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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SAN BERNARDINO**

KYLE BELIN, an individual and on  
behalf of all others similarly situated,

Plaintiff,

v.

HSNI, LLC, a Delaware Limited  
Liability Company doing business as  
HOME SHOPPING NETWORK;  
DANIEL HODGE, an individual and  
DOES 1 through 100, inclusive,

Defendants.

[San Bernardino County Superior Court  
Case No. CIVSB2424446]

**CLASS AND PAGA SETTLEMENT  
AGREEMENT**

Action Filed: August 12, 2024

Trial Date: None Set

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Kyle Belin (“Plaintiff”) and defendant HSNi, LLC (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

## 1. DEFINITIONS

1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant, captioned *Kyle Belin v. HSNi*, , initiated on August 12, 2024, and pending in the San Bernardino County Superior Court Case No. CIVSB2424446.

1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.

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

1.4. “Aggrieved Employee” means a person employed by Defendant in California and classified as a non-exempt, hourly-paid employee who worked for Defendant during the PAGA Period.

1.5. “Class” means all persons employed by Defendant in California and classified as a non-exempt, hourly-paid employee who worked for Defendant during the Class Period.

1.6. “Class Counsel” means David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group, P.C.

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

1.8. “Class Data” means the following Class Member identifying information in Defendant’s custody, possession, or control: each Class Member’s (1) name; (2) last known address(es); (3) last known Social Security Number(s); and (4) number of PAGA Pay Periods and Class Workweeks, supported by a sworn declaration confirming the same.

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

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

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

1.12. “Class Period” means the period from August 12, 2020 through the date of Preliminary Approval or March 31, 2025, whichever is earlier.

1.13. “Class Representative” means the named Plaintiff in the Operative Complaint in the Action seeking Court approval to serve as a Class Representative.

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

1.15. “Court” means the San Bernardino County Superior Court.

1.16. “Defendant” means named defendant HSNi, LLC.

1.17. “Defense Counsel” means Timothy L. Hix, Bailey K. Bifoss, and Richard Mojica of Seyfarth Shaw LLP.

1.18. “Effective Date” means the date on which the later of the following events has occurred: (a) the period for filing any appeal, writ, or other appellate proceeding opposing Final Approval of the settlement and Final Judgment has elapsed without any appeal, writ, or other appellate proceeding having been filed (i.e. 61 days after entry of Judgment); (b) when any appeal, writ, or other appellate proceeding opposing the settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or (c) when any appeal, writ, or

1 other appellate proceeding has upheld the Court's Final Approval Order with no right to pursue  
2 further remedies or relief.

3 1.19. "Final Approval" means the Court's order granting final approval of the Settlement.

4 1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval  
5 of the Settlement.

6 1.21. "Final Judgment" means the Judgment entered by the Court based upon the Final  
7 Approval.

8 1.22. "Gross Settlement Amount" means \$750,000.00 (Seven Hundred Fifty Thousand Dollars  
9 and Zero Cents) which is the total amount Defendant agrees to pay under the Settlement, except  
10 as provided in Paragraph 8.1 below and any and all employer payroll taxes owed on the Wage  
11 Portions of the Individual Class Payments. The Gross Settlement Amount will be used to pay  
12 Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class  
13 Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, and  
14 Administrator's Expenses.

15 1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of the  
16 Net Settlement Amount calculated according to the number of Workweeks worked during the  
17 Class Period.

18 1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of  
19 the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during  
20 the PAGA Period.

21 1.25. "Judgment" means the judgment entered by the Court based upon Final Approval.

22 1.26. "LWDA" means the California Labor and Workforce Development Agency, the agency  
23 entitled, under Labor Code section 2699, subd. (i).

24 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA  
25 under Labor Code section 2699, subd. (i).

26 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following  
27 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA  
28

1 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel  
2 Litigation Expenses Payment, and Administration Expenses Payment. The remainder is to be  
3 paid to Participating Class Members as Individual Class Payments.

4 1.29. “Non-Participating Class Member” means any Class Member who opts out of the  
5 Settlement by sending the Administrator a valid and timely Request for Exclusion.

6 1.30. “Operative Complaint” shall mean the final complaint filed by Plaintiff in the Action,  
7 which the Parties currently intend to be the First Amended Complaint described in Paragraph 3.1  
8 below.

9 1.31. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked  
10 for Defendant for at least one day during the PAGA Period.

11 1.32. “PAGA Period” means the period from July 29, 2023 through the end of the Class Period.

12 1.33. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

13 1.34. “PAGA Notice” means plaintiff’s July 29, 2024 letter to defendant and the LWDA,  
14 providing notice pursuant to Labor Code section 2699.3 subd. (a), as well as all amendments  
15 thereto.

16 1.35. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the  
17 Gross Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to the LWDA  
18 in settlement of PAGA claims.

19 1.36. “Participating Class Member” means a Class Member who does not submit a valid and  
20 timely Request for Exclusion from the Settlement.

21 1.37. “Plaintiff” means Kyle Belin the named plaintiff in the Action.

22 1.38. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the  
23 Settlement.

24 1.39. “Preliminary Approval Order” means the proposed Order granting Preliminary Approval  
25 and Approval of PAGA Settlement.

26 1.40. “Released Class Claims” means the claims being released as described in Paragraph 6.2  
27 below.

1.41. “Released PAGA Claims” means the claims being released as described in Paragraph 6.4 below.

1.42. “Released Parties” means: Defendant, and each of its former, present and future owners, parents, and subsidiaries, and all of their current, former, and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, predecessors, successors, assigns, accountants, insurers, reinsurers, and/or legal representatives, including but not limited to named defendant, Danielle Hodge, erroneously sued as Daniel Hodge.

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

1.44. “Response Deadline” means forty-five (45) days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) mail Requests for Exclusion from the Settlement, or (b) mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 15 days beyond the Response Deadline has expired.

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

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

## **2. RECITALS**

2.1. On July 29, 2024, Plaintiff filed with the LWDA and served on Defendant a notice under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the LWDA to recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code violations (“PAGA Notice”).

2.2. On August 12, 2024, Plaintiff commenced this Action by filing a complaint against Defendant in the Superior Court of San Bernardino County, Case No. CIVSB2424446, for: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal

periods; (4) failure to provide rest periods; (5) waiting time penalties; (6) wage statement violations; (7) failure to timely pay wages; (8) failure to indemnify; (9) violation of Labor Code section 227.3; and (10) unfair competition (the “Class Action”). Defendant denies the allegations in the class Action, denies any failure to comply with the laws identified in the Class Action, and denies any and all liability for the causes of action alleged.

2.3. On August 30, 2024, Plaintiff amended his PAGA Notice.

2.4. On September 18, 2024, Defendant removed the action to the United States District Court for the Central District of California.

2.5. On November 26, 2024, Plaintiff again amended his PAGA Notice.

2.6. Thereafter, the Parties agreed to exchange informal discovery and attend mediation.

2.7. Prior to mediation Plaintiff obtained, through informal discovery: (a) the time and payroll data for all employees during the class period; (b) policy and practice documents; and (c) Plaintiff’s personnel file.

2.8. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

2.9. On January 22, 2025, the Parties participated in an all-day mediation presided over by Eve Wagner, Esquire. The mediation was successful, and the Parties agreed to globally resolve all class and PAGA claims in the Action.

2.10. The Court has not granted class certification.

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

2.12. The Parties have agreed to remand the Action to state court.

### **3. AMENDED COMPLAINT**

3.1. First Amended Complaint. The Parties have executed a Stipulation to remand the Action from the United States District Court for the Central District of California to the San

Bernardino Superior Court. Within five (5) business days of the Action being remanded or the Central District's denial of the Parties' Stipulation, Plaintiff will file a First Amended Complaint to add a claim under PAGA based on the predicate PAGA Notices described above at Paragraphs 2.1, 2.3, and 2.5. The Parties currently intend the First Amended Complaint described herein to be the "Operative Complaint."

#### **4. MONETARY TERMS**

4.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9.1 below, Defendant promises to pay \$750,000.00 as the Gross Settlement Amount, unless increased pursuant to Paragraph 9.1 of this Agreement, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 5.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

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

4.2.1. To Plaintiff: Class Representative Service Payment to Plaintiff of not more than \$7,500.00 in addition to any Individual Class Payment and any Individual PAGA Payment Plaintiff is entitled to receive as a Participating Class Member. Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, such award shall not be a basis on which to abrogate this Agreement and the Administrator

1 will retain the remainder in the Net Settlement Amount. The Administrator will pay the  
2 Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full  
3 responsibility and liability for employee taxes owed on the Class Representative Service  
4 Payment.

5 4.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 35% of the  
6 Gross Settlement Amount, which, unless escalated pursuant to Paragraph 9.1 of this  
7 Agreement, is currently estimated to be \$262,500.00 and a Class Counsel Litigation  
8 Expenses Payment of not more than \$40,000.00. Defendant will not oppose requests for  
9 these payments provided that do not exceed these amounts. Plaintiff and/or Class  
10 Counsel will endeavor to file a motion for Class Counsel Fees Payment and Class  
11 Litigation Expenses Payment prior to the Final Approval Hearing. If the Court approves  
12 a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less  
13 than the amounts requested, such award shall not be a basis on which to abrogate this  
14 Agreement and the Administrator will allocate the remainder to the Net Settlement  
15 Amount. Released Parties shall have no liability to Class Counsel or any other  
16 Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee  
17 Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will  
18 pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one  
19 or more IRS 1099 Forms. Class Counsel assume full responsibility and liability for taxes  
20 owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses  
21 Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute  
22 or controversy regarding any division or sharing of any of these Payments. There will  
23 be no additional charge of any kind to either the Settlement Class Members or request  
24 for additional consideration from Defendant for such work unless, Defendant materially  
25 breaches this Agreement, including any term regarding funding, and further efforts are  
26 necessary from Class Counsel to remedy said breach, including, without limitation,  
27 moving the Court to enforce the Agreement. Should the Court approve attorneys' fees  
28

and/or litigation costs and expenses in amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount. Furthermore, should Plaintiff breach this Agreement, then Defendant shall be allowed to recover attorneys' fees and costs for remedying said breach.

4.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$8,950.00, except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$8,950.00 such award shall not be a basis on which to abrogate this Agreement and the Administrator will retain the remainder in the Net Settlement Amount.

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

4.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

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

1 4.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of  
2 \$37,500.00 to be paid from the Gross Settlement Amount, with 75% allocated to the  
3 LWDA PAGA Payment and 25% allocated to the Individual PAGA Payments.

4 4.2.5.1. The Administrator will calculate each Individual PAGA  
5 Payment by (a) dividing the amount of the Aggrieved Employees' 25% share  
6 of PAGA Penalties \$9,375.00 by the total number of PAGA Period Pay Periods  
7 worked by all Aggrieved Employees during the PAGA Period and (b)  
8 multiplying the result by each Aggrieved Employee's PAGA Period Pay  
9 Periods. Aggrieved Employees assume full responsibility and liability for any  
10 taxes owed on their Individual PAGA Payment.

11 4.2.5.2. The Court has authority under this Agreement to increase  
12 or reduce PAGA Penalties up to and including at the Final Approval stage.  
13 However, some approval of PAGA Penalties is a material term of this  
14 Agreement. If the Court does not approve any PAGA Penalties without leave to  
15 amend, then the entire Agreement will be, at Defendant's sole discretion, void  
16 and unenforceable. In such a case, the Parties shall be returned to their  
17 respective statuses as of the date and time immediately prior to the execution of  
18 this Agreement and the Parties shall proceed in all respects as if this Agreement  
19 had not been executed. If the Court approves PAGA Penalties of less than the  
20 amount requested, the Administrator will allocate the remainder to the Net  
21 Settlement Amount. The Administrator will report the Individual PAGA  
22 Payments on IRS 1099 Forms.

## 23 **5. SETTLEMENT FUNDING AND PAYMENTS**

24 5.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records  
25 to date, Defendant estimates there are 560 Class Members who collectively worked a total of  
26 25,000 Workweeks, and 214 of Aggrieved Employees who worked a total of 4,759 PAGA Pay  
27 Periods.  
28

1 5.2. Class Data. Not later than 30 days after the Court grants Preliminary Approval of the  
2 Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the  
3 form of a Microsoft Excel spreadsheet. Defendant shall also provide to Class Counsel, at the time  
4 the Class Data is delivered, a sworn declaration supporting the information contained in the Class  
5 Data. To protect Class Members' privacy rights, the Administrator must maintain the Class Data  
6 in confidence, use the Class Data only for purposes of this Settlement and for no other purpose,  
7 and restrict access to the Class Data to Administrator employees who need access to the Class  
8 Data to effect and perform under this Agreement. Defendant has a continuing duty to  
9 immediately notify Class Counsel if it discovers that the Class Data omitted class member  
10 identifying information and to provide corrected or updated Class Data as soon as reasonably  
11 feasible. Without any extension of the deadline by which Defendant must send the Class Data  
12 to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good  
13 faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

14 5.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement  
15 Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by  
16 transmitting the funds to the Administrator no later than 14 days after the Effective Date.

17 5.4. Payments from the Gross Settlement Amount. Within 7 days after Defendant funds the  
18 Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments,  
19 all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses  
20 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and  
21 the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment,  
22 the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment  
23 shall not precede disbursement of Individual Class Payments, and the Individual PAGA  
24 Payments.

25 5.4.1. The Administrator will issue checks for the Individual Class Payments and/or  
26 Individual PAGA Payments and send them to the Class Members via First Class U.S.  
27 Mail, postage prepaid. The face of each check shall prominently state the date (not less  
28

1 than 180 days after the date of mailing) when the check will be voided. The  
2 Administrator will cancel all checks not cashed by the void date. The Administrator  
3 will send checks for Individual Settlement Payments to all Participating Class Members  
4 (including those for whom Class Notice was returned undelivered). The Administrator  
5 will send checks for Individual PAGA Payments to all Aggrieved Employees including  
6 Non-Participating Class Members who qualify as Aggrieved Employees (including  
7 those for whom Class Notice was returned undelivered). The Administrator may send  
8 Participating Class Members a single check combining the Individual Class Payment  
9 and the Individual PAGA Payment. Before mailing any checks, the Settlement  
10 Administrator must update the recipients' mailing addresses using the National Change  
11 of Address Database.

12 5.4.2. The Administrator must conduct a Class Member Address Search for all other  
13 Class Members whose checks are returned undelivered without USPS forwarding  
14 address. Within 7 days of receiving a returned check the Administrator must re-mail  
15 checks to the USPS forwarding address provided or to an address ascertained through  
16 the Class Member Address Search. The Administrator need not take further steps to  
17 deliver checks to Class Members whose re-mailed checks are returned as undelivered.  
18 The Administrator shall promptly send a replacement check to any Class Member whose  
19 original check was lost or misplaced, requested by the Class Member prior to the void  
20 date.

21 5.4.3. For any Class Member whose Individual Class or PAGA Payment check is  
22 uncashed and cancelled after the void date, the Administrator shall transmit the funds  
23 represented by such checks to the California Controller's Unclaimed Property Fund in  
24 the name of the Class Member, thereby leaving no "unpaid residue" subject to the  
25 requirements of California Code of Civil Procedure section 384, subd. (b).

26 5.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall  
27 not obligate Defendant to confer any additional benefits or make any additional  
28

1 payments to Class Members (such as 401(k) contributions or bonuses) beyond those  
2 specified in this Agreement. The Individual Class Payments and Individual PAGA  
3 Payments will not be used to calculate any additional benefits under any benefit plan to  
4 which any Class Member may be eligible, including but not limited to any profit-sharing  
5 plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans,  
6 PTO plans, and/or any other benefit plan. Rather, it is the Parties' intention that this  
7 Agreement will not affect any rights, contributions, or amounts to which any Class  
8 Member may be entitled under any benefit plan.

9 **6. RELEASE OF CLAIMS**

10 Effective upon entry of Judgment, the Order granting Final Approval of this Settlement,  
11 and on the date when Defendant fully funds the entire Gross Settlement Amount and funds all  
12 employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff,  
13 Class Members, and Class Counsel will release claims against all Released Parties as follows:

14 6.1. Plaintiff's Release. Plaintiff and his respective former and present spouses,  
15 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release  
16 and discharge Released Parties from all claims, transactions, or occurrences, including, but not  
17 limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts  
18 contained, in the Operative Complaint, (b) all PAGA claims that were, or reasonably could have  
19 been, alleged based on facts contained in the Operative Complaint and Plaintiff's PAGA Notice,  
20 and (c) any other claims, debts, liabilities, demands, damages, obligations, actions and causes of  
21 action, of any nature whatsoever, whether known or unknown, suspected or unsuspected, arising  
22 out of or in connection with his employment with Defendant, the separation of such employment,  
23 or any other act, omission, or event occurring between the Parties at any time before entry of  
24 Judgment. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions  
25 to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability  
26 benefits, social security benefits, workers' compensation benefits that arose at any time, or based  
27 on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts  
28

1 or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to  
2 be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all  
3 respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

4 6.1.1. Plaintiff's ADEA Waiver. As part of Plaintiff's Release, Plaintiff specifically  
5 waives claims for discrimination, harassment, or retaliation based on age (including  
6 under the Age Discrimination in Employment Act ("ADEA")). Plaintiff agrees that he  
7 has 21 days to consider this Agreement after receiving it. He must sign and return this  
8 Agreement to Defendant during the review period if he wants to receive the payments  
9 and other consideration listed in this Agreement. Additionally, after signing this  
10 Agreement, Plaintiff has seven (7) days to revoke this ADEA waiver by sending written  
11 notice of revocation to Bailey K. Bifoss, Seyfarth Shaw LLP, 560 Mission Street, 31<sup>st</sup>  
12 Floor, San Francisco, California 94105; Email: bbifoss@seyfarth.com. This Agreement  
13 is not effective or enforceable until this revocation period expires. If Plaintiff revokes  
14 his ADEA waiver under this Paragraph, Plaintiff shall not receive the payments and  
15 other consideration listed herein.

16 6.1.2. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For  
17 purposes of Plaintiff's Release only, Plaintiff expressly waives and relinquish the  
18 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,  
19 which reads:

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

24 6.2. Release by Participating Class Members: For the duration of the Class Period, all  
25 Participating Class Members, on behalf of themselves and their respective former and present  
26 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released  
27 Parties from all claims that were alleged, or reasonably could have been alleged, based on the  
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1 facts stated in the Operative Complaint. This Release specifically includes but is not limited to  
2 claims for: (1) minimum wage violations; (2) failure to pay all overtime wages, including  
3 failure to correctly calculate the appropriate rate of pay for overtime wages; (3) meal period  
4 violations, including but not limited to failure to provide meal periods and failure to correctly  
5 calculate the appropriate rate of pay for meal period premiums; (4) rest period violations,  
6 including but not limited to failure to authorize and permit rest periods and failure to correctly  
7 calculate the appropriate rate of pay for rest period premiums; (5) paid sick leave violations,  
8 including but not limited to failure to correctly calculate the appropriate rate of pay for paid  
9 sick leave; (6) unpaid vacation wages, including but not limited to the failure to pay vacation  
10 wages and failure to correctly calculate the appropriate rate of pay for vacation wages including  
11 final vacation wages; (7) untimely payment of wages during employment; (8) failure to  
12 reimburse business expenses; (9) untimely payment of wages at separation (waiting time  
13 penalties); (10) wage statement violations; and (11) unfair competition and/or business  
14 practices. This Release shall include all claims and theories arising under California Labor  
15 Code sections 200, 201, 202, 203, 204, 204b, 210, 218, 226, 226.3, 226.7, 227.3, 245-248.7,  
16 256, 510, 512, 516, 558, 558.1, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802,  
17 2804, as well as related claims under the applicable California IWC Wage Orders and  
18 California Business & Professions Code 17200 *et seq.*

19 6.3. Except as set forth in Paragraph 6.2 of this Agreement, Participating Class Members do  
20 not release any other claims, including claims for vested benefits, wrongful termination, violation  
21 of the Fair Employment and Housing Act, unemployment insurance, disability, social security,  
22 workers' compensation, or claims based on facts occurring outside the Class Period.

23 6.4. Release by Aggrieved Employees: For the duration of the PAGA Period, all Aggrieved  
24 Employees are deemed to release, on behalf of themselves and their respective former and present  
25 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released  
26 Parties from all claims for PAGA civil penalties that were alleged, or reasonably could have been  
27 alleged, based on the facts stated in the Operative Complaint and the PAGA Notices.  
28

1                   **7.       MOTION FOR PRELIMINARY APPROVAL**

2                   The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion  
3 for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary  
4 Approvals.

5       7.1.   Plaintiff’s Responsibilities. Plaintiff will prepare and to deliver to Defense Counsel all  
6 documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and  
7 memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the  
8 Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor  
9 Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and  
10 Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from  
11 the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting  
12 to its willingness to serve; competency; operative procedures for protecting the security of Class  
13 Data; amounts of insurance coverage for any data breach, defalcation of funds or other  
14 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;  
15 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense  
16 Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve  
17 and disclosing all facts relevant to any actual or potential conflicts of interest with Class  
18 Members; (v) a signed declaration from each Class Counsel firm attesting to its competency to  
19 represent the Class Members; its timely transmission to the LWDA of all necessary PAGA  
20 documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative  
21 Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699,  
22 subd. (l)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class  
23 Members and the Administrator.

24       7.2.   Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible  
25 for expeditiously finalizing and filing the Motion for Preliminary Approval after the full  
26 execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary  
27 Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary  
28

Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator.

7.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting and conferring, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting and conferring, and in good faith, to modify the Agreement and otherwise satisfy the Court’s concerns.

## **8. SETTLEMENT ADMINISTRATION**

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

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

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

### 8.4. Notice to Class Members

8.4.1. No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the

Class Data.

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

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

8.4.4. The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 15 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

8.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as

1 other Class Members, and the Administrator will send, via email or overnight delivery,  
2 a Class Notice requiring them to exercise options under this Agreement not later than  
3 15 days after receipt of Class Notice, or the deadline dates in the Class Notice, which  
4 ever are later.

5 8.5. Requests for Exclusion (Opt-Outs).

6 8.5.1. Class Members who wish to exclude themselves (opt out of) the Class Settlement  
7 must send the Administrator, by mail, a signed written Request for Exclusion not later  
8 than 45 days after the Administrator mails the Class Notice (plus an additional 15 days  
9 for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter  
10 from a Class Member or his/her representative that reasonably communicates the Class  
11 Member's election to be excluded from the Settlement and includes the Class Member's  
12 name, address and email address or telephone number. To be valid, a Request for  
13 Exclusion must be timely postmarked by the Response Deadline.

14 8.5.2. The Administrator may not reject a Request for Exclusion as invalid because it  
15 fails to contain all the information specified in the Class Notice. The Administrator  
16 shall accept any Request for Exclusion as valid if the Administrator can reasonably  
17 ascertain the identity of the person as a Class Member and the Class Member's desire  
18 to be excluded. The Administrator's determination shall be final and not appealable or  
19 otherwise susceptible to challenge. If the Administrator has reason to question the  
20 authenticity of a Request for Exclusion, the Administrator may demand additional proof  
21 of the Class Member's identity. The Administrator's determination of authenticity shall  
22 be final and not appealable or otherwise susceptible to challenge.

23 8.5.3. Every Class Member who does not submit a timely and valid Request for  
24 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled  
25 to all benefits and bound by all terms and conditions of the Settlement, including the  
26 Participating Class Members' Releases under Paragraphs 6.2 and 6.4 of this Agreement,  
27 regardless whether the Participating Class Member actually receives the Class Notice  
28

1 or objects to the Settlement.

2 8.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a  
3 Non-Participating Class Member and shall not receive an Individual Class Payment or  
4 have the right to object to the class action components of the Settlement. Because future  
5 PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-  
6 Participating Class Members who are Aggrieved Employees are deemed to release the  
7 claims identified in Paragraph 6.4 of this Agreement and are eligible for an Individual  
8 PAGA Payment.

9 8.6. Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after  
10 the Administrator mails the Class Notice (plus an additional 15 days for Class Members whose  
11 Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods  
12 (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge  
13 the allocation by communicating with the Administrator via mail. The Administrator must  
14 encourage the challenging Class Member to submit supporting documentation. In the absence  
15 of any contrary documentation, the Administrator is entitled to presume that the Workweeks  
16 contained in the Class Notice are correct so long as they are consistent with the Class Data. The  
17 Administrator's determination of each Class Member's allocation of Workweeks and/or Pay  
18 Periods shall be final and not appealable or otherwise susceptible to challenge. The  
19 Administrator shall promptly provide copies of all challenges to calculation of Workweeks  
20 and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination  
21 the challenges.

22 8.7. Objections to Settlement

23 8.7.1. Only Participating Class Members may object to the class action components of  
24 the Settlement and/or this Agreement, including contesting the fairness of the  
25 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class  
26 Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

27 8.7.2. Participating Class Members may send written objections to the Administrator, by  
28

mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 15 days for Class Members whose Class Notice was re-mailed).

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

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

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

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

(whether valid or invalid).

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

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

8.8.5. **Administrator’s Declaration.** At least 7 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

8.8.6. **Final Report by Settlement Administrator.** Within 10 days after the Administrator

disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 7 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

#### **9. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE**

Based on its records, Defendant estimates that, as of the date of this Settlement Agreement there are 560 Class Members and 25,000 Total Workweeks during the Class Period.

9.1. Increase in Workweeks. Defendant represents that there are no more than 25,000 Workweeks worked during the Class Period. In the event the number of Workweeks worked by Class Members during the Class Period increases by more than 10%, or 2,500 Workweeks, then Defendant will have the option to increase the Gross Settlement Amount proportionally by the Workweeks in excess of 27,500 Workweeks multiplied by the Workweek Value. The Workweek Value shall be calculated by dividing the originally agreed-upon Gross Settlement Amount (\$750,000.00) by 25,000, which amounts to a Workweek Value of \$30.00. Thus, for example, should there be 28,000 Workweeks in the Class Period, then the Gross Settlement Amount shall be increased by \$15,000.00 ((28,000 Workweeks minus 27,500 Workweeks) x \$30.00 per Workweek.). In its sole and absolute discretion, Defendant may also choose to limit the Class Period such that the Class Period ends on the date when Class Members have worked no more than 27,500 Workweeks. Defendant must make its election no later than 7 days after receiving sufficient information that the number of workweeks has exceeded 27,500.

#### **10. MOTION FOR FINAL APPROVAL**

Prior to the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed

Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

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

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

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

of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

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

10.6. Effect of Settlement Not Being Final. In the event that the Settlement does not become Final, then the Settlement Agreement shall become null and void and all negotiations, proceedings, and statements relating thereto shall be without prejudice as to the rights of any and all Parties hereto, and all Parties and their respective predecessors and successors shall be deemed to have reverted to their respective positions in the Action as of the date and time immediately prior to the execution of this Settlement Agreement and shall retain all rights to make all arguments regarding the merits of the claims and the appropriateness of the case for class and/or representative treatment.

## **11. AMENDED JUDGMENT**

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

1                   **12.     DEFENDANT’S RIGHT TO WITHDRAW**

2   12.1.           Defendant’s Right to Withdraw. If the number of valid Requests for Exclusion  
3 identified in the Exclusion List exceeds 8% of the total of all Class Members, Defendant may but  
4 is not obligated to elect to withdraw from the Settlement. The Parties agree that, if Defendant  
5 withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that  
6 neither Party will have any further obligation to perform under this Agreement; provided,  
7 however, that Defendant will remain responsible for paying all Administration Expenses incurred  
8 as of the date Defendant makes this election to withdraw. Defendant must notify Class Counsel  
9 and the Court of its election to withdraw not later than 7 days after the Administrator sends the  
10 Exclusion List to Defense Counsel. Invalid Requests for Exclusion will have no effect on this  
11 threshold for an election.

12                   **13.     ADDITIONAL PROVISIONS**

13   13.1.   No Admission of Liability, Class Certification or Representative Manageability for Other  
14 Purposes. This Agreement represents a compromise and settlement of highly disputed claims.  
15 Nothing in this Agreement is intended or should be construed as an admission by Defendant that  
16 any of the allegations in the Operative Complaint have merit or that Defendant has any liability  
17 for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that  
18 Defendant’s defenses in the Action have merit. The Parties agree that class certification and  
19 representative treatment is for purposes of this Settlement only. If, for any reason the Court does  
20 grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to  
21 contest certification of any class for any reasons, and Defendant reserves all available defenses  
22 to the claims in the Action, and Plaintiff reserves the right to move for class certification on any  
23 grounds available and to contest Defendant’s defenses. The Settlement, this Agreement and  
24 Parties' willingness to settle the Action will have no bearing on, and will not be admissible in  
25 connection with, any litigation (except for proceedings to enforce or effectuate the Settlement  
26 and this Agreement).

27   13.2.   Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant, and  
28

1 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement  
2 is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit  
3 another person to disclose, disseminate or publicize, any of the terms of the Agreement directly  
4 or indirectly, specifically or generally, to any person, corporation, association, government  
5 agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom  
6 will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the  
7 extent necessary to report income to appropriate taxing authorities; (4) in response to a court  
8 order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal  
9 government agency. Each Party agrees to immediately notify each other Party of any judicial or  
10 agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel,  
11 Defendant, and Defense Counsel separately agree not to, directly or indirectly, initiate any  
12 conversation or other communication, before the filing of the Motion for Preliminary Approval,  
13 any with third party regarding this Agreement or the matters giving rise to this Agreement except  
14 to respond only that "the matter was resolved," or words to that effect. This paragraph does not  
15 restrict Class Counsel's communications with Class Members in accordance with Class  
16 Counsel's ethical obligations owed to Class Members.

17 13.3. No Solicitation. The Parties separately agree that they and their respective counsel and  
18 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal  
19 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's  
20 ability to communicate with Class Members in accordance with Class Counsel's ethical  
21 obligations owed to Class Members.

22 13.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement  
23 together with its attached exhibits shall constitute the entire agreement between the Parties  
24 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or  
25 inducements made to or by any Party.

26 13.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and  
27 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate  
28

1 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate  
2 its terms, and to execute any other documents reasonably required to effectuate the terms of this  
3 Agreement including any amendments to this Agreement.

4 13.6. Cooperation. The Parties and their counsel will cooperate with each other and use their  
5 best efforts, in good faith, to implement the Settlement by, among other things, modifying the  
6 Settlement Agreement, submitting supplemental evidence and supplementing points and  
7 authorities as requested by the Court. In the event the Parties are unable to agree upon the form  
8 or content of any document necessary to implement the Settlement, or on any modification of the  
9 Agreement that may become necessary to implement the Settlement, the Parties will seek the  
10 assistance of a mediator and/or the Court for resolution.

11 13.7. No Prior Assignments. The Parties separately represent and warrant that they have not  
12 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or  
13 encumber to any person or entity and portion of any liability, claim, demand, action, cause of  
14 action, or right released and discharged by the Party in this Settlement.

15 13.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are  
16 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied  
17 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR  
18 Part 10, as amended) or otherwise.

19 13.9. Modification of Agreement. This Agreement, and all parts of it, may be amended,  
20 modified, changed, or waived only by an express written instrument signed or agreed to by all  
21 Parties or their representatives, and approved by the Court. Plaintiff and Defendant expressly  
22 agree that should the Parties agree to amend, modify, change, or waive this Agreement, or any  
23 part of it, Class Counsel and Defense Counsel are authorized to submit to the Court any  
24 amendments of this Agreement, amended Agreements, or amendments to the Agreement, on  
25 behalf of the Parties once fully executed, which includes, but is not limited to, authorization of  
26 the use of signatures previously provided by the Parties.

27 13.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to  
28

the benefit of, the successors of each of the Parties.

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

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

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

13.14. Use of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement (“Confidential Information”), may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Plaintiff’s Counsel shall retain such information and data only as long as required to comply with all legal and ethical obligations, and shall store all such information and data in a secure fashion.

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

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

13.17. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one

and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

13.18. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

13.19. Fair Settlement. The Parties, Class Counsel, and Defense Counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, both current and potential.

13.20. Severability. In the event that one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendant's Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

**IT IS SO AGREED:**

Kyle Belin  
Kyle Belin (Mar 3, 2025 11:04 PST)

Plaintiff, Kyle Belin

---

For Defendant, HSNi, LLC

1 **AGREED AS TO FORM ONLY:**

2 *Vedang J. Patel*

3 \_\_\_\_\_  
4 David D. Bibiyan  
5 Vedang J. Patel  
6 Counsel for Plaintiff

\_\_\_\_\_   
Timothy L. Hix  
Bailey K. Bifoss  
Richard Mojica  
Counsel for Defendant

1 and the same instrument if counsel for the Parties will exchange between themselves signed  
2 counterparts. Any executed counterpart will be admissible in evidence to prove the existence  
3 and contents of this Agreement.

4 13.18. Stay of Litigation. The Parties agree that upon the execution of this Agreement the  
5 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further  
6 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend  
7 the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement  
8 process.

9 13.19. Fair Settlement. The Parties, Class Counsel, and Defense Counsel believe and warrant  
10 that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have  
11 arrived at this Agreement through arms-length negotiations, taking into account all relevant  
12 factors, both current and potential.

13 13.20. Severability. In the event that one or more of the provisions contained in this Agreement  
14 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,  
15 illegality, or unenforceability shall in no way effect any other provision if Defendant's Counsel  
16 and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing  
17 to proceed as if such invalid, illegal, or unenforceable provision had never been included in this  
18 Agreement.

19  
20 **IT IS SO AGREED:**

21 Kyle Belin  
22 Kyle Belin (Mar 3, 2025 11:04 PST)

23 Plaintiff, Kyle Belin

21 Shauna Burkes 3/4/2025

22 Shauna Burkes

23 For Defendant, HSNi, LLC

1 **AGREED AS TO FORM ONLY:**

2 *Vedang J. Patel*

*Bailey K. Bifoss*

3/4/2025

3  
4 David D. Bibiyan  
5 Vedang J. Patel  
6 Counsel for Plaintiff

Timothy L. Hix  
Bailey K. Bifoss  
Richard Mojica  
Counsel for Defendant