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26 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

27 **COUNTY OF KERN**

28 JOSE MANUEL ALAMO and BLAS NOE
LICANO MUNOZ, on behalf of themselves, and
for all similarly situated persons, and the general
public;

Plaintiffs,
vs.

LEHR BROTHERS, INC., a California
Corporation; and DOES 1 through 50, inclusive;

Defendant.

Case No.: BCV-20-102932

Dept: 10, Hon. Bernard C. Barmann

**Joint Stipulation re: Class Action and PAGA
Settlement**

1 This Joint Stipulation Re: Class Action PAGA Settlement (hereinafter “Stipulation” or
2 “Settlement Agreement”) is made and entered into by: (1) Plaintiffs Jose Manuel Alamo and Blas Noe
3 Licano Munoz (“Plaintiffs”), individually and in their representative capacity on behalf of the
4 Settlement Class, as defined below, and as a private attorney general on behalf of the State of California
5 and Aggrieved Employees, as defined below, of Defendant; and (2) Defendant Lehr Brothers, Inc.
6 (“Defendant”). This Settlement Agreement is subject to the approval of the Court and is made for the
7 sole purpose of attempting to consummate settlement of the action on a class-wide, representative basis
8 subject to the terms, conditions, definitions, and recitals set forth hereunder. Upon approval by the
9 Court, the Parties request that the Court make and enter judgment, as well as retain continuing
10 jurisdiction with respect to the settlement advanced herein subject to the following terms, conditions,
11 definitions, and recitals advanced.

12 This Settlement shall be binding on Plaintiffs and the class they purport to represent, on all
13 aggrieved employees, Defendant, and on their respective counsel, subject to the terms and conditions
14 hereof and the approval of the Court. Furthermore, the parties stipulate to class certification for
15 purposes of settlement only.

16 THE PARTIES STIPULATE AND AGREE as follows:

17 **1. DEFINITIONS**

18 As used in this Settlement Agreement, the following terms shall have the meanings specified
19 below. To the extent terms or phrases used in this Settlement Agreement are not specifically defined
20 below, but are defined elsewhere in this Settlement Agreement, they are incorporated by reference into
21 this definition section.

22 **1.1 ACTION**

23 “Action” shall mean the following civil action: *Jose Alamo and Blas Noe Licano Munoz*
24 *individually and on behalf of all similarly situated v. Lehr Brothers, Inc.*, in the Kern County Superior
25 Court for the State of California, Case No. BCV-20-102932, filed on December 15, 2020.
26
27
28

1 **1.2 ADMINISTRATIVE EXPENSES**

2 “Administrative Expenses” shall include all costs and expenses associated with and paid to the
3 third-party settlement administrator, which are anticipated not to exceed \$8,000, but in the event said
4 costs exceed \$8,000.00, such shall be paid from the Gross Settlement Amount.

5 **1.3 AGGRIEVED EMPLOYEE AND AGGRIEVED EMPLOYEES**

6 “Aggrieved Employee” and “Aggrieved Employees shall mean and include all non-exempt
7 employees of Defendant including, but not limited to, its past, present, and future owners, parents,
8 subsidiaries, affiliates, and/or related entities, who worked for Defendant in the State of California
9 during the relevant and applicable PAGA Period.

10 **1.4 APPLICABLE WAGE ORDERS**

11 “Applicable Wage Orders” shall mean the California Industrial Welfare Commission (“IWC”)
12 Wage Orders applicable to the alleged facts of this Action, including, but not limited to, IWC Wage
13 Order Nos. 8, 13, and 14-2001 and others that may be applicable.

14 **1.5 CLAIMS**

15 “Claims” shall mean any and all claims, causes of action, theories of liability, and allegations
16 known and/or unknown, asserted and/or unasserted, by Plaintiffs against Defendant in the Action.

17 **1.6 CLASS ATTORNEY FEES AND EXPENSES**

18 “Class Attorney Fees and Expenses” shall mean the portion of the Gross Settlement Amount
19 for which Class Counsel may apply for their attorneys’ fees and litigation expenses. The amount of
20 Class Attorney Fees and Expenses shall include all past and future attorneys’ fees and costs incurred
21 in the Action – including, without limitation, all time expended by Class Counsel in the Action or in
22 defending the Settlement and securing final approval of the Settlement (including any appeals thereof).
23 The Parties agree that the fee portion of the Class Attorney Fees and Expenses shall be up to, but no
24 greater than, 35% of the Gross Settlement Amount (i.e., \$96,250.00), as approved by the Court, and
25 the award of costs and expenses shall be up to an additional \$10,000.00.

26 **1.7 CLASS COUNSEL**

27 “Class Counsel” shall mean Farrah Mirabel of Law Offices of Farrah Mirabel, P.C., and Amir
28 Seyedfarshi of Employment Rights Law Group APC.

1 **1.8 CLASS MEMBER**

2 “Class Member” shall mean all non-exempt employees of Defendant who are or were employed
3 by Defendant and worked at least one shift in California for or on behalf of Defendant from December
4 14, 2016 through the date the Court grants Preliminary Approval (“Class Period,” defined below).

5 **1.9 CLASS NOTICE**

6 “Class Notice” shall mean the *Notice of Proposed Class Action Settlement and Hearing Date*
7 *for Court Approval*, as set forth in the form of **Exhibit 1** attached hereto, or as otherwise approved by
8 the Court, which is to be mailed to Class Members along with the Share Form.

9 **1.10 CLASS PARTICIPANTS**

10 “Class Participants” shall mean all Class Members who do not timely request exclusion from
11 the Class Settlement.

12 **1.11 CLASS PERIOD**

13 “Class Period” shall mean the period from December 14, 2016 through the date the Court grants
14 Preliminary Approval.

15 **1.12 CLASS REPRESENTATIVE**

16 “Class Representative” shall mean Plaintiffs Jose Alamo and Blas Noe Licano Munoz.

17 **1.13 CLASS SETTLEMENT**

18 “Class Settlement” shall mean the settlement embodied in this Settlement Agreement, which is
19 subject to Court approval.

20 **1.14 “COMPENSABLE WORKWEEKS”**

21 “Compensable Workweeks” shall mean the weeks worked by each Class Member during the
22 Class Period based on Defendant’s employment records, and as used as a value to calculate individual
23 settlement payments.

24 **1.15 COMPLAINT**

25 “Complaint” shall mean the First Amended Complaint filed in the Action on or about February
26 19, 2021, which is the operative complaint on file in this Action and at issue.

27 **1.16 COURT**

28 “Court” shall mean the Kern County Superior Court before who the Action is currently pending.

1 **1.17 DEFENDANT**

2 “Defendants” shall mean Defendant Lehr Brothers, Inc.

3 **1.18 DEFENSE COUNSEL**

4 “Defense Counsel” shall refer to Scott Belden Esq. and Daniel Root Esq. of Belden Blaine
5 Raytis LL

6 **1.19 EFFECTIVE DATE**

7 “Effective Date” shall be the date when all of the following events have occurred: (a) this
8 Settlement Agreement has been executed by all Parties and by Class Counsel and Defense Counsel;
9 (b) the Court has given preliminary approval to the Class Settlement; (c) notice has been given to the
10 Settlement Class providing them with an opportunity to request exclusion from the Class Settlement;
11 (d) the Court has held a Final Approval and Fairness Hearing and entered a final order and judgment
12 certifying the Settlement Class and approving this Settlement Agreement; and (e) the later of the
13 following events: (i) if no appeal is filed, the expiration of the period of applicable time for filing any
14 appeal, writ, or other appellate proceeding opposing the Class Settlement and/or the Court’s Judgment
15 (i.e., 65 days from service of the Notice of Entry of Judgment); (ii) the date of final dismissal of any
16 appeal, writ, or other appellate proceeding opposing the Class Settlement and/or the Court’s Judgment
17 with no right to pursue further remedies or relief; or (iii) the date of affirmance of any appeal, writ, or
18 the issuance of such other final appellate order upholding the Court’s final order and judgment becomes
19 final under the California Rules of Court and with no right to pursue further remedies or relief. In this
20 regard, it is the intention of the Parties that the Class Settlement shall not become effective until the
21 Court’s order approving the Class Settlement is completely final and there is no further recourse by an
22 appellant or objector who seeks to contest the Class Settlement. In the event no objections are filed, the
23 Effective Date shall be after steps (a) through (e) are completed (i.e., the date that the court has entered
24 a final order and judgment certifying the Settlement Class and approving this Settlement Agreement).

25 **1.20 EMPLOYEE’S TAXES AND REQUIRED WITHHOLDING**

26 “Employee’s Taxes and Required Withholding” shall mean the employee’s share of any and all
27 applicable federal, state, or local payroll taxes, including those collected under authority of the Federal
28 Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and/or the State

1 Unemployment Tax Act (SUTA) on the portion of any Class Participant's Individual Settlement
2 Amount that constitutes wages. The Employer's Taxes and Required Withholdings will be withheld
3 from and paid out of the Net Settlement Amount.

4 **1.21 EMPLOYER'S TAXES**

5 "Employer's Taxes" shall mean and refer to Defendants' share of payroll taxes (e.g.,
6 Unemployment Insurance, Employment Training Tax, Social Security, and Medicare taxes) that is
7 owed on the portion of any Class Participant's Individual Settlement Amount that constitutes wages.
8 The Employer's Taxes shall be separately paid by Defendant Lehr Brothers, Inc. and shall not be paid
9 from the Gross Settlement Amount or Net Settlement Amount.

10 **1.22 FINAL APPROVAL AND FAIRNESS HEARING**

11 "Final Approval and Fairness Hearing" shall mean the final hearing before the Court to finally
12 approve the Settlement as fair, reasonable, and adequate.

13 **1.23 GROSS SETTLEMENT AMOUNT**

14 "Gross Settlement Amount" is the agreed upon, non-reversionary settlement amount totaling
15 \$275,000.00 to be paid by Defendant Lehr Brothers Inc. in full and complete settlement of this Action
16 for all claims and Released Claims at issue in this Action, including, but not limited to, wages, interest,
17 premiums, penalties, and/or other damages or awards, as well as inclusive of the Administrative
18 Expenses, the Employer's Taxes and Required Withholdings, the Class Attorney Fees and Expenses,
19 the Incentive Award, and PAGA Payment and all other amounts other than the Employer's Taxes
20 defined above. This is the maximum possible amount that may be paid by Defendants to resolve the
21 Action, with the exception of the Employer's Taxes defined above. Defendant Lehr Brothers, Inc. shall
22 separately pay their Employer's Taxes due on the wage portion of the Gross Settlement Amount in
23 addition to the Gross Settlement Amount.

24 Furthermore, as of the date of mediation held on June 14, 2022, Defendant represented that
25 there were approximately Two Hundred Seventy-Four (274) potential Class Members who worked a
26 total of approximately 18,470 workweeks ("Estimated Class Workweeks") during the Class Period. If
27 the Court does not grant either the preliminary or final approval of settlement, the Parties stipulate that
28 the conditional class certification is revoked without prejudice. If at the time of Preliminary Approval,

1 the total number of Estimated Class Workweeks is Fifteen Percent (15%) more than the Estimate Class
2 Workweeks amount (i.e., 21,241 workweeks or more during the Class period), then the Parties shall
3 have the ability to void the settlement or negotiate an earlier Class Approval or cut-off date. The Gross
4 Settlement Amount shall not be in any manner increased in the event Estimated Workweeks worked
5 by Class Members exceeds Fifteen Percent (15%) thereof. Furthermore, in the event that Ten Percent
6 (10%) or more Class Members opt out of the settlement, Defendant shall have the right, but not the
7 obligation, to void the settlement.

8 **1.24 HEARING ON PRELIMINARY APPROVAL**

9 “Hearing on Preliminary Approval” shall mean the hearing held on the motion for preliminary
10 approval of the Class Settlement.

11 **1.25 INCENTIVE AWARD**

12 “Incentive Award” shall mean any additional monetary payment provided to the Class
13 Representative for his efforts and risks on behalf of the Settlement Class in this Action. Plaintiff Munoz
14 shall be provided and paid from the Gross Settlement Amount a total of \$10,000.00 as an Incentive
15 Award, and Plaintiff Alamo shall be provided and paid from the Gross Settlement Amount a total of
16 \$10,000.00 as an Incentive Award.

17 **1.26 INDIVIDUAL SETTLEMENT AMOUNT**

18 “Individual Settlement Amount” shall mean a Class Participant’s share of the Net Settlement
19 Amount, as further detailed in Paragraphs 7.2 and 7.3 below. For tax purposes, the Parties agree to
20 allocate payments to Class Members as follows: 20% to wages for which an IRS Form W-2 shall issue,
21 20% to penalties, and 60% to interest for which an IRS Form 1099 shall issue (total 80% to penalties
22 and interest).

23 **1.27 NET SETTLEMENT AMOUNT**

24 “Net Settlement Amount” shall mean the Gross Settlement Amount after all Court-approved
25 deductions for Administrative Expenses; Class Attorney Fees and Expenses; and Plaintiff’s Incentive
26 Award, and PAGA Payment. The Net Settlement Amount is the maximum amount that will be
27 available for distribution to Class Participants.
28

1 **1.28 OPT OUT**

2 “Opt Out” shall refer to the process of submitting a timely and valid request exclusion from the
3 Class Settlement in accordance with the terms of the Class Notice and no later than the Response
4 Deadline, as described in Paragraph 6.5 below.

5 **1.29 OPT-OUTS**

6 “Opt-Outs” shall mean all persons who timely and validly request exclusion from the Class
7 Settlement in accordance with the terms of the Class Notice and no later than the Response Deadline,
8 as described in Paragraph 6.5 below.

9 **1.30 PAGA PAYMENT**

10 “PAGA Payment” means the penalties pursuant to PAGA that the Parties have agreed is a
11 reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is
12 \$12,000.00. The PAGA Payment is to be deducted from the Gross Settlement Amount. The PAGA
13 Payment is to be approved by the Court pursuant to Labor Code section 2699 and is to be distributed
14 as follows: seventy-five percent (75%) (i.e., \$9,000.00) to the LWDA and twenty-five percent (25%)
15 (i.e., \$3,000.00) to the PAGA Settlement Class. Class Counsel shall give timely notice of this
16 Settlement Agreement to the LWDA pursuant to Labor Code section 2699, subdivision (l)(2).

17 **1.31 PAGA PERIOD**

18 “PAGA Period” shall mean the period from August 25, 2019, through the date of Preliminary
19 Approval.

20 **1.32 PAGA SETTLEMENT CLASS**

21 “PAGA Settlement Class” shall mean all non-exempt employees (Aggrieved Employees), both
22 former and current, who are or were employed by and worked at least one shift for Defendant in the
23 State of California during the PAGA Period as defined above. Defendant represents that the PAGA
24 Class consists of approximately One Hundred Seventy One (171) Aggrieved Employees during the
25 PAGA Period.

26 **1.33 PARTIES**

27 “Parties” shall mean Plaintiffs and Defendants.
28

1 **1.34 PLAINTIFFS**

2 “Plaintiffs” shall mean Plaintiffs Jose Alamo and Blas Noe Licano Munoz.

3 **1.35 PRELIMINARY APPROVAL DATE**

4 “Preliminary Approval Date” shall mean the date upon which the Court enters an order
5 preliminarily approving this Settlement Agreement.

6 **1.36 RELEASED CLAIMS**

7 All Class Members who do not opt out of the Settlement will be bound by a release of all claims
8 and causes of action falling within the definition of “Released Claims” (below), whether known or
9 unknown, asserted or unasserted, patent or latent, and irrespective of the factual basis for such claims.
10 The scope of the release is limited to the Released Claims. Plaintiffs and the Class Participants may
11 hereafter discover allegations, facts, and/or legal arguments, causes of action, or theories of liability in
12 addition to or different from those they now know or currently believe to be true with respect to the
13 claims, causes of action and legal theories of recovery in this Action. Regardless, the discovery of new
14 allegations, facts, and/or legal arguments, causes of action, or theories of liability shall in no way limit,
15 reduce, modify, or effect the scope or definition of the Released Claims, and by virtue of this
16 Agreement, Plaintiffs and the Class Participants shall be deemed to have, and by operation of the final
17 judgment approved by the Court, shall have, fully, finally, and forever settled, discharged, and released
18 Defendant and Released Parties from all of the Released Claims. Furthermore, Released Claims shall
19 mean and include a full and final discharge of Defendant and Released Parties from any and all
20 statutory, constitutional, contractual, and common law claims for wages, damages, premiums, unpaid
21 costs and expenses, penalties, liquidated damages, punitive damages, debts, liabilities, demands,
22 obligations, guarantees, costs, expenses, attorneys’ fees, causes of action, contingent or accrued, arising
23 out of the allegations and claims asserted, unasserted, or could have been asserted under the First
24 Amended Complaint, and any future amendments to the First Amended Complaint.

25 More particularly and specifically, Plaintiffs, the Aggrieved Employees, and all Class
26 Participants including, but not limited to, their heirs executors, attorneys, agents, representatives,
27 successors, assigns, and spouses (“Releasing Parties”), shall and will release Defendant and all of its
28 former, present, and future owners, parents, subsidiaries, affiliates, shareholders, predecessors and

1 successors in interest, and related entities and all of Defendant's current, former, and future officers,
2 directors, supervisors, employees, representatives, agents, predecessors, successors, and assigns (the
3 "Released Parties") from any and all known or unknown, asserted or unasserted, patent or latent,
4 claims, rights, demands, liabilities, penalties, and causes of action alleged under Plaintiffs' operative
5 complaint, as well as any amended complaint against the Released Parties, as pled or could have been
6 pled based upon the allegations advanced under the operative complaint in the Action, including, but
7 not limited to, (1) PAGA and civil penalties thereunder pursuant to Labor Code Section 2699, et seq.;
8 (2) failure to provide meal periods, off-duty meal periods, or remit premiums for non-complaint meal
9 periods pursuant to Labor Code Sections 226.7, 1198, and 512, as well as all other applicable theories
10 and statutory and/or regulatory laws or authorities alleged or could have been alleged with respect to
11 or in support hereof Defendant and/or Released Parties; (3) failure to provide compliant rest periods,
12 off-duty rest periods, or remit premiums for non-compliant rest periods pursuant to Labor Code
13 Sections 226.7 and 1198, as well as all other applicable theories and statutory and/or regulatory laws
14 or authorities alleged or could have been alleged with respect to or in support hereof against Defendant
15 and/or Released Parties; (4) failure to pay all overtime wages pursuant to Labor Code Sections 510 and
16 1198, as well as all other applicable theories and statutory and/or regulatory laws or authorities alleged
17 or could have been alleged with respect to or in support hereof against Defendant and/or Released
18 Parties; (5) failure to pay all wages earned pursuant to Labor Code Section 204, as well as all other
19 applicable theories and statutory and/or regulatory laws or authorities alleged or could have been
20 alleged with respect to or in support hereof against Defendant and/or Released Parties; (6) failure to
21 maintain accurate payroll records pursuant to Labor Code Sections 226 and 1174, as well as all other
22 applicable theories and statutory and/or regulatory laws or authorities alleged or could have been
23 alleged with respect to or in support hereof against Defendant and/or Released Parties; (7) failure to
24 pay wages upon separation pursuant to Labor Code Sections 201-203, as well as all other applicable
25 theories and statutory and/or regulatory laws or authorities alleged or could have been alleged with
26 respect to or in support hereof against Defendant and/or Released Parties; (8) failure to pay for sick
27 days pursuant to Labor Code Section 246, et seq., as well as all other applicable theories and statutory
28 and/or regulatory laws or authorities alleged or could have been alleged with respect to or in support

1 hereof against Defendant and/or Released Parties; (9) failure to reimburse business expenses pursuant
2 to Labor Code Section 2802, as well as all other applicable theories and statutory and/or regulatory
3 laws or authorities alleged or could have been alleged with respect to or in support hereof against
4 Defendant and/or Released Parties; and (10) violation(s) pursuant to Business and Professions Code
5 Section 17200, et seq. Releasing Parties also fully, finally, and forever discharge and release Defendant
6 and Released Parties from any and all claims, rights, demands, liabilities, and causes of action with
7 respect to or arising out of all applicable IWC Wage Orders including, but not limited to, IWC Wage
8 Order Nos. 8, 13, and 14; any and all claims, whether known or unknown, advanced under Plaintiffs'
9 PAGA Notice Letter; any and all other claims, rights, demands, liabilities, penalties, and causes of
10 action or related claims known or unknown, asserted or unasserted, or that have or could have been
11 alleged in this Action under the California Labor Code, California Business and Professions Code,
12 Government Code, and/or under any other applicable Federal, State, and/or Local statute, code, and/or
13 regulation or at common law or in equity; any and all other claims and/or causes of action that were or
14 could have been asserted or brought under the operative Complaint and/or based on the facts alleged
15 in the Action; and any and all other claims rights, demands, liabilities, civil or statutory penalties,
16 causes of action, or related claims for attorneys' fees, costs, expenses, and/or interest with respect to
17 this Action or resulting or arising out of the foregoing. The Release Period for the Released Claims
18 shall be the designated and Court approved Class Period (i.e., December 14, 2016 through the date of
19 Preliminary Approval).

20 In addition to the foregoing, Plaintiffs' respective release of claims includes a release of any
21 and all known or unknown, suspected or unsuspected, asserted, unasserted, or could have been asserted
22 claims, including such claims that Plaintiffs did not know or suspect to exist in their favor at the time
23 of the Release, which, if known, might have affected his or her settlement with, and release of, the
24 Released Parties or might have affected his or her decision not to object to this Settlement or Release.
25 With respect to the Release, Plaintiffs stipulate and agree that, upon the execution of this Agreement,
26 Plaintiffs shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived
27 and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section
28 1542 of the California Civil Code, or any other similar provision under Federal, State, or Local law or

1 authority as to the Released Claims. Plaintiffs may also hereafter discover facts in addition to or
2 different from those now known, believed, or suspected to be true with respect to the subject matter of
3 the Release, but upon the Effective Date of this Agreement, such shall be deemed to have, and by
4 operation of the Final Judgment shall have, fully, finally, and forever settled and released any and all
5 of the Claims released pursuant to the Release whether known or unknown, suspected or unsuspected,
6 contingent or non-contingent, which now exist, or heretofore have existed.

7 The Parties understand and specifically agree that the scope of the Release described in this
8 Paragraph is a material part of the consideration for this Agreement; was critical in justifying the agreed
9 upon economic value of this settlement and without it Defendants would not have agreed to the
10 consideration provided; and is draft in a manner necessary to ensure that Defendants are obtaining
11 peace of mind regarding the resolution of claims that were or could have been alleged based on the
12 facts, causes of action, and legal theories contained in Plaintiff's First Amended Complaint.

13 This Settlement Agreement shall not and will not release any person, party, or entity from
14 claims, if any, by Class Participants for workers compensation, unemployment, disability benefits of
15 any nature. Nor does it release any claims, actions, or causes of action which may be possessed by
16 Class Participants under state or federal discrimination statutes, including, without limitation, the
17 California Fair Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh Civil Rights
18 Act (Civ. Code, § 51); the California Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C.
19 § 2000, et seq.); the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the Employee
20 Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their implementing
21 regulations and interpretive guidelines.

22 **1.37 RELEASED PARTIES**

23 “Released Parties” shall mean and refer to Defendant and all of its former, present, and future,
24 owners, parents, subsidiaries, affiliates, shareholders, predecessors and successors in interest, and
25 related entities; its current, former, and future officers, directors, supervisors, employees, fiduciaries,
26 trustees, representatives, agents, insurers, predecessors and successors in interest, assigns, and benefit
27 plans; and any individual or entity which could be jointly liable with any of the foregoing.
28

1 **1.38 RELEASING PARTIES**

2 “Releasing Parties” shall mean Plaintiffs, every Aggrieved Employee, every Class Participant,
3 and all persons purporting to act on their behalf or purporting to assert a claim under or through them,
4 including, but not limited to, their dependents, heirs, assigns, beneficiaries, devisees, legatees,
5 executors, administrators, agents, trustees, conservators, guardians, personal representatives, and
6 successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or
7 any other type or in any other capacity.

8 **1.39 RESPONSE DEADLINE**

9 “Response Deadline” shall mean the date forty-five (45) calendar days immediately following
10 the date on which the Settlement Administrator mails Class Notice packets to the Class Members and
11 the last day on which Class Members may (1) submit a request for exclusion or opt-out; (2) object to
12 Class Settlement; and (c) dispute the information contained in the Summary Sheet.

13 **1.40. SETTLEMENT AND SETTLEMENT AGREEMENT**

14 “Settlement” and “Settlement Agreement” shall mean the disposition of the Action pursuant to
15 this Agreement.

16 **1.41. SETTLEMENT ADMINISTRATOR**

17 “Settlement Administrator” shall mean ILYM, Inc. which the Parties have agreed will be
18 responsible for administration of the Class Settlement and related matters. In the event ILYM, Inc. is
19 not designated or approved as the Settlement Administrator, the Parties shall meet and confer to
20 mutually decide and agree upon another settlement administrator.

21 **1.42. SETTLEMENT CLASS AND SETTLEMENT CLASS MEMBERS**

22 “Settlement Class” and “Settlement Class Members” shall mean all non-exempt employees,
23 both former and current, who are or were employed by and worked at least one shift for Defendant in
24 the State of California during the Class Period as stated above, who have not requested to be excluded
25 or have not opted out of the Class by submitting a valid and timely Request for Exclusion or Opt-Out.
26 Again, as of the date of mediation on June 14, 2022, Defendant represented that there were
27 approximately Two Hundred Seventy-Four (274) potential Class Members who worked a total of
28 approximately 18,470 workweeks (“Estimated Class Workweeks”) during the Class Period. If the

1 Court does not grant either the preliminary or final approval of settlement, the Parties stipulate that the
2 conditional class certification is revoked without prejudice. If at the time of Preliminary Approval, the
3 total number of Estimated Class Workweeks is Fifteen Percent (15%) more than the Estimate Class
4 Workweeks amount (i.e., 21,241 workweeks or more during the Class period), then the Parties shall
5 have the ability to void the settlement or negotiate an earlier Class Approval or cut-off date. The Gross
6 Settlement Amount shall not be in any manner increased in the event Estimated Workweeks worked
7 by Class Members exceeds Fifteen Percent (15%) thereof. Furthermore, in the event that Ten Percent
8 (10%) or more Class Members opt out of the settlement, Defendant shall have the right, but not the
9 obligation, to void the settlement.

10 **1.43. SHARE FORM**

11 “Share Form” shall mean the Share Form, as set forth in the form of **Exhibit 2** attached hereto,
12 or as otherwise approved by the Court, which is to be mailed to Class Members along with the Class
13 Notice.

14 **2. FACTUAL AND PROCEDURAL BACKGROUND**

15 **2.1. PLAINTIFF’S CLAIMS**

16 On August 25, 2020, Plaintiffs submitted their PAGA Letter to the LWDA asserting claims that
17 Defendants violated Labor Code sections 98.6, 201-205, 210, 216, 218.5, 221, 225.5, 223, 226.2, 226.3,
18 226.7, 233, 234, 246, 510-512, 551-552, 558, 558.1, 1174, 1174.5, 1193.6, 1194-1197.1, 1198-1199.5
19 and 2698-2699, 2699.5, 2802. On December 14, 2020, Plaintiffs filed their Class and PAGA
20 representative action complaint in Kern County Superior Court alleging, inter alia, representative
21 claims, allegations, and causes of action including, but not limited to, that Defendant failed to pay
22 minimum wages for all hours worked; failed to pay overtime wages; failed to provide compliant rest
23 periods and/or pay rest period premiums; failed to provide compliant meal periods and/or pay meal
24 period premiums; failed to provide complete/accurate wage statements; failed to pay all final wages;
25 failed to pay timely wages; failed to pay for sick days; violated the UCL based on the foregoing; and
26 owes PAGA penalties based on the foregoing. Plaintiffs also advanced under their Complaint
27 individual claims, allegations, and causes of action arising out of each Plaintiff’s employment with and
28 cessation of employment from Defendant.

1 **2.2. DISCOVERY, INVESTIGATION, RESEARCH, AND MEDIATION**

2 The Parties have conducted a detailed and comprehensive investigation of the claims asserted
3 against Defendant including, but not limited to, applicable law, wage orders, and regulations. This
4 discovery, investigation, and prosecution has included, among other things, (a) an analysis of the legal
5 positions taken by Defendant; (b) investigation into the viability of class treatment of the claims
6 asserted in the Action; (c) analysis of potential class-wide damages, including information sufficient to
7 understand Defendant’s potential defenses to Plaintiff’s claims; (d) research of the applicable law with
8 respect to the claims asserted in the Complaint and the potential defenses thereto; (e) assembling and
9 analyzing of data for calculating damages; and (f) consideration of information disclosed at and in
10 connection with mediation.

11 Class Counsel and the Class Representatives have vigorously prosecuted this case, and
12 Defendant has vigorously contested it. The Parties have engaged in sufficient investigation and
13 discovery to assess the relative merits of the claims of the Class Representative and of the defenses to
14 them.

15 After such discovery, investigation, and prosecution, on June 14, 2022, the Parties attended a
16 full-day mediation with an experienced employment law mediator, Justice Steven Vartabedian (Ret.),
17 which culminated in a settlement in principal, the terms and conditions of which are elaborated and set
18 forth under this Settlement Agreement.

19 **2.3. ALLEGATIONS OF THE CLASS REPRESENTATIVES AND BENEFITS OF**
20 **CLASS SETTLEMENT**

21 The documents, records, and data exchanged in this matter, as well as discussions between
22 counsel, have been adequate to give the Class Representatives and Class Counsel a sound
23 understanding of the merits of their positions and to evaluate the value of the claims of the Settlement
24 Class and PAGA Settlement Class.

25 The Class Representatives and Class Counsel believe that the claims, causes of action,
26 allegations, and contentions asserted in the Action have merit. However, the Class Representatives and
27 Class Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings
28 necessary to prosecute the Action against Defendants through trial and through appeals. Class Counsel

1 has taken into account the uncertain outcome of the litigation, the risk of continued litigation in complex
2 actions such as this, as well as the difficulties and delays inherent in such litigation, and the potential
3 difficulty of obtaining certification of the Settlement Class as well as trying the claims of the Class.
4 Class Counsel is mindful of the potential problems of proof under, and possible defenses to, the claims
5 alleged in the Action.

6 The Class Representatives and Class Counsel believe that the Settlement set forth in this
7 Settlement Agreement confers substantial benefits upon Plaintiffs and the Settlement Class, as well as
8 the PAGA Settlement Class, and that an independent review of this Settlement Agreement by the Court
9 in the approval process will confirm this conclusion. Based on their own independent investigation and
10 evaluation, Class Counsel has determined that the Settlement set forth in this Settlement Agreement is
11 in the best interests of Plaintiffs and the Settlement Class.

12 **2.4. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

13 Defendant has denied and continues to deny all allegations, claims, causes of action, and
14 contentions alleged by Plaintiffs in the Action. Defendant has expressly denied and continues to deny
15 all charges of wrongdoing and liability against it arising out of any of the conduct, statements, acts,
16 and/or omissions alleged by Plaintiffs, both collectively and individually, in the Action, and has
17 expressly denied and continues to deny any wrongdoing whatsoever. Defendant contends that it has
18 complied with all California, Federal, Local, and Administrative wage and hour laws, including
19 applicable IWC Wage Orders, and has dealt legally and fairly with Plaintiffs and the Class Members.

20 Defendant further denies that, for any purpose other than settling this Action, these claims are
21 appropriate for class or representative treatment. Thus, as stated above, Defendant stipulates to
22 certification of the Class for settlement purposes only. Nonetheless, Defendant has concluded that
23 further proceedings in the Action would be protracted and expensive, and that it is desirable that the
24 Action be fully and finally settled in the manner and upon the terms and conditions set forth in this
25 Settlement Agreement to dispose of said burdensome and protracted litigation, to permit the operation
26 of Defendant's respective businesses without further substantial expense dedicated towards litigation,
27 and to lessen distraction and diversion of their personnel with respect to matters at issue in the Action.
28 Defendant has also taken into account the uncertainty and risks inherent in any litigation, especially in

1 complex cases such as the Action. As such, even though Defendant continues to contend that it is not
2 liable for any of the claims alleged by Plaintiffs in this Action, Defendant has determined that it is in
3 their best interest that the Action be settled in the manner and upon the terms and conditions set forth
4 in this Settlement Agreement.

5 **2.5. INTENT OF THE CLASS SETTLEMENT**

6 The Class Settlement set forth herein intends to achieve the following: (1) entry of an order
7 approving the Class Settlement; (2) entry of judgment of the Action; (3) discharge and release of
8 Defendant and the Released Parties from any and all liability, damages, penalties, or otherwise, whether
9 actual or perspective, for any and all of the Released Claims; and (4) discharge and release of Defendant
10 and the Released Parties from any and all liability, damages, penalties, or otherwise, whether actual or
11 perspective, for any and all claims arising out of the Action. Settlement of this Action shall not, in any
12 manner, constitute an admission of fault, wrongdoing, and/or liability by Defendant, and Defendant
13 has denied and continues to deny any fault, wrongdoing, and/or liability claimed by Plaintiffs.

14 **3. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

15 For the purposes of this Settlement Agreement and the Class Settlement of this Action only, the
16 Parties agree to conditional class certification of the Settlement Class. The certification of the
17 Settlement Class shall not constitute, in this or any other proceeding, an admission of any kind by
18 Defendant, including without limitation, that certification of a class is or would be warranted,
19 appropriate or proper, or that Plaintiffs could establish any of the requisite elements for class treatment
20 of any of the claims in the Action. In the event that the Settlement Agreement is not finally approved
21 by the Court, a Final Effective Date is not achieved, or the Class Settlement is rejected, terminated, or
22 otherwise rendered null and void as set forth herein, then certification of the Settlement Class shall be
23 automatically vacated, shall be void *ab initio*, of no force or effect, and shall not constitute evidence or
24 a binding determination that the requirements for certification of a class for trial purposes in this Action
25 or in any other action which have been, are or can be, satisfied. Further, if the Agreement does not
26 reach a Final Effective Date, Plaintiffs agree that Plaintiffs will not argue, claim, reference, or otherwise
27 raise any preliminary approval of the Settlement Class in connection with any later proceeding before
28 the Court.

1 **4. APPOINTMENT OF CLASS COUNSEL**

2 For purposes of this Settlement Agreement and subject to the Court's approval, the Parties agree
3 to the appointment of Class Counsel as counsel for the Settlement Class and the effectuation of the
4 Class Settlement pursuant to this Settlement Agreement.

5 **5. CONSIDERATION**

6 **5.1. SETTLEMENT AMOUNT**

7 The Parties agree to settle this Action for the Gross Settlement Amount of \$275,000.00. There
8 shall be no reversion to Defendant. Defendant shall pay the Gross Settlement Amount in full. The Gross
9 Settlement Amount and other actions and forbearances taken by Defendant shall constitute adequate
10 consideration for the Class Settlement and will be made in full and final settlement of: the Released
11 Claims, the Class Attorney Fees and Expenses, Administrative Expenses, the Incentive Award, the
12 PAGA Payment (and any payments to individual PAGA Class Members resulting from the PAGA
13 Payment), and any other obligation of Defendant under this Settlement Agreement (other than the
14 Employer's Taxes on the portion of the Net Settlement Amount allocated to the payment of wages).
15 Under no circumstances will Defendant be obligated to pay more than the Gross Settlement Amount
16 and its share of the employer's payroll taxes, which shall be funded in addition to the Gross Settlement
17 Amount as a result of this Settlement, unless otherwise provided for in this Settlement.

18 **5.2. INCENTIVE AWARD FOR PLAINTIFFS**

19 Plaintiffs may petition the Court to approve an Incentive Award in an amount up to, but not
20 exceeding, \$10,000.00 for Plaintiff Jose Manuel Alamo and \$10,000.00 for Blas Noe Licano Munoz
21 (a maximum total Incentive Award for Plaintiffs of \$20,000.00 to be apportioned equally) to
22 acknowledge their efforts on behalf of the Settlement Class in this Action, including assisting in the
23 investigation and consulting with Class Counsel and providing crucial documents to Class Counsel.
24 Defendant shall not oppose any request by Plaintiffs for an Incentive Award in such an amount. Any
25 Incentive Award approved by the Court shall be paid to Plaintiffs from the Gross Settlement Amount
26 and shall be in addition to any distribution to which he or she may otherwise be entitled as a Class
27 Participant. Any Incentive Award approved by the Court shall not be considered wages, and the
28 Settlement Administrator shall issue to Plaintiffs an IRS Form 1099 reflecting such payment. Plaintiffs

1 shall be solely and legally responsible for the payment of all taxes with respect to any Incentive Award
2 approved by the Court and shall hold Defendants harmless from any and all claims or liability for taxes,
3 penalties, or interest with regard thereto. In the event the Court reduces Class Representative's
4 Incentive Award, the reduced amount shall be added to the Net Settlement Amount to be distributed to
5 Class Participants. Furthermore, as set forth under this Agreement and the concurrently and separately
6 executed individual Settlement and Release Agreement concerning each Plaintiff's individual claims,
7 Plaintiffs agree to release any claims fully and completely they may have arising out of their
8 employment with Defendant, including a Civil Code Section 1542 release.

9 **5.3. PAYMENT TO CLASS PARTICIPANTS**

10 Each Class Participant shall be eligible to receive payment of the Individual Settlement
11 Amount, which is a share of the Net Settlement Amount based on the pro rata number of Compensable
12 Workweeks worked by the Class Members during the Class Period. For purposes of this calculation, a
13 workweek means a week where a Class Member was employed in California in a non-exempt job
14 position. The respective Compensable Workweeks for each Settlement Class member will be divided
15 by the total Compensable Workweeks for all Settlement Class Members, resulting in the payment ratio
16 for each Settlement Class member. Each Settlement Class Member's payment ratio is then multiplied
17 by the Net Settlement Amount to determine his or her Individual Settlement Payment. Defendant
18 Settlement Administrator will calculate the total Compensable Workweeks for all Settlement Class
19 Members. Each Class Participant, including Plaintiff, shall be responsible for the payment of the
20 Employee's Taxes and Required Withholding with respect to his or his Individual Settlement Amount
21 and shall hold Defendants harmless from any and all liability with regard thereto.

22 **5.4. PAYMENT TO PAGA SETTLEMENT CLASS**

23 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA
24 Payment. The PAGA Payment shall consist of the and be allocated to penalties pursuant to PAGA that
25 the Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in
26 the Action, which is \$12,000.00, and shall be paid from the Gross Settlement Amount. The PAGA
27 Payment must be approved by the Court pursuant to Labor Code section 2699 and is to be distributed
28 as follows: seventy-five percent (75%) (i.e., \$9,000.00) to the LWDA and twenty-five percent (25%)

1 (i.e., \$3,000.00) to the PAGA Settlement Class. The portion of the PAGA Payment allocated to the
2 PAGA Settlement Class shall be distributed to the PAGA Settlement Class based on the pro rata
3 number of pay periods worked by each particular PAGA Settlement Class member during the PAGA
4 Period as a proportion of all pay periods worked by all members of the PAGA Settlement Class. These
5 payments are made pursuant to Labor Code Section 2699(i).

6 **5.5. TAX TREATMENT AND PAYMENT**

7 The Settlement Administrator shall be responsible for paying the employees' share of federal,
8 state, and local payroll and income taxes. For the purpose of calculating Employee's Taxes and
9 Required Withholding for the Individual Settlement Amounts for Class Participants (including any
10 payments to the Class Representative but exclusive of his Incentive Award), the Parties agree that 20%
11 of each Individual Settlement Amount shall constitute payment in the form of wages (and each Class
12 Participant will be issued an IRS Form W-2 for such payment to him or her), 20% of each Individual
13 Settlement Amount shall constitute penalties, and 60% of each Individual Settlement Amount shall
14 constitute interest (80% total with respect to penalties and interests and each Class Participant will be
15 issued an IRS Form 1099 for such payment to him or her).

16 Prior to final distribution, the Settlement Administrator shall calculate the total Employee's
17 Taxes and Required Withholding due as a result of the wage portion of Class Participants' anticipated
18 Individual Settlement Amounts and such actual amount will be deducted from the Net Settlement
19 Amount. Additionally, prior to the funding of the Gross Settlement Amount and final distribution, the
20 Settlement Administrator shall calculate the total Employer's Taxes due on the wage portion of the
21 Class Participants' Individual Settlement Amounts and issue instructions to Defendants to separately
22 fund these tax obligations/withholdings. The Parties understand that Plaintiffs and the Class
23 Participants who receive any payment pursuant to this Settlement Agreement shall be solely
24 responsible for all other individual tax obligations.

25 With respect to the PAGA Payment and any payments made to individual members of the
26 PAGA Settlement Class, all such payments shall be treated as payments owing for penalties and interest
27 thereon and shall not be considered wages. The Settlement Administrator shall issue to members of the
28 PAGA Settlement Class an IRS Form 1099 reflecting such payment. Members of the PAGA Settlement

1 Class shall be solely responsible for the payment of all taxes with respect to any PAGA payments made
2 to them.

3 The Settlement Administrator shall issue an IRS Form W-2 to each Class Participant for the
4 portion of the Individual Settlement Amount that is designated as wages. The Settlement Administrator
5 shall issue an IRS Form 1099 to each Class Participant for the portion of the Individual Settlement
6 Awards that is not designated as wages. The Settlement Administrator shall issue an IRS Form 1099
7 to the Class Representatives for any Incentive Award paid in connection with his roles as the Class
8 Representative.

9 The Settlement Administrator shall file, with the California Employment Development
10 Department (“EDD”), the required reports of Personal Income Tax (“PIT”) wages withheld from the
11 Individual Settlement Amounts, as well as the amounts to be paid as Unemployment Insurance (“UI”),
12 Employment Training Tax (“ETT”), and State Disability Insurance (“SDI”). For purposes of this
13 reporting, prior to disbursement of the Individual Settlement Amounts, the Settlement Administrator
14 shall provide Defendant with a list of all Class Participants, and Defendant shall provide to the
15 Settlement Administrator its Form DE 2088, Notice of Contribution Rates and Statement of UI
16 Account, for the current calendar year (if unavailable, Defendant may provide instead their California
17 State Employer’s Identification Number and its applicable UI and ETT Rates).

18 All Class Participants and Plaintiff will be responsible for correctly characterizing the
19 compensation they receive for tax purposes and for paying any taxes on the amounts received, except
20 for the employer contributions which will be handled as provided by this Stipulation. The Class
21 Participants and Plaintiff agree to indemnify Defendant for any liability Defendant incurs to any tax
22 authority on account of the Class Participants’ or Plaintiffs’ failures to pay all taxes due on amounts
23 they receive hereunder, except to the extent the failure results from Defendant’s failure to pay their
24 own respective portion of taxes due.

25 **5.6. NO EFFECT ON EMPLOYEE BENEFIT PLANS**

26 Neither the Class Settlement nor any amounts paid under the Class Settlement will modify any
27 previously credited hours, days, or weeks of service under any employee benefit plan, policy or bonus
28 program sponsored by Defendant, or effect the eligibility or calculation thereof. Amounts paid to

1 Plaintiffs or other Settlement Class Members pursuant to this Agreement shall be deemed not to be
2 pensionable earnings, as well.

3 All monies receive by Settlement Class Members shall be deemed to be income to such
4 Settlement Class Members solely in the year in which such awards actually are received by Settlement
5 Class Members. It is understood that the receipt of such amounts and/or awards will not entitle
6 Settlement Class Members to, will not form the basis for, and/or will not trigger additional
7 compensation, contributions to, benefits under, or any other monetary entitlement under any of
8 Defendant's company compensation plans or sponsored benefit plans, policies, or bonus programs, nor
9 will it entitle any Settlement Class member to any increased pension and/or retirement, or other
10 deferred compensation benefit or benefits. It is the intent of this Settlement that any Settlement Award
11 or Class Settlement payment provided for in this Agreement are the sole payments to be made by
12 Defendant to Settlement Class Members in connection with this Settlement, and that the Settlement
13 Class Members are not entitled to any new or additional compensation or benefits as a result
14 (notwithstanding any contrary language or agreement in any benefit or compensation plan document
15 that might have been in effect during the period covered by this Settlement).

16 The payments made under the terms of this Settlement Agreement shall not be applied
17 retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of
18 compensation for the purposes of any of Defendant's benefit plan, policy, or bonus program. Defendant
19 retains the right to modify the language of its benefits plans, policies, and bonus programs to reflect
20 this intent and to make clear that any amounts paid pursuant to this Settlement Agreement are not for
21 "weeks worked," "weeks paid," "weeks of service," or any similar measuring term as defined by
22 applicable plans, policies, and bonus programs for purpose of eligibility, vesting, benefit accrual, or
23 any other purpose, and that additional contributions or benefits are not required by this Settlement
24 Agreement. Defendant does not consider the Class Settlement payments "compensation" for purposes
25 of determining eligibility for, or benefit accrual within, any benefit plans, policies, or bonus programs,
26 or any other plan sponsored by Defendant.

1 **5.7. CLASS ATTORNEY FEES AND EXPENSES**

2 As part of the motion for final approval of the Class Settlement, Class Counsel may apply for
3 an award of Class Attorney Fees and Expenses with the fee portion not to exceed 35% of the Gross
4 Settlement Amount (i.e., \$96,250.00) and the award of costs and expenses up to, but not more than, an
5 additional \$10,000.00. The Class Attorney Fees and Expenses shall be paid from the Gross Settlement
6 Amount. To the extent compliant with this Agreement and made in good faith, Defendant agrees not
7 to oppose or object to Class Counsel's application for Class Attorney Fees and Expenses.

8 As a condition of this Class Settlement, Class Counsel has agreed to pursue fees only in the
9 manner reflected by this subsection. Any Class Attorney Fees and Expenses awarded by the Court shall
10 be paid from the Gross Settlement Amount prior to arriving at the Net Settlement Amount and shall
11 not constitute payment to any Class Members. If Class Counsel voluntarily reduces the request for
12 Class Attorney Fees and Expenses or the Court's award of Class Attorney Fees and Expenses is less
13 than set forth above, the Net Settlement Amount shall be recalculated to reflect the actual Class
14 Attorney Fees and Expenses awarded. In the event the Court reduces the Class Attorney Fees and
15 Expenses, the reduced amount shall be added to the Net Settlement Amount to be distributed to Class
16 Participants. Class Counsel shall not have the right to revoke this Agreement in the event the court
17 reduces Class Attorney Fees and/or Expenses, and the Agreement shall remain binding.

18 The Class Attorney Fees and Expenses approved by the Court shall reflect: (a) all work
19 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
20 represent the Settlement Class through the date of this Settlement Agreement; (b) all work to be
21 performed and costs to be incurred in connection with approval by the Court of the Class Settlement;
22 (c) all work to be performed and costs and expenses, if any, incurred in connection with administering
23 the Class Settlement through the Effective Date and dismissal of the Action with prejudice; and (d) may
24 be based on the "catalyst theory" and/or the "common fund doctrine." Notwithstanding, and as set
25 forth above, Class Attorney Fees and Expenses shall in no manner exceed 35% of the Gross Settlement
26 Amount Award. Furthermore, this Settlement is not contingent upon the Court awarding Class Counsel
27 any particular amount in attorneys' fees, costs, and/or expenses.
28

1 Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment
2 of any fees and expenses pursuant to this section. The Settlement Administrator shall issue an IRS
3 Form 1099 – MISC to Class Counsel for payments made pursuant hereto.

4 **6. SETTLEMENT ADMINISTRATION**

5 **6.1. COSTS AND EXPENSES**

6 All costs and expenses due to the Settlement Administrator in connection with its administration
7 of the Class Settlement, including, but not limited to, providing the Class Notice, locating Class
8 Members, processing Requests for Exclusion or Opt-Out requests and objections, distributing the
9 portion of the PAGA Payment payable to the LWDA, distributing the portion of the PAGA Payment
10 payable to the members of the PAGA Settlement Class, and calculating, administering and distributing
11 Individual Settlement Amounts to the Class Participants and related tax forms and withholdings, shall
12 be paid from the Gross Settlement Amount. The costs of administration for the disbursement of the
13 Gross Settlement Amount, as set forth above, shall not exceed \$8,000.00. To the extent administration
14 costs are less than \$8,000.00, the amounts not utilized for purposes of settlement administration or
15 incurred as costs thereof will be added to the Net Settlement Amount to be distributed to Class
16 Participants. Defendant agrees not to oppose any such applications which are consistent with this
17 paragraph. The Parties agree to cooperate in the Settlement Administration process and to make all
18 reasonable efforts to control and minimize the cost and expenses incurred in administration of the
19 Settlement.

20 **6.2. PAYMENT BY DEFENDANT**

21 Defendant shall deposit the Gross Settlement Amount in a lump sum payment to the Settlement
22 Administrator within 31 days after the Effective Date by wiring or mailing the Gross Settlement
23 Amount to the Settlement Administrator. In no event shall Defendants be obligated to pay or deposit
24 with the Settlement Administrator more than the Gross Settlement Amount (\$275,000.00). Defendant
25 shall be separately and solely responsible for any Employer Taxes owed or due as a result of this
26 Settlement Agreement.

6.3. THE SETTLEMENT ADMINISTRATOR

The Settlement Administrator will be responsible for: (a) preparing, translating into Spanish, printing, and mailing the Class Notice and Share Form (**Exhibit 1** and **Exhibit 2**, respectively) to Class Members as well as following up with reasonable skip tracing; (b) posting notice of entry of final order and judgment certifying the Class Settlement and approving this Settlement Agreement; (c) handling inquiries from Class Members concerning the Class Notice; (d) determining Individual Settlement Amounts; (e) determining individual payments to members of the PAGA Settlement Class; (f) maintaining the settlement funds in an appropriate interest-bearing account; (g) preparing, administering, and distributing Individual Settlement Amounts to Class Participants; (h) preparing, administering, and distributing individual payments to members of the PAGA Settlement Class; (i) distributing the portion of the PAGA Payment payable to the LWDA; (j) issuing a final report; (k) notifying the Parties of the identity of Class Members who submit timely Requests for Exclusion; (l) calculating and paying the employer's share of the applicable federal and state withholding taxes; (m) filing any required federal and state tax forms and related agency reporting; (n) filing any required reports with the Court and, as necessary, providing any declaration(s) in support of preliminary and/or final approval of this Settlement; and (n) performing such other duties as the Parties may direct. Additionally, the Settlement Administrator will handle all tax document preparation and reporting, including state and federal tax forms, if any.

On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and Defense Counsel with summary information updating them as to the number of validated and timely objections and Opt Out requests. The Settlement Administrator will serve on Class Counsel and Defense Counsel via e-mail date-stamped copies of the original Opt Out requests and objections no later than seven (7) days after their receipt. The Settlement Administrator will provide Class Counsel with proof of mailing of the Class Notice, without listing individual Class Member names, which the Settlement Administrator will file with the Court at the time Class Counsel files its motion in support of the Court's Final Approval and Fairness Hearing.

No later than seven (7) days prior to the Final Approval and Fairness Hearing, the Settlement Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary

1 information regarding: **(a)** the total amount of final Individual Settlement Amounts of each Class
2 Participant, without any identifying personal information; **(b)** the number of Class Participants to
3 receive such payments, and **(c)** the final number of Opt-Outs and objections.

4 **6.4. NOTICE TO CLASS MEMBERS**

5 Notice shall be provided to Class Members in the following manner: Within twenty-one (21)
6 calendar days after the Preliminary Approval Date, Defendant shall provide the Settlement
7 Administrator with the following information and data (formatted as an Microsoft Excel spreadsheet,
8 Word document, or in another acceptable, usable format) that is within Defendant's possession and to
9 the extent available containing for each Class Member: (a) the Class Member's name; (b) the Class
10 Member's last known address; (c) the Class Member's social security number; and (d) the Class
11 Member's dates of employment (first, last, and/or other) in California in a non-exempt job position for
12 Defendant ("Class Information"). This Class information is confidential and not to be disclosed to
13 anyone other than the Settlement Administrator. This information shall be based on Defendant's
14 payroll, employment, and other business records.

15 Within twenty-one (21) days following receipt of the foregoing Class Information from
16 Defendant, the Settlement Administrator shall determine the number of shifts worked by each Class
17 Member; populate the data for each Class Member accordingly; conduct a National Change of Address
18 search to update any addresses provided; and thereafter mail a copy of the Notice to all Class Members
19 by first class regular U.S. Mail, using the most current mailing address information provided by
20 Defendant and/or obtained by the Settlement Administrator. The Settlement Administrator shall
21 exercise its best judgment to determine the current mailing address for each Class Member. The
22 address identified by the Settlement Administrator as the current mailing address shall be presumed to
23 be the best mailing address for each Class Member. The Class Notice shall also contain an easily
24 understood statement alerting the Class Members that, unless they elect to Opt Out of the Class
25 Settlement, the Class Member shall be bound to the terms and conditions of this Agreement including
26 their release and waiver of all Released Claims against Defendant and the Released Parties.

27 The Class Notice will inform Class Members of their estimated share of the settlement and the
28 number of workweeks that they worked during the Class Period. Class Members will have the

1 opportunity to dispute their workweeks if they believe they worked more weeks during the Class Period
2 than Defendant's records show by submitting evidence, documentation, and/or information to the
3 Settlement Administrator no later than forty-five (45) days after being mailed the Class Notice and
4 Share Form by the Settlement Administrator, which is the defined Response Deadline. If there is a
5 dispute, the Settlement Administrator will jointly work with and consult the Parties to resolve the
6 dispute in good faith and determine whether an adjustment is warranted. If Plaintiff and Defendants
7 cannot agree over the workweeks to be credited or adjusted in the event of dispute, the Settlement
8 Administrator shall make the final decision based on the information presented by the Class Member
9 and Defendants, of which shall be binding upon the class Member and the Parties.

10 Any disputes not resolved by the Settlement Administrator concerning the administration of the
11 Settlement will be resolved by the Court, under the laws of the state of California. Prior to any such
12 involvement by the Court, counsel for the Parties will confer in good faith to resolve the disputes
13 without necessity of court intervention.

14 The Settlement Administrator will engage in address searches consistent with its normal
15 practices in administering settlements of wage claims, including skip tracing. Such search efforts shall
16 include, where necessary, using social security numbers to obtain better address information and
17 attempting to call such Class Members.

18 **6.5. OPT-OUT PROCEDURE**

19 Class Members will not be required to submit a claim form to participate in the Settlement.
20 However, Class Members who do not timely Opt Out of the Class Settlement will be deemed to
21 participate in the Class Settlement and shall become Class Participants without having to submit a
22 claim form or take any other action. To Opt Out of the Class Settlement, the Class Member must submit
23 a letter or postcard to the Settlement Administrator postmarked prior to but in no event later than the
24 final day of the Response Deadline. The Opt Out request must state the Class Member's name, address,
25 telephone number, and signature. The Opt Out request should state something to the effect of:

26 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE MUNOZ,
27 ET AL. V. LEHR BROTHERS, INC. LAWSUIT. I UNDERSTAND THAT IF I ASK
28

1 TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE
2 ANY MONEY FROM THE CLASS SETTLEMENT OF THIS LAWSUIT AND WILL
3 NOT BE RELEASING ANY CLAIMS I MIGHT HAVE.”

4 Any Opt Out request that is not postmarked by the Response Deadline will be invalid. The date
5 of the postmark on the Opt Out shall be the exclusive means used to determine whether it has been
6 timely submitted. The Opt Out will be deemed invalid if it does not contain or clearly state the Class
7 Member’s name, address, and telephone number; a clear statement by the Class Member electing to
8 opt out or be excluded; and the Class Member’s signature. Any Class Member who requests to be
9 excluded or opts out from the Settlement Class will not be entitled to any recovery under the Settlement
10 and will not be bound by the terms of the Settlement or have any right to object, appeal, or comment
11 thereto. Class Members who receive a Notice of Class Settlement, but fail to submit a valid and timely
12 Opt Out on or before the Response Deadline, shall be bound by all terms and conditions of this
13 Settlement Agreement and any Final Judgment entered in this Action.

14 Any returned envelopes from this mailing with forwarding addresses will be utilized by the
15 Settlement Administrator to forward the Notices to the Class Members. Notices returned to the
16 Settlement Administrator as non-delivered shall be re-sent to the forwarding address, if any, on the
17 returned envelope. If no forwarding address is provided, the Settlement Administrator shall promptly
18 attempt to determine a correct address by use of skip-tracing or other search using the name, address,
19 and/or Social Security number of the Class Member involved, and shall then perform a re-mailing, if
20 another mailing address is identified. Upon completion of these steps by the Settlement Administrator,
21 the Parties shall be deemed to have satisfied their obligation to provide the Notice to the affected Class
22 Member. The affected Class Member shall remain a Class Participant and shall be bound by all the
23 terms of this Stipulation and the Court’s Final Order and Judgment. Any Re-Mailing of the Notice
24 shall extend the Response Deadline by a period of ten (10) calendar days from the original Response
25 Deadline.

26 It will be presumed that, if an envelope containing the Class Notice has not been returned within
27 twenty-eight (28) days of the mailing, the Class Member received the Class Notice. At least ten (10)
28

1 days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class
2 Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard
3 to the mailing of the Class Notice and its attempts to locate Class Members. The declaration shall
4 specify the number of Class Members to whom the Class Notice was sent and the number of Class
5 Members to whom the Class Notice was not delivered, as well as information relating to the number
6 of Opt-Outs and objectors. Class Counsel shall file this declaration with the Court.

7 If the Settlement Administrator determines that an Opt Out request returned by a Class Member
8 before the Response Deadline is deficient, then the Settlement Administrator shall mail a deficiency
9 letter to that Class Member identifying the problem. If a Class Member submits both a dispute and an
10 Opt Out request, the Settlement Administrator shall make reasonable attempts to clarify if the Opt Out
11 request were deficient. If the Class Member fails to cure the deficiency, the Opt Out request shall be
12 disregarded and the class member will be paid, and the Class Member will become bound by the
13 judgment.

14 A request to Opt Out of the Class Settlement shall not serve to exclude the Class Member from
15 participation in the PAGA Settlement Class. Members of the PAGA Settlement Class shall have no
16 right or ability to opt out of the portion of this Settlement Agreement releasing PAGA claims.

17 Class Participants will be bound by the terms and conditions of this Agreement, including the
18 Release of Released Claims set forth in the definition of “Released Claims” provided in this Settlement
19 Agreement.

20 **6.6. OBJECTION PROCEDURE**

21 The Class Notice shall inform the Class Members of their right to object to the Class Settlement.
22 Any Class Member who wishes to object to the Class Settlement must submit a written objection to the
23 Settlement Administrator no later than the Response Deadline and must file with the Court, and serve
24 on all parties a written statement of objection. The date of the postmark of the objection set forth on
25 the Notice of Objection shall be the exclusive means used to determine whether the objection was
26 timely submitted.

27 Only Class Participants may object to the Settlement. The objection must include the case name
28 and number and must set forth, in clear and concise terms, a statement of the reasons why the objector

1 believes that the Court should find that the proposed Class Settlement is not in the best interest of the
2 Settlement Class and the reasons why the Class Settlement should not be approved, including the legal
3 and factual arguments supporting the objection. If an objector also wishes to appear at the Final
4 Approval and Fairness Hearing, in person or through an attorney, they need not file a notice of intention
5 to appear at the same time as the objection is filed.

6 The Settlement Administrator will promptly serve copies of any objection or notice of intention
7 to appear on Class Counsel and Defense Counsel. Class Counsel shall lodge a copy of the objection
8 with the Court. Class Members may appear at the Final Approval Hearing, either in person or through
9 a lawyer retained at their own expense whether or not they have submitted a timely written objection
10 and notice of intention to appear pursuant to this subsection.

11 In the event that the Court approves this Settlement notwithstanding the objections of any Class
12 Members, Class Members who object to the Settlement will nonetheless be bound by the Settlement.
13 Class Members who have opted out of the Settlement do not have standing to object to the Settlement
14 or to file an appeal.

15 **6.7. NOTICE OF FINAL JUDGMENT**

16 Within ten (10) days after the Court has held a Final and Fairness Approval Hearing and entered
17 a final order certifying the Class for settlement purposes only and approving the Class Settlement, the
18 Settlement Administrator will give notice of judgment to Class Members pursuant to rule 3.771(b) of
19 the California Rules of Court, by posting a copy of said order and final judgment on its website at a
20 web address to be included in the Class Notice.

21 **7. CLASS SETTLEMENT FUNDING AND DISTRIBUTION**

22 **7.1. ALLOCATION OF THE GROSS SETTLEMENT AMOUNT**

23 The claims of all Class Members are settled for the Gross Settlement Amount of \$275,000.00,
24 which will be allocated as follows:

- 25 1. The Administrative Expenses, not to exceed \$8,000.00;
- 26 2. Class Counsel's attorney fees not to exceed \$ 96,250.00;
- 27 3. Class Counsel's litigation costs and expenses not to exceed \$10,000.00;
- 28

1 4. The Incentive Award, not to exceed \$10,000.00 for each named Plaintiff, total of
2 \$20,000.00.; and

3 5. PAGA Payment to LWDA of \$9,000.00 and to Aggrieved Employees of the PAGA
4 Settlement Class of \$3,000.00.

5 For purposes of calculating the estimated Individual Settlement Amounts, the Settlement
6 Administrator shall calculate the estimated Net Settlement Amount based on the estimated values
7 provided above prior to sending Notice to the Class Members. Prior to final distribution, the Settlement
8 Administrator shall recalculate the final Net Settlement Amount based on the actual values of the
9 amounts in each category.

10 **7.2. CALCULATION OF THE INDIVIDUAL SETTLEMENT AMOUNTS FOR**
11 **CLASS PARTICIPANTS**

12 Individual Settlement Amounts to be paid to Class Participants shall be paid from the Net
13 Settlement Amount. The portion of the Net Settlement Amount shall be distributed pro rata on a
14 “checks cashed” basis based on the proportional number of workweeks worked by each Class Member
15 during the Class Period.

16 The Settlement Administrator shall be solely and exclusively responsible for calculating the
17 Individual Settlement Amounts for Class Participants. Defendant shall have no responsibility for
18 deciding the validity of the Individual Settlement Amounts or any other payments made pursuant to
19 this Settlement Agreement, shall have no involvement in or responsibility for the determination or
20 payment of Employee’s Taxes and Required Withholding, and shall have no liability and shall be
21 indemnified for any errors made with respect to such Employee’s Taxes and Required Withholding.
22 Although the Settlement Administrator will calculate and pay the standard Employee’s Taxes and
23 Required Withholding on the portion of the Individual Settlement Amounts constituting wages on their
24 behalf, Plaintiffs and Class Participants represent and understand that they shall be solely responsible
25 for any and all tax obligations associated with their respective Individual Settlement Amounts and
26 Incentive Awards.

1 **7.3. CALCULATION OF THE PAYMENTS FOR INDIVIDUAL MEMBERS OF**
2 **THE PAGA SETTLEMENT CLASS**

3 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA
4 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have
5 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which
6 is \$12,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section
7 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$9,000.00) to the LWDA and
8 twenty-five percent (25%) (i.e., \$3,000.00) to the PAGA Settlement Class.

9 The Settlement Administrator shall be responsible for calculating the Individual PAGA
10 Payments for the PAGA Settlement Class. The portion of the PAGA Payment allocated to the PAGA
11 Settlement Class shall be distributed to the PAGA Settlement Class based on the pro rata number of
12 pay periods worked by each particular PAGA Settlement Class member during the PAGA Period as a
13 proportion of all pay periods worked by all PAGA Settlement Class members during the PAGA Period.
14 Each member of the PAGA Settlement Class, including Plaintiff, shall be responsible for the payment
15 of the Employee's Taxes and Required Withholding with respect to their share of the PAGA Payment
16 and shall hold Defendants harmless from any and all liability with regard thereto.

17 Defendants shall have no responsibility for deciding the validity of the individual payment
18 amounts allocated to each member of the PAGA Settlement Class or any other payments made pursuant
19 to this Settlement Agreement, shall have no involvement in or responsibility for the determination or
20 payment of Employee's Taxes and Required Withholding, and shall have no liability and be
21 indemnified for any errors made with respect to such Employee's Taxes and Required Withholding.

22 The members of the PAGA Settlement Class shall be solely responsible for any and all tax
23 obligation associated with their respective shares of the PAGA Payment.

24 **7.4. TIME FOR PAYMENT OF ATTORNEY FEES AND EXPENSES**

25 The Settlement Administrator shall distribute to Class Counsel any attorney fees and expenses
26 approved by the Court to Class Counsel no later than forty (40) days after the Effective Date.
27
28

1 **7.5. TIME FOR PAYMENT OF INCENTIVE AWARD**

2 The Settlement Administrator shall distribute to Plaintiff the Incentive Award approved by the
3 Court no later than forty (40) days after the Effective Date.

4 **7.6. TIME FOR PAYMENT OF PAGA PAYMENT TO THE LWDA**

5 The Settlement Administrator shall distribute to the LWDA the portion of the PAGA Payment
6 due to it and approved by the Court no later than forty (40) days after the Effective Date.

7 **7.7. TIME FOR PAYMENT OF TAXES AND REQUIRED WITHHOLDING AND**
8 **INDIVIDUAL SETTLEMENT AMOUNTS**

9 The Settlement Administrator shall make every effort to pay the Employee's Taxes and
10 Required Withholding associated with each Class Participant's Individual Settlement Amount and mail
11 the Individual Settlement Amount to each Class Participant, by first-class United States mail, to the
12 last-known address no later than forty (40) days after the Effective Date. If the Settlement
13 Administrator is not able to do so within the time period set forth above, it shall so inform Class Counsel
14 and Defense Counsel and provide an approximate date by which the Employee's Taxes and Required
15 Withholding shall be paid and the Individual Settlement Amounts will be mailed. Under no
16 circumstances shall the Settlement Administrator distribute checks to Class Participants until all
17 Individual Settlement Amounts have been considered, calculated, and accounted for, and all of the
18 remaining monetary obligations have been calculated and accounted for.

19 Within one hundred twenty (120) days of mailing the Individual Settlement Amounts to Class
20 Participants or as Ordered by the Court, the Settlement Administrator shall file with the Court and
21 provide to Class Counsel a declaration of payment. In the event that any Class Participant is deceased,
22 payment shall be made payable to the estate of that Class Member and delivered to the executor or
23 administrator of that estate, unless the Settlement Administrator has received an affidavit or declaration
24 pursuant to California Probate Code section 13101, in which case payment shall be made to the
25 affiant(s) or declarant(s).

26 **7.8. NON-CASHED SETTLEMENT CHECKS**

27 Individual Settlement Payment checks shall remain negotiable for One Hundred Eighty (180)
28 days from the date of issuance. Any funds associated with checks that have not been cashed within

1 One Hundred Eighty (180) days, will become void, and the Individual Settlement Amount associated
2 with the uncashed check will be distributed pursuant to Code of Civil Procedure section 384 to the
3 Kern County Wounded Heroes Fund as the *cy pres* recipient. To the extent that the Court does not
4 agree that the alternative plan set forth in this section complies with California Code of Civil Procedure
5 section 384, the Parties agree to meet and confer to agree to another plan that complies therewith. Any
6 Class Member who does not request to be excluded or opt-out nevertheless will be bound by the terms
7 and conditions of this Agreement and settlement regardless of whether he or she cashes or deposits the
8 settlement check delivered.

9 **7.9. DISPUTES REGARDING CLASS MEMBER WORKWEEK DATA OR**
10 **PAYMENT OF INDIVIDUAL SETTLEMENT SHARES**

11 As set forth above, each Class Member has the opportunity to dispute the number of workweeks
12 or their estimated Individual Settlement Amount contained on their Class Notice (“Workweek
13 Dispute”). Class Member workweeks and the corresponding Individual Settlement Amount shall be
14 calculated using the employment and payroll records of Defendant, which presumptively shall be
15 deemed to be full, complete, and accurate for purposes of this Settlement Agreement. To overcome
16 that presumption, any Class Member objecting to the accuracy of the number of shifts or amount of the
17 Individual Settlement Amount must submit documentary evidence, such as pay stubs or other written
18 employment records, to the Settlement Administrator.

19 Any Workweek Dispute must be mailed or faxed to the Settlement Administrator by the Class
20 Member, postmarked or fax-stamped on or before the Response Deadline. The Settlement
21 Administrator shall immediately provide copies of all disputes to counsel for Defendants, shall inform
22 Class Counsel of the dispute without disclosing the identity of the Class Member making the dispute,
23 and shall immediately attempt to resolve all such disputes directly with relevant Class Members with
24 the assistance of Defendants, Defense Counsel, and Class Counsel. If the dispute cannot be resolved,
25 it shall be submitted to the Settlement Administrator for its final, non-appealable decision. The
26 Settlement Administrator shall use its best efforts to resolve all such disputes prior to the Effective
27 Date. In the event the Settlement Administrator cannot resolve the dispute, the dispute shall be
28 submitted to the Court for resolution, of which the Parties shall confer prior thereto for purposes of

1 reaching a good faith resolution. Any decision reached by the Settlement Administrator and/or the
2 Court shall be binding upon the Parties and Class Members

3 If, however, a dispute arises or is not resolved until after the Settlement Amount has been
4 distributed, the initial calculation shall stand (as Defendants shall be under no obligation to pay any
5 amounts in excess of the Gross Settlement Amount under this Settlement Agreement).

6 **8. NULLIFICATION OF THIS SETTLEMENT AGREEMENT**

7 **8.1. NON-APPROVAL OF THIS SETTLEMENT AGREEMENT**

8 This Stipulation shall be considered null and void, all Parties to the Class Settlement shall stand
9 in the same position, without prejudice, as if the Class Settlement had been neither entered into nor
10 filed with the Court, and any order of judgment entered by the Court in furtherance of the settlement
11 shall be vitiated *nunc pro tunc*, if any of the following occurs: (a) the Court should for any reason fail
12 to approve this Settlement Agreement in the form agreed to by the Parties; (b) the Court does not enter
13 the Final Settlement Approval Order and Judgment as provided for herein or contemplated by this
14 Stipulation; (c) the Court does not enter a Final Settlement Approval Order and Judgment as provided
15 for herein that becomes final as a result of the occurrence of the Effective Date; or (d) the Settlement
16 does not become final for any other reason. Notwithstanding the foregoing, the Parties may attempt in
17 good faith to cure any perceived defects or enter into further negotiations with respect to this Settlement
18 Agreement to facilitate approval.

19 **8.2 PARTIES' RIGHTS TO VOID CLASS SETTLEMENT; ESCALATOR** 20 **NEGOTIATION CLAUSE**

21 If ten percent (10%) or more members of the Settlement Class timely submit Opt Out requests,
22 Defendant shall have the right (but not the obligation) to void this Settlement Agreement, in which case
23 this Stipulation will not have any force and/or effect. Class Counsel and Plaintiff agree not to oppose
24 any application by Defendant and/or its Counsel that is consistent with this paragraph. The Parties and
25 their counsel agree not to take any action to encourage any Class Members to opt out of and/or object
26 to the Settlement Agreement. If the Settlement is voided on this basis, no payment will be made by
27 Defendant to Plaintiff, any Class Member, or Class Counsel, and all Parties and third parties referenced
28 in this Stipulation will bear their own costs, fees, and expenses associated with the Litigation.

1 As set forth above, on June 14, 2022, the Parties engaged in a full-day mediation concerning
2 this Action. On said date, to its best knowledge and estimation, Defendant estimated that were an
3 approximate total of 18,470 Estimated Class Workweeks that have been worked by Class Members
4 from the commencement of the Class Period through the date of mediation. Notwithstanding, if at the
5 time of Preliminary Approval, the total number of Estimated Class Workweeks is 15% more than the
6 Estimated Class Workweeks amount (i.e., 21,241 workweeks worked during the Class Period), the
7 Parties shall have the ability to void the Settlement or negotiate an earlier Class Approval or cut-off
8 date or deadline. The Gross Settlement Amount shall not in any manner be increased or subject to
9 escalation in the event the Estimated Workweeks worked by Class Members during the Class Period
10 exceeds 15% thereof.

11 **8.3. INTERIM STAY AND STAY ON APPEAL**

12 The Parties agree to stay all proceedings in the Action, except such proceedings necessary to
13 implement and complete the Settlement, holding the Action in abeyance pending the Final Approval
14 Hearing to be conducted by the Court.

15 If an appeal is filed from the Court's Final Settlement Approval Order and Judgment prior to
16 the Effective Date, administration of the Settlement shall be immediately stayed pending final
17 resolution of the appeal process.

18 **9. MOTIONS FOR COURT APPROVAL**

19 **9.1. PRELIMINARY APPROVAL**

20 As soon as practicable after execution of this Settlement Agreement, Class Counsel will submit
21 this Settlement Agreement to the Court along with a Motion for Preliminary Approval of the Class
22 Settlement, and shall apply to the Court for the entry of an order substantially in the following form:

23 a) Scheduling a fairness hearing on the question of whether the proposed Settlement –
24 including payment of attorneys' fees, attorneys' costs, appointment of the Class Representative and the
25 amount of his enhancement award, and the method of determining Individual Settlement Amounts to
26 be paid to Class Participants, should be finally approved as fair, reasonable, and adequate as to the
27 Class;
28

1 b) Approving as to form and content the proposed Class Notice and Share Form (attached
2 as Exhibit 1 and Exhibit 2, respectively);

3 c) Directing the mailing to Class Members of the Notice, by first class U.S. Mail, pursuant
4 to the terms specified herein;

5 d) Preliminarily approving the Settlement, subject only to the objections of Class Members
6 and final review by the Court; and

7 e) Enjoining the Class Representative and all Class Members from filing or prosecuting
8 any claims, suits, or administrative proceedings (including filing claims with the California Division
9 of Labor Standards Enforcement) regarding claims released by the Settlement unless such individuals
10 have submitted valid Requests for Exclusion to the Administrator.

11 Each party shall cooperate to present the Class Settlement to the Court for preliminary approval
12 in a timely fashion. While Defendant can reserve their right to object to facts or assertions made in the
13 moving papers, Defense Counsel agrees not to oppose Plaintiffs' Motion so long as it is made in good
14 faith and reflective of the terms and conditions of this Agreement and the Settlement reached.

15 To the extent the Court does not approve this Stipulation, or any term contained herein, and
16 instead allows the Parties to amend this Stipulation, the Parties agree to cooperate in good faith to
17 amend the Stipulation in accordance with the Court's direction, and to retain all other terms of the
18 Stipulation that the Court approves.

19 **9.2. FINAL APPROVAL**

20 Class Counsel shall timely prepare Final Settlement Papers in conformance with the terms of
21 this Stipulation, including: (1) motion for final approval of the Settlement and award of attorneys' fees
22 and costs and enhancement award (2) the [Proposed] Final Settlement Order; and (3) any other
23 documents, petitions, or motions required to effectuate this Settlement – including, but not limited to,
24 any additional proposed orders requested by the Court. Class Counsel shall provide copies of such
25 documents to Defendant's counsel at least three (3) days before filing for comment, though Class
26 Counsel is not required to obtain Defendant's approval before filing.

27 The Final Approval and Fairness Hearing shall be held before the Court. At the Final Approval
28 and Fairness Hearing, Plaintiff shall move the Court for the entry of the final order certifying the

1 Settlement Class for settlement purposes only and approving the Class Settlement as being fair,
2 reasonable, and adequate to the Class Participants within the meaning of California Rules of Court,
3 Rule 3.769, subdivisions (c), (d) and (e), and for the entry of a final judgment of the Action consistent
4 with the terms of the Class Settlement and rule 3.769, subdivision (h), of the California Rules of Court.
5 Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may
6 be required for the Court's determination.

7 **10. RELEASES AND WAIVERS**

8 **10.1. RELEASE OF CLAIMS BY PLAINTIFF AND SETTLEMENT CLASS**

9 Upon the Effective Date of this Agreement, Plaintiff and the Releasing Parties shall be deemed
10 to each and all forever release and discharge Defendant and the Released Parties, each and all of them,
11 as set forth and defined above under Section 1.36, of and from any and all Released Claims arising
12 during the Class Period. It is the desire of the Parties, Releasing Parties, and Released Parties to fully,
13 finally, and forever settle, compromise, and discharge any, each, every, and all of the Released Claims,
14 as well as all claims at issue in this Action. Each of the Releasing Parties, including each Class
15 Participant, will be bound by the Release of Released Claims as set forth hereunder, as a result of the
16 Class Settlement, and pursuant to the terms of the final judgment and the satisfaction of such judgment.

17 Class Participants will be deemed to have acknowledged and agreed that their claims for wages
18 and/or penalties in the Action are disputed, and that their Individual Settlement Amount constitutes
19 payment, resolution, settlement, and discharge of all sums allegedly due to them and all claims to be
20 released held. Class Participants will be deemed to have acknowledged and agreed that California
21 Labor Code section 206.5 is not applicable to the Individual Settlement Amount. That section provides
22 in pertinent part as follows:

23 "An employer shall not require the execution of a release of a claim or right on account
24 of wages due, or to become due, or made as an advance on wages to be earned, unless
25 payment of those wages has been made."

26 **10.2 GENERAL RELEASE OF CLAIMS BY NAMED PLAINTIFFS**

27 Plaintiffs' General Release set forth under this Section 10.2 includes and is subject to Sections
28 1.36 and 10.1 above. Notwithstanding and in addition thereto, each Plaintiff has agreed and entered

1 into a separate Settlement Agreement and Release with respect to claims asserted, unasserted, and/or
2 could have been asserted with respect to this Action and/or arising out of their employment with
3 Defendant, including a release of claims as set forth thereunder which is applicable hereto and thereto
4 (the terms and conditions of which are incorporated herein by this reference). As such, the releases set
5 forth under this Agreement with respect to Plaintiffs are to act in supplement to, operate in conjunction
6 with, and work in accordance with the releases set forth under each Plaintiff's individual Settlement
7 Agreement and Release. To the extent any release provision with respect to Plaintiffs set forth under
8 this Settlement Agreement or Plaintiff's individual Settlement Agreement and Release conflict with
9 the other, the release provision providing the greatest permissible release shall prevail and control.

10 Plaintiff Alamo and Munoz, on behalf of themselves and their respective dependents, heirs and
11 assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees, conservators,
12 guardians, personal representatives, and successors-in-interest, whether individual, class,
13 representative, legal, equitable, direct or indirect, or any other type or in any other capacity, shall and
14 do hereby forever release, discharge and agree to hold harmless the Released Parties from any and all
15 charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages,
16 actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorney
17 fees and costs), known or unknown, asserted or unasserted, at law or in equity, which they may now
18 have or may have after the signing of this Settlement Agreement, arising out of or in any way connected
19 with their employment with Defendant including, the Released Claims, claims that were asserted or
20 could have been asserted in the Complaint, and any and all transactions, occurrences, or matters
21 between the Parties occurring prior to the date this Settlement Agreement is fully executed. Without
22 limiting the generality of the foregoing, this release shall include, but not be limited to, any and all
23 claims under: (a) the Americans with Disabilities Act; (b) Title VII of the Civil Rights Act of 1964;
24 (c) the Civil Rights Act of 1991; (d) 42 U.S.C. § 1981; (e) the Age Discrimination in Employment Act;
25 (f) the Fair Labor Standards Act; (g) the Equal Pay Act; (h) the Employee Retirement Income Security
26 Act, as amended; (i) the Consolidated Omnibus Budget Reconciliation Act; (j) the Rehabilitation Act
27 of 1973; (k) the Family and Medical Leave Act; (l) the Civil Rights Act of 1966; (m) the California
28 Fair Employment and Housing Act; (n) the California Constitution; (o) the California Labor Code;

1 (p) the California Government Code; (q) the California Civil Code; (r) the California Business and
2 Professions Code; and (s) any and all other federal, state, and local statutes, ordinances, regulations,
3 rules, and other laws, and any and all claims based on constitutional, statutory, common law, or
4 regulatory grounds as well as any other claims based on theories of wrongful or constructive discharge,
5 breach of contract or implied contract, fraud, misrepresentation, promissory estoppel, or intentional
6 infliction of emotional distress, negligent infliction of emotional distress, or damages under any other
7 federal, state, or local statutes, ordinances, regulations, rules, or laws. This release is for any and all
8 relief, no matter how denominated, including, but not limited to, back pay, front pay, vacation pay,
9 bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages, damages
10 for pain and suffering, and attorney fees and costs, and Plaintiffs hereby forever release, discharge, and
11 agree to hold harmless Defendant and the Released Parties from any and all claims for attorney fees
12 and costs arising out of the matters released in this Settlement Agreement.

13 Plaintiffs specifically acknowledge that they are aware of and familiar with the provisions of
14 California Civil Code section 1542, which provides as follows:

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

19 Plaintiffs, being aware of California Civil Code section 1542, hereby expressly waive and
20 relinquish all rights and benefits she may have under section 1542 as well as any other statutes or
21 common law principles of a similar effect. Plaintiffs may hereafter discover facts in addition to or
22 different from those which she now knows or believes to be true with respect to the subject matter of
23 all the claims referenced herein, but agrees that, as of the Effective Date, Plaintiffs fully, finally, and
24 forever settle, discharge, and release any and all claims against the Released Parties, known or
25 unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or could have
26 been asserted upon any theory of law or equity without regard to the subsequent discovery of existence
27 of such different or additional facts. Plaintiff’s general release shall extend up to the Final Order and
28

1 Judgment. Plaintiff represents and acknowledges that as of the date of execution of this Agreement
2 they is under 40 years of age.

3 **10.3. CIRCULAR 230 DISCLAIMER**

4 Each party to this Settlement Agreement (for purposes of this section, the “Acknowledging
5 Party”; and each party to this Agreement other than the Acknowledging Party, an “Other Party”)
6 acknowledges and agrees that (1) no provision of this Settlement Agreement, and no written
7 communication or disclosure between or among the parties or their attorneys and other advisers, is or
8 was intended to be, nor shall any such communication or disclosure constitute or be construed or be
9 relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31
10 C.F.R. Part 10); (2) the Acknowledging Party (a) has relied exclusively upon him or its own
11 independent legal and tax advisers for advice (including tax advice) in connection with this Settlement
12 Agreement, (b) has not entered into this Settlement Agreement based upon the recommendation of any
13 other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
14 communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that
15 may be imposed on the Acknowledging Party; and (3) no attorney or adviser to any other party has
16 imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies
17 (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party
18 of the tax treatment or tax structure of any transaction, including any transaction contemplated by this
19 Settlement Agreement.

20 **11. DUTIES OF THE PARTIES**

21 **11.1.MUTUAL FULL COOPERATION**

22 The Parties agree to cooperate fully with one another to accomplish and implement the terms
23 of this Settlement Agreement. Such cooperation shall include, but not be limited to, execution of such
24 other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms
25 of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated
26 by this Settlement Agreement and any other efforts that may become necessary by court order or
27 otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable
28 after execution of this Settlement Agreement, Class Counsel, with the cooperation of Defendants and

1 Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final approval of
2 this Settlement Agreement.

3 **11.2. DUTY TO SUPPORT AND DEFEND THE CLASS SETTLEMENT**

4 The Parties agree to abide by all of the terms of this Settlement Agreement in good faith and to
5 support the Class Settlement fully and to use their best efforts to defend this Class Settlement from any
6 legal challenge, whether by appeal or collateral attack.

7 **12. MISCELLANEOUS PROVISIONS**

8 **12.1. ENFORCEMENT**

9 Notwithstanding anything else contained herein, this Settlement Agreement shall be
10 enforceable under California Code of Civil Procedure section 664.6 and admissible under California
11 Evidence Code section 1123, subdivision (a), and the Federal Rules of Evidence.

12 **12.2. DIFFERENT FACTS**

13 The Parties acknowledge that, except for matters expressly represented herein, the facts in
14 relation to the dispute and all claims released by the terms of this Settlement Agreement may turn out
15 to be different from the facts now known by each party and/or its counsel, or believed by such Party or
16 counsel to be true, and each Party therefore expressly assumes the risk of the existence of different or
17 presently unknown facts, and agrees that this Settlement Agreement shall be in all respects effective
18 and binding despite such difference.

19 **12.3. NO PRIOR ASSIGNMENTS**

20 The Parties represent, covenant, and warrant that they have not directly or indirectly assigned,
21 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any
22 portion of any liability, claim, demand, action, cause of action, or right herein released and discharged
23 except as set forth herein.

24 **12.4. NON-ADMISSION**

25 Nothing contained herein is to be interpreted, construed, or deemed to be an admission,
26 statement, or agreement of liability, fault, or wrongdoing by Defendant. This Stipulation and the
27 attached exhibits are settlement documents, and, pursuant to California Evidence Code section 1152,
28

1 these documents shall be inadmissible in any proceeding except in an action or proceeding to approve,
2 interpret, or enforce this Stipulation.

3 **12.5. NON-EVIDENTIARY USE**

4 Neither this Agreement nor any of its terms, nor any statements or conduct in the negotiation
5 or drafting of it, shall be offered or used as evidence by Plaintiffs, any Class Member (including any
6 individual who requested to be excluded from the Settlement Class), Defendant, or its, her, his, or their
7 respective counsel, in the Action, except as is reasonably necessary to effectuate the Settlement
8 Agreement's purpose and terms. This Settlement Agreement may, however, be used by Defendant and
9 the Released Parties to prove or defend against any claim released herein by any Class Member in any
10 judicial, quasi-judicial, administrative, or governmental proceeding.

11 **12.6. MEDIA OR PRESS**

12 Plaintiffs and Defendant, and their respective counsel, recognize, accept, and agree that the
13 Parties to this Settlement Agreement desire that the terms of this Settlement Agreement, the fact of the
14 Class Settlement embodied in this Settlement Agreement, the disposition of the Action, the Action, and
15 all matters relating to the litigation of the Action, including discovery proceedings therein, and evidence
16 obtained during the course of the Action, shall not be discussed with, publicized, or presented to the
17 media or press. The Parties and their counsel shall not issue press releases, communicate with, or
18 respond to any media or publication entities, publish information in manner or form, whether printed
19 or electronic, on any medium or otherwise communicate, whether by print, video, recording or any
20 other medium, with any person or entity concerning the Settlement Agreement, including the fact of
21 the Settlement Agreement, its terms or contents and the negotiations underlying the Settlement
22 Agreement, except as shall be contractually required to effectuate the terms of the Settlement
23 Agreement. However, for the limited purpose of allowing Class Counsel to prove adequacy as class
24 counsel in other actions, Class Counsel may disclose a brief description of the case and the fact of
25 settlement. In response to any inquiries, including those from media outlets, concerning the settlement,
26 the Parties and their respective counsel agree that they shall simply respond by stating, "the matter has
27 resolved."
28

1 **12.7. NON-RETALIATION**

2 Defendant understand and acknowledge that they have a legal obligation to not retaliate against
3 any Class Member who elects to participate in the Class Settlement or elects to Opt Out of the Class
4 Settlement. Defendant will not discourage Class Members who are employees, directly or indirectly,
5 from making claims, opting out, or objecting to the Class Settlement. None of the Parties, or their
6 respective attorneys or agents, shall solicit or encourage any Class Members, directly or indirectly, to
7 Opt Out of the Class Settlement.

8 **12.8. CONSTRUCTION**

9 The Parties agree that the terms and conditions of this Settlement Agreement are the result of
10 lengthy, intensive, arms-length, non-collusive negotiations between the Parties and that this Settlement
11 Agreement is not to be construed in favor of or against any party by reason of the extent to which any
12 party or its counsel participated in the drafting of this Settlement Agreement. If any of the dates in this
13 Settlement Agreement fall on a weekend, bank or court holiday, the time to act shall be extended to the
14 next business day.

15 **12.9. GOVERNING LAW**

16 This Settlement Agreement is intended to and shall be governed by the laws of the State of
17 California, without regard to conflict of law principles, in all respects, including execution,
18 interpretation, performance, and enforcement.

19 **12.10. NOTICES**

20 Except for Class Member notices required to be made by the Settlement Administrator, all
21 notices or other communications required or permitted under this Settlement Agreement shall be in
22 writing and shall be sufficiently given if delivered in person to the party or their counsel by U.S.
23 certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed to the address of the
24 party appearing in this Settlement Agreement.

25 **12.11. CAPTIONS AND INTERPRETATIONS**

26 Section titles or captions contained herein are inserted as a matter of convenience and for
27 reference only and in no way define, limit, extend, or describe the scope of this Settlement Agreement
28 or any provision thereof.

1 **12.12. MODIFICATION**

2 This Settlement Agreement may not be changed, altered, or modified, except in writing signed
3 by the Parties. This Settlement Agreement may not be discharged except by performance in accordance
4 with its terms or by a writing signed by the Parties.

5 **12.13. INTEGRATION CLAUSE**

6 This Settlement Agreement contains the entire agreement between the Parties relating to the
7 Class Settlement of the Action and the transactions contemplated thereby, and all prior or
8 contemporaneous agreements, understandings, representations, and statements, whether oral or written,
9 and whether by a party or such party's legal counsel, are upon full execution of this agreement hereby
10 superseded. No rights under this Settlement Agreement may be waived except in writing as provided
11 above.

12 **12.14. SUCCESSORS AND ASSIGNS**

13 This Settlement Agreement shall be binding on and inure to the benefit of the Parties and Class
14 Members (excluding only persons who timely Opt Out) and their respective present and former heirs,
15 trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees,
16 insurers, attorneys, accountants, auditors, advisors, consultants, pension plans, welfare benefit plans,
17 fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors,
18 successors, and assigns.

19 **12.15. CORPORATE SIGNATORIES**

20 Any person executing this Settlement Agreement or any such related document on behalf of a
21 corporate signatory or on behalf of a partnership hereby warrants and promises, for the benefit of all
22 Parties hereto, that such person has been duly authorized by such corporation or partnership to execute
23 this Settlement Agreement or any such related document.

24 **12.16. EXECUTION IN COUNTERPARTS**

25 This Settlement Agreement shall become effective upon its execution by all of the undersigned.
26 The Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall
27 have the same force and effect as if all Settling Parties had signed the same instrument.
28

1 **12.17. ATTORNEY FEES, COSTS, AND EXPENSES**

2 Except as otherwise specifically provided for herein, each party shall bear his or its own
3 attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising out of the Action
4 and shall not seek reimbursement thereof from any other party to this Settlement Agreement.

5 **12.18. ACTION TO ENFORCE AGREEMENT**

6 In the event that any of the Parties to this Stipulation institutes any legal action, arbitration, or
7 other proceeding against any of the other Parties to enforce the provisions of this Stipulation or to
8 declare rights or obligations under this Stipulation, the prevailing party shall be entitled to recover his
9 or its attorney fees and costs incurred in connection with any such enforcement proceedings.

10 **12.19 JURISDICTION OF THE COURT**

11 The Court shall retain jurisdiction with respect to the interpretation, implementation, and
12 enforcement of the terms of this Stipulation and all orders and judgments entered in connection
13 therewith.

14 **12.20 EXHIBITS INCORPORATED BY REFERENCE**

15 The terms of this Stipulation include the terms set forth in any attached Exhibit, which are
16 incorporated by this reference as though fully set forth herein. Any Exhibit to this Stipulation is an
17 integral part of the Settlement.

18 **12.21 BINDING AGREEMENT**

19 The Parties intend that this Settlement shall be fully enforceable and binding on all Parties, and
20 that it shall be admissible and subject to disclosure in any proceeding to enforce its terms,
21 notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or
22 state law.

23 **13. EXECUTION**

24 The Parties and their counsel have executed this Settlement Agreement on the date below their
25 signatures or the signature of their representatives. The date of this Settlement Agreement shall be the
26 date of the latest signature.

APPROVAL AND EXECUTION BY PARTIES

CLASS REPRESENTATIVE:

Dated: _____

Jose Alamo
Plaintiffs and Class Representatives

Dated: _____

Blas Noe Licano Munoz
Plaintiffs and Class Representatives

DEFENDANT:

LEHR BROTHERS, INC.

Dated _____

Sign: _____
Print: _____
Its: _____

LAW OFFICE OF FARRAH MIRABEL

Dated _____

By: _____
Farrah Mirabel, Esq.
Attorneys for Plaintiffs Alamo and Munoz

Dated _____

EMPLOYMENT RIGHTS LAW GROUP, APC

By: _____
Amir Seyedfarshi
Attorneys for Plaintiffs Alamo and Munoz

Dated _____

BELDEN BLAINE RAYTIS LLP

By: _____
Scott Belden, Esq.
Danie Root, Esq.
Attorneys for Defendant, Lehr Brothers, Inc.