply with the law in any material respect. Defendants deny any liability to anyone under the claims asserted in the Lawsuit.

## 2. WHAT ARE THE PROPOSED SETTLEMENT TERMS?

At the Final Approval Hearing, the Class Representative, through Class Counsel, will ask the Court to approve a Gross Settlement Amount of \$800,000 and authorize the following deductions: Class Representative Service Payment (\$10,000), Class Counsel Attorneys' Fees in the amount of 35% of the Gross Settlement (\$280,000), Class Counsel Litigation Costs (not to exceed \$30,000), the LWDA's 75% portion of the PAGA Payment (\$12,000), and the Administration Expenses to be paid to the third-party settlement administrator (not to exceed \$20,500).

After making the above deductions in amounts approved by the Court, the Administrator will calculate and distribute making Individual Class Payments to Participating Class Members based on their Class Period Workweeks. 30% of each Individual Class Payment shall constitute disputed taxable wages ("Disputed Wage Portion") and 70% shall constitute interest and penalties ("Non-Wage Portion."). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms.

Defendants will separately pay employer payroll taxes it owes on the Disputed Wage Portion. The Administrator will report the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

You will be treated as a Participating Class Member, participating fully in the settlement, unless you submit a signed Request for Exclusion by the **[[Response Deadline]]** "Response Deadline".

After the Judgment is final and Defendants have fully funded the settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the settlement, as follows:

Release by Participating Class Members: All Participating Class Members release Released Parties from any and all claims, damages, and penalties alleged in the Operative Complaint and/or Plaintiff's notice to the Labor Workforce Development Agency ("LWDA") and arising out of the facts in the Operative Complaint and/or notice to the LWDA during the Class Period, including, without limitation, claims for: (1) failure to pay all minimum wages, (2) failure to pay all overtime wages, (3) meal period violations, (4) rest period violations, (5) failure to reimburse business expenses, (6) untimely payment of wages, (7) wage statement violations, (8) waiting time penalties, (9) sick leave violations, (10) violations of the Unfair Competition Law, and (11) civil penalties under the Private Attorneys General Act. Participating Class Members **do not** release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts outside of the Operative Complaint or outside the Class Period.

Release by PAGA Members: All PAGA Members and the LWDA release Released Parties from, and are forever barred from pursuing such against Released Parties for, the PAGA claims alleged in and/or arising out of the facts alleged in the Operative Complaint and/or notice to the LWDA during the PAGA Period, including, without limitation penalties predicated on the underlying alleged violations for: (1) overtime and minimum wage violations, (2) meal period violations, (3) rest period violations, (4) failure to reimburse business expenses, (5) sick leave violations, (6) Covid supplemental paid sick leave violations, (7) untimely payment of wages, (8) wage statement violations, (9) waiting time penalties, and (10) failure to maintain accurate records.

### **3. HOW IS MY INDIVIDUAL CLASS SETTLEMENT CALCULATED?**

The number of Class Workweeks you worked during the class period are stated on the first page of this notice. The Administrator will calculate Individual Class Payments by (1) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and then (2) multiplying the result by the number of Workweeks worked by each respective Participating Class Member. In other words, you will receive a proportional recovery based on your length of employment in relation to other Class Members.

### **4. HOW CAN I CORRECT THE NUMBER OF WORKWEEKS?**

You have until the Response Deadline to correct or challenge the number of Workweeks. You can submit your challenge by signing and sending a letter to the Administrator via mail or email to the Administrator at the following address:

Administrator:  
**CPT Group**  
**50 Corporate Park**  
**Irvine, CA 92606**

**(800) 523-5773**

The Administrator will accept Defendants' calculation of Workweeks 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.

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

The Administrator will send, by U.S. mail, a single check to every Participating Class Member following the Effective Date of this Settlement. Your check will be sent to the same address as this notice. If you change your address, notify the Administrator as soon as possible.

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

Complete the attached Request for Exclusion form and mail or email it to the Administrator before the Response Deadline.

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

Only Participating Class Members have the right to object to the Settlement by submitting a written objection to the Administrator before the Response Deadline. To object, please provide a written statement to the Administrator advising what you object to, why you object, and any facts that support your objection. Please sign the objection and identify the Action and include your name, current address, telephone number, and your approximate dates of employment.

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.

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

You may, but are not required to, attend the Final Approval Hearing on **[[Final Approval Hearing Date]]** at **[[Final Approval Hearing Time]]** in Dept. 67 of the San Diego County Superior Court, located at 330 W Broadway, San Diego, CA 92101. 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 the LWDA, Class Counsel, the Class Representative(s), and the Administrator. The Court will invite comment from objectors, Class Counsel, and Defense Counsel before making a decision.

It is possible the Court will reschedule the Final Approval Hearing. Please review the Court's online docket or contact the Administrator or Class Counsel to verify the date and time of the Final Approval Hearing if you believe it may have been continued or otherwise changed.

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

The Agreement sets forth everything Defendants and Plaintiffs 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 Court's website, access the Register of Actions, and search for the case using the case number at the top of this notice. You can also telephone or send an email to Class Counsel at the address below:

Class Counsel

Nicholas J. Ferraro (State Bar No. 306528)

Lauren N. Vega (State Bar No. 306525)

Ferraro Vega Employment Lawyers, Inc.

3160 Camino del Rio South, Suite 308

San Diego, California 92108

(619) 693-7727 telephone

[classactions@ferrarovega.com](mailto:classactions@ferrarovega.com)

[ferrarovega.com](http://ferrarovega.com)

**10. WHAT IF I LOSE MY SETTLEMENT CHECK OR FAIL TO CASH IT?**

If you lose or misplace your settlement check, the Administrator will replace it if you request a replacement before the void date on the face of the original check. If your check is already void or you have otherwise failed to cash it, it will be provided to the State of California's Unclaimed Property Division in your name. For more information, please review how to process a claim for your funds with the State of California, [https://www.sco.ca.gov/upd\\_form\\_claim.html](https://www.sco.ca.gov/upd_form_claim.html).



# **Attachment B**

## **Request for Exclusion Form**

**Request for Exclusion Form**

*Anthony Davide et al. v. SFFIT Ventures LLC and ASPYR Holdings, LLC et al.*  
Superior Court of the State of California for the County of San Diego  
Case No. 37-2022-00036078-CU-OE-CTL

By signing and returning this form, I confirm that I do not want to be included in the Settlement or receive a settlement check in the class action lawsuit referenced above.

I understand that by opting out, I am giving up my right to receive any payments in this Settlement. To “opt out,” this form must be postmarked no later than **[[Response Deadline]]** and mailed via U.S. Mail to the following address:

**CPT Group**  
**50 Corporate Park**  
**Irvine, CA 92606**  
**(800) 523-5773**

I confirm I have reviewed the Notice of Class Action Settlement. I have decided to be excluded from the class and **not** participate in the proposed settlement or receive an individual settlement check I am otherwise entitled to receive.

Dated: \_\_\_\_\_

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Last Four Digits of SSN)*

\_\_\_\_\_  
*(Type or print name and former name(s))*

\_\_\_\_\_  
*(Telephone Number)*

\_\_\_\_\_  
*(Address)*