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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

GARY E. FOSTER, an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

MTGL, INC., a California corporation; and
DOES 1 through 100, inclusive,

Defendant.

CASE NO.: 30-2021-01184556-CU-OE-CXC

[Assigned for all purposes to Hon. Randall
J. Sherman in Dept. CX-105]

**CLASS AND PAGA SETTLEMENT
AGREEMENT**

Action Filed: February 17, 2021

Trial Date: None Set

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiff Gary E. Foster (“Plaintiff”) and Defendant MTGL, Inc. (“Defendant”). The
3 Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

4 **1. DEFINITIONS**

5 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
6 Defendant, captioned *Gary E. Foster v. MTGL, Inc.*, Case No. 30-2021-01184556-CU-OE-CXC,
7 initiated on February 17, 2021, and pending in Superior Court of the State of California, County
8 of Orange.

9 1.2. “Administrator” means ILYM Group, Inc. (“ILYM”), the neutral entity the Parties have
10 agreed to appoint to administer the Settlement.

11 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid
12 from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance
13 with the Administrator’s “not to exceed” bid submitted to the Court in connection with
14 Preliminary Approval of the Settlement.

15 1.4. “Aggrieved Employee” means all persons currently or formerly employed by Defendant,
16 either directly or through any subsidiary, staffing agency, or professional employer organization,
17 as non-exempt, hourly-paid employees in the State of California during the PAGA Period.

18 1.5. “Class” means all persons currently or formerly employed by Defendant, either directly
19 or through any subsidiary, staffing agency, or professional employer organization, as non-
20 exempt, hourly-paid employees in the State of California during the Class Period.

21 1.6. “Class Counsel” means David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group,
22 P.C.

23 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean
24 the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
25 expenses, respectively, incurred to prosecute the Action.

26 1.8. “Class Data” means Class Member identifying information in Defendant’s custody,
27 possession, or control, including the Class Member’s (1) name; (2) last known address(es); (3)
28 last known telephone number(s); (4) last known Social Security Number(s); and (5) the dates of

1 employment (i.e., hire dates, and, if applicable, re-hire date(s) and/or separation date(s)).

2 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either
3 a Participating Class Member or Non-Participating Class Member (including a Non- Participating
4 Class Member who qualifies as an Aggrieved Employee).

5 1.10. “Class Member Address Search” means the Administrator’s investigation and search for
6 current Class Member mailing addresses using all reasonably available sources, methods and
7 means including, but not limited to, the National Change of Address database, skip traces, and
8 direct contact by the Administrator with Class Members.

9 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION
10 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to
11 Class Members in English and Spanish in the form, without material variation, attached as Exhibit
12 A and incorporated by reference into this Agreement.

13 1.12. “Class Period” means the period from February 17, 2017 through January 14, 2025.

14 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action
15 seeking Court approval to serve as a Class Representative.

16 1.14. “Class Representative Service Payment” means the payment to the Class Representative
17 for initiating the Action and providing services in support of the Action.

18 1.15. “Court” means the Superior Court of California, County of Orange.

19 1.16. “Defendant” means named Defendant MTGL, Inc.

20 1.17. “Defense Counsel” means Megan K. Lieber and Bao D. Nguyen of Collins + Collins
21 LLP.

22 1.18. “Effective Date” means the later of: (a) the Court enters a Judgment on its Order Granting
23 Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the
24 latest of the following occurrences: (a) if no Participating Class Member objects to the
25 Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members
26 objects to the Settlement, the day after the deadline for filing a notice of appeal from the
27 Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court
28 affirms the Judgment and issues a remittitur.

1 1.19. “Exclusion List” means the names and other identifying information of Class Members
2 who have timely submitted valid Requests for Exclusion.

3 1.20. “Final Approval” means the Court’s order granting final approval of the Settlement.

4 1.21. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval
5 of the Settlement.

6 1.22. “Final Judgment” means the Judgment entered by the Court based upon the Final
7 Approval.

8 1.23. “Gross Settlement Amount” means \$1,100,000.00 (One Million One Hundred Thousand
9 Dollars and Zero Cents) which is the total amount Defendant agrees to pay under the Settlement,
10 except as provided in Paragraph 8.1 below and any and all employer payroll taxes owed on the
11 Wage Portions of the Individual Class Payments. The Gross Settlement Amount will be used to
12 pay 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 1.24. “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 1.25. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of
19 the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA
20 Period.

21 1.26. “Judgment” means the judgment entered by the Court based upon Final Approval.

22 1.27. “LWDA” means the California Labor and Workforce Development Agency, the agency
23 entitled, under Labor Code section 2699, subd. (i).

24 1.28. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA
25 under Labor Code section 2699, subd. (i).

26 1.29. “Motion for Preliminary Approval” means a jointly-prepared Motion by the Party for
27 preliminary approval by the Court of this Settlement that complies with the Court’s current
28 checklist for Preliminary Approvals.

1 1.30. “Net Settlement Amount” means the Gross Settlement Amount, less the following
2 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
3 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
4 Litigation Expenses Payment, and Administration Expenses Payment. The remainder is to be
5 paid to Participating Class Members as Individual Class Payments.

6 1.31. “Non-Participating Class Member” means any Class Member who opts out of the
7 Settlement by sending the Administrator a valid and timely Request for Exclusion.

8 1.32. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked
9 for Defendant for at least one day during the PAGA Period, based on hire dates, re-hire dates (as
10 applicable), and termination dates (as applicable).

11 1.33. “PAGA Period” means the period from November 6, 2019, through the end of the Class
12 Period..

13 1.34. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

14 1.35. “PAGA Notice” means plaintiff’s November 6, 2020 letter to Defendant and the LWDA,
15 providing notice pursuant to Labor Code section 2699.3 subd. (a).

16 1.36. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the
17 Gross Settlement Amount, \$55,000.00 with 25% allocated to the Aggrieved Employees
18 (\$13,750.00), and 75% allocated to the LWDA (\$41,250.00) in settlement of PAGA claims.

19 1.37. “Participating Class Member” means a Class Member who does not submit a valid and
20 timely Request for Exclusion from the Settlement.

21 1.38. “Plaintiff” means Gary E. Foster the named plaintiff in the Action.

22 1.39. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the
23 Settlement.

24 1.40. “Preliminary Approval Order” means the proposed Order granting Preliminary Approval
25 and Approval of PAGA Settlement.

26 1.41. “Released Class Claims” means the claims being released as described in Paragraph 5.2
27 below.

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1 1.42. “Released PAGA Claims” means the claims being released as described in Paragraph 5.4
2 below.

3 1.43. “Released Parties” means: Defendant, and each of its former, present and future owners,
4 parents, and subsidiaries, and all of their current, former, and future officers, directors, members,
5 managers, employees, consultants, partners, shareholders, joint venturers, agents, predecessors,
6 successors, assigns, accountants, insurers, reinsurers, and/or legal representatives.

7 1.44. “Request for Exclusion” means a Class Member’s submission of a written request to be
8 excluded from the Class Settlement signed by the Class Member.

9 1.45. “Response Deadline” means forty-five (45) days after the Administrator mails Notice to
10 Class Members and Aggrieved Employees, and shall be the last date on which Class Members
11 may: (a) mail Requests for Exclusion from the Settlement, or (b) mail his or her Objection to the
12 Settlement. Class Members to whom Notice Packets are resent after having been returned
13 undeliverable to the Administrator shall have an additional fifteen (15) days beyond the Response
14 Deadline has expired.

15 1.46. “Settlement” means the disposition of the Action effected by this Agreement and the
16 Judgment.

17 1.47. “Weekly Report” means the weekly written report the Administrator shall prepare for to
18 Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices
19 mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid
20 or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received
21 and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA
22 Payments, as well as the Administrator’s assessment of the validity of Requests for Exclusion
23 and any objections received.

24 1.48. “Workweek” means any week during which a Class Member worked for Defendant, for
25 at least one day during the Class Period, based on hire dates, re-hire dates (as applicable), and
26 termination dates (as applicable).

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1 **2. RECITALS**

2 2.1. On November 6, 2020, Plaintiff provided written notice (the “PAGA Notice”) to the
3 Labor & Workforce Development Agency (“LWDA”) pursuant to the procedures specified in
4 Labor Code section 2699.3 online and by certified mail, with return receipt requested, of
5 Defendant’s violation of various Labor Code provisions as herein described.

6 2.2. After sixty-five (65) days had passed since Plaintiff filed and served the PAGA Notice
7 without any action by the LWDA with respect to the alleged Labor Code violations, on February
8 17, 2021, Plaintiff commenced this Action by filing a class and PAGA representative action
9 complaint against Defendant for: failure to pay overtime and minimum wages; failure to provide
10 meal breaks, rest breaks, or compensation in lieu thereof; waiting time penalties; wage statement
11 violations; failure to indemnify; unfair competition; and penalties under Labor Code Sections
12 210, 226.3, 558, 1197.1, and 2699 (“Action”).

13 2.3. Thereafter, the Parties agreed to exchange informal discovery and attend mediation.

14 2.4. Prior to mediation Plaintiff obtained, through informal discovery: (a) time and payroll
15 records; (b) wage and hour policy documents; (c) Defendant’s Employee Handbook; and (d) all
16 documents pertaining to Plaintiff available to Defendant.

17 2.5. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in
18 *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker*
19 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

20 2.6. On November 19, 2024, the Parties participated in an all-day mediation presided by Lynn
21 Frank, Esquire. The mediation was successful, and the Parties agreed to globally resolve all class
22 and PAGA claims in the Action.

23 2.7. The Court has not granted class certification.

24 2.8. The Parties, Class Counsel, and Defense Counsel represent that they are not aware of any
25 other pending matter or action asserting claims that will be extinguished or affected by the
26 Settlement.

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1 **3. MONETARY TERMS**

2 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8.1 below,
3 Defendant agree to pay \$1,100,000.00 as the Gross Settlement Amount, unless increased
4 pursuant to Paragraph 8.1 of this Agreement, and to separately pay any and all employer payroll
5 taxes owed on the Wage Portions of the Individual Class Payments. Defendant shall have no
6 obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated
7 in Paragraph 4.3 of this Agreement. The Administrator shall disburse the entire Gross Settlement
8 Amount without asking or requiring Participating Class Members or Aggrieved Employees to
9 submit any claim as a condition of payment. None of the Gross Settlement Amount will revert
10 to Defendant.

11 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct
12 the following payments from the Gross Settlement Amount, in the amounts specified by the Court
13 in the Final Approval:

14 3.2.1. To Plaintiff: Class Representative Service Payment to Plaintiff of not more than
15 \$10,000.00, in addition to any Individual Class Payment and any Individual PAGA
16 Payment Plaintiff is entitled to receive as a Participating Class Member. Defendant will
17 not oppose Plaintiff's request for a Class Representative Service Payment that does not
18 exceed this amount. As part of the motion for Class Counsel Fees Payment and Class
19 Litigation Expenses Payment, Plaintiff will seek Court approval for any Class
20 Representative Service Payments prior to the Final Approval Hearing. If the Court
21 approves a Class Representative Service Payment less than the amount requested, the
22 Administrator will retain the remainder in the Net Settlement Amount. The
23 Administrator will pay the Class Representative Service Payment using IRS Form 1099.
24 Plaintiff assumes full responsibility and liability for employee taxes owed on the Class
25 Representative Service Payment.

26 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 35% of the
27 Gross Settlement Amount, which, unless escalated pursuant to Paragraph 8.1 of this
28 Agreement, is currently estimated to be \$385,000.00 and a Class Counsel Litigation

1 Expenses Payment of not more than \$65,000.00. Defendant will not oppose requests for
2 these payments provided that do not exceed these amounts. Plaintiff and/or Class
3 Counsel will endeavor to file a motion for Class Counsel Fees Payment and Class
4 Litigation Expenses Payment prior to the Final Approval Hearing. If the Court approves
5 a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less
6 than the amounts requested, the Administrator will allocate the remainder to the Net
7 Settlement Amount. Released Parties shall have no liability to Class Counsel or any
8 other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee
9 Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will
10 pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one
11 or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for
12 taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation
13 Expenses Payment and hereby holds Defendant harmless, and indemnifies Defendant,
14 from any dispute or controversy regarding any division or sharing of any of these
15 Payments. There will be no additional charge of any kind to either the Settlement Class
16 Members or request for additional consideration from Defendant for such work unless,
17 Defendant materially breaches this Agreement, including any term regarding funding,
18 and further efforts are necessary from Class Counsel to remedy said breach, including,
19 without limitation, moving the Court to enforce the Agreement. Should the Court
20 approve attorneys' fees and/or litigation costs and expenses in amounts that are less than
21 the amounts provided for herein, then the unapproved portion(s) shall be a part of the
22 Net Settlement Amount.

23 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
24 \$6,950.00 except for a showing of good cause and as approved by the Court. To the
25 extent the Administration Expenses are less or the Court approves payment less than
26 \$6,950.00, the Administrator will retain the remainder in the Net Settlement Amount.

27 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated
28 by (a) dividing the Net Settlement Amount by the total number of Workweeks worked

1 by all Participating Class Members during the Class Period and (b) multiplying the result
2 by each Participating Class Member's Workweeks.

3 3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating
4 Class Member's Individual Class Payment will be allocated to settlement of
5 wage claims (the "Wage Portion"). The Wage Portions are subject to tax
6 withholding and will be reported on an IRS W-2 Form. The 80% of each
7 Participating Class Member's Individual Class Payment will be allocated to
8 settlement of claims for interest and penalties (the "Non-Wage Portion"). The
9 Non-Wage Portions are not subject to wage withholdings and will be reported
10 on IRS 1099 Forms. Participating Class Members assume full responsibility
11 and liability for any employee taxes owed on their Individual Class Payment.

12 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual
13 Class Payments. Non-Participating Class Members will not receive any
14 Individual Class Payments. The Administrator will retain amounts equal to
15 their Individual Class Payments in the Net Settlement Amount for distribution
16 to Participating Class Members on a pro rata basis.

17 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
18 \$55,000.00 to be paid from the Gross Settlement Amount, with 75% (\$41,250.00)
19 allocated to the LWDA PAGA Payment and 25% (\$13,750.00) allocated to the
20 Individual PAGA Payments.

21 3.2.5.1. The Administrator will calculate each Individual PAGA
22 Payment by (a) dividing the amount of the Aggrieved Employees' 25% share
23 of PAGA Penalties (\$13,750.00) by the total number of PAGA Period Pay
24 Periods worked by all Aggrieved Employees during the PAGA Period and (b)
25 multiplying the result by each Aggrieved Employee's PAGA Period Pay
26 Periods. Aggrieved Employees assume full responsibility and liability for any
27 taxes owed on their Individual PAGA Payment.

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1 3.2.5.2. If the Court approves PAGA Penalties of less than the
2 amount requested, the Administrator will allocate the remainder to the Net
3 Settlement Amount. The Administrator will report the Individual PAGA
4 Payments on IRS 1099 Forms.

5 **4. SETTLEMENT FUNDING AND PAYMENTS**

6 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records
7 to date, Defendant estimate there are 121 Class Members who collectively worked a total of
8 25,567 Workweeks, and 59 of Aggrieved Employees who worked a total of 15,681 PAGA Pay
9 Periods.

10 4.2. Class Data. Not later than seven (7) days after the Court grants Preliminary Approval of
11 the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the
12 form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
13 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
14 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
15 employees who need access to the Class Data to effect and perform under this Agreement.
16 Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class
17 Data omitted class member identifying information and to provide corrected or updated Class
18 Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant
19 must send the Class Data to the Administrator, the Parties and their counsel will expeditiously
20 use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or
21 omitted Class Data.

22 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement
23 Amount, and also fund the amounts necessary to fully pay Defendant' share of payroll taxes by
24 transmitting the funds to the Administrator no later than 60 days after the Effective Date.

25 4.4. Payments from the Gross Settlement Amount. Within seven (7) days after Defendant
26 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class
27 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
28 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses

1 Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel
2 Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative
3 Service Payment shall not precede disbursement of Individual Class Payments, and the Individual
4 PAGA Payments.

5 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or
6 Individual PAGA Payments and send them to the Class Members via First Class U.S.
7 Mail, postage prepaid. The face of each check shall prominently state the date (not less
8 than 180 days after the date of mailing) when the check will be voided. The
9 Administrator will cancel all checks not cashed by the void date. The Administrator
10 will send checks for Individual Settlement Payments to all Participating Class Members
11 (including those for whom Class Notice was returned undelivered). The Administrator
12 will send checks for Individual PAGA Payments to all Aggrieved Employees including
13 Non-Participating Class Members who qualify as Aggrieved Employees (including
14 those for whom Class Notice was returned undelivered). The Administrator may send
15 Participating Class Members a single check combining the Individual Class Payment
16 and the Individual PAGA Payment. Before mailing any checks, the Settlement
17 Administrator must update the recipients' mailing addresses using the National Change
18 of Address Database.

19 4.4.2. The Administrator must conduct a Class Member Address Search for all other
20 Class Members whose checks are returned undelivered without a USPS forwarding
21 address. Within seven (7) days of receiving a returned check the Administrator must
22 re-mail checks to the USPS forwarding address provided or to an address ascertained
23 through the Class Member Address Search. The Administrator need not take further
24 steps to deliver checks to Class Members whose re-mailed checks are returned as
25 undelivered. The Administrator shall promptly send a replacement check to any Class
26 Member whose original check was lost or misplaced, requested by the Class Member
27 prior to the void date.

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1 4.4.3. For any Class Member whose Individual Class Payment check or Individual
2 PAGA Payment check is uncashed and cancelled after the void date, the Administrator
3 shall transmit the funds represented by such checks to the *cy pres* recipient, Legal Aid
4 at Work, 180 Montgomery St., Suite 600, San Francisco, California 94104.

5 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall
6 not obligate Defendant to confer any additional benefits or make any additional
7 payments to Class Members (such as 401(k) contributions or bonuses) beyond those
8 specified in this Agreement.

9 **5. 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 all employer
12 payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class
13 Members, and Class Counsel will release claims against all Released Parties as follows:

14 5.1. Plaintiff's Release. Plaintiff and his respective former and present spouses,
15 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, shall
16 release and discharge Released Parties from all claims, transactions, or occurrences, including,
17 but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the
18 facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably
19 could have been, alleged based on facts contained in the Operative Complaint and Plaintiff's
20 PAGA Notice. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or
21 actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits,
22 disability benefits, social security benefits, workers' compensation benefits that arose at any time,
23 or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may
24 discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows
25 or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective
26 in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

27 5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
28 purposes of Plaintiff's Release only, Plaintiff expressly waives and relinquishes any

1 provisions, rights, and benefits, of section 1542 of the California Civil Code, which
2 reads:

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

7 5.2. Release of Class Claims: For the duration of the Class Period, all Participating Class
8 Members, on behalf of themselves and their respective former and present representatives,
9 agents, attorneys, heirs, administrators, successors, and assigns, shall release Released Parties
10 from all claims, arising during the Class Period, for the claims brought by Plaintiff in the
11 complaint filed in the Action, or that could have been brought in the Action based on the factual
12 allegations made by Plaintiff in the operative Complaint.

13 5.3. Except as set forth in Section 5.3 of this Agreement, Participating Class Members will
14 not release any other claims, including claims for vested benefits, wrongful termination, violation
15 of the Fair Employment and Housing Act, unemployment insurance, disability, social security,
16 workers' compensation, or claims based on facts occurring outside the Class Period.

17 5.4. Release of PAGA Claims: For the duration of the PAGA Period and to the extent
18 permitted by law, the LWDA, the State of California, all Aggrieved Employees, by and through
19 Plaintiff as an agent and proxy of the LWDA, shall release, on behalf of themselves and their
20 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
21 and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or
22 reasonably could have been alleged, based on the facts stated in the operative Complaint and the
23 PAGA Notice.

24 **6. MOTION FOR PRELIMINARY APPROVAL**

25 The Parties agree to jointly prepare and file a Motion for Preliminary Approval that
26 complies with the Court's current checklist for Preliminary Approvals.

27 6.1. Defendant's Declaration in Support of Preliminary Approval. Within seven (7) days of
28 full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed

1 declaration from Defendant and Defense Counsel disclosing all facts relevant to any actual or
2 potential conflicts of interest with the Administrator and Cy Pres Recipient.

3 6.2. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all
4 documents necessary for obtaining Preliminary Approval, including:

5 (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary
6 Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for
7 approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2));

8 (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA
9 Settlement;

10 (iii) a draft proposed Class Notice;

11 (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for
12 administering the Settlement and attesting to its willingness to serve; competency;
13 operative procedures for protecting the security of Class Data; amounts of insurance
14 coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant
15 to any actual or potential conflicts of interest with Class Members; and the nature and
16 extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel;

17 (v) a signed declaration from Plaintiff confirming willingness and competency to serve
18 and disclosing all facts relevant to any actual or potential conflicts of interest with Class
19 Members;

20 (vi) a signed declaration from each Class Counsel firm attesting to its competency to
21 represent the Class Members; its timely transmission to the LWDA of all necessary
22 PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)),
23 Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor
24 Code section 2699, subd. (l)(2)); and

25 (vii) all facts relevant to any actual or potential conflict of interest with Class Members
26 and the Administrator.

27 6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible
28 for expeditiously finalizing and filing the Motion for Preliminary Approval after the full

1 execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary
2 Approval; and appearing in Court to advocate in favor of the Motion for Preliminary Approval.
3 Class Counsel is responsible for delivering the Court's Preliminary Approval to the
4 Administrator.

5 6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
6 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
7 Defense Counsel will expeditiously work together on behalf of the Parties by meeting and
8 conferring, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary
9 Approval or conditions Preliminary Approval on any material change to this Agreement, Class
10 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by
11 meeting and conferring, and in good faith, to modify the Agreement and otherwise satisfy the
12 Court's concerns.

13 7. SETTLEMENT ADMINISTRATION

14 7.1. Selection of Administrator. The Parties have jointly selected ILYM to serve as the
15 Administrator and verified that, as a condition of appointment, ILYM agrees to be bound by this
16 Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for
17 payment of Administration Expenses. The Parties and their Counsel represent that they have no
18 interest or relationship, financial or otherwise, with the Administrator other than a professional
19 relationship arising out of prior experiences administering settlements.

20 7.2. Employer Identification Number. The Administrator shall have and use its own Employer
21 Identification Number for purposes of calculating payroll tax withholdings and providing reports
22 state and federal tax authorities.

23 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
24 the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section
25 468B-1.

26 7.4. Notice to Class Members

27 7.4.1. No later than three (3) business days after receipt of the Class Data, the
28 Administrator shall notify Class Counsel that the list has been received and state the

1 number of Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the
2 Class Data.

3 7.4.2. Using best efforts to perform as soon as possible, and in no event later than
4 fourteen (14) days after receiving the Class Data, the Administrator will send to all Class
5 Members identified in the Class Data, via first-class United States Postal Service
6 (“USPS”) mail, the Class Notice with Spanish translation, substantially in the form
7 attached to this Agreement as Exhibit A. The first page of the Class Notice shall
8 prominently estimate the dollar amounts of any Individual Class Payment and/or Individual
9 PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA
10 Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices,
11 the Administrator shall update Class Member addresses using the National Change of
12 Address database.

13 7.4.3. Not later than three (3) business days after the Administrator’s receipt of any Class
14 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class
15 Notice using any forwarding address provided by the USPS. If the USPS does not
16 provide a forwarding address, the Administrator shall conduct a Class Member Address
17 Search, and re-mail the Class Notice to the most current address obtained. The
18 Administrator has no obligation to make further attempts to locate or send Class Notice
19 to Class Members whose Class Notice is returned by the USPS a second time.

20 7.4.4. The deadlines for Class Members’ written objections, Challenges to Workweeks
21 and/or Pay Periods, and Requests for Exclusion will be extended an additional fifteen
22 (15) days beyond the forty-five (45) days otherwise provided in the Class Notice for all
23 Class Members whose notice is re-mailed. The Administrator will inform the Class
24 Member of the extended deadline with the re-mailed Class Notice.

25 7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
26 discovers any persons who believe they should have been included in the Class Data
27 and should have received Class Notice, the Parties will expeditiously meet and confer,
28 and in good faith in an effort to agree on whether to include them as Class Members. If

1 the Parties agree, such persons will be Class Members entitled to the same rights as other
2 Class Members, and the Administrator will send, via email or overnight delivery, a Class
3 Notice requiring them to exercise options under this Agreement not later than fifteen
4 (15) days after receipt of Class Notice, or the deadline dates in the Class Notice, which
5 ever are later.

6 **7.5. Requests for Exclusion (Opt-Outs).**

7 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement
8 must send the Administrator, by mail, a signed written Request for Exclusion not later
9 than forty-five (45) days after the Administrator mails the Class Notice (plus an
10 additional fifteen (15) days for Class Members whose Class Notice is re-mailed). A
11 Request for Exclusion is a letter from a Class Member or his/her representative that
12 reasonably communicates the Class Member's election to be excluded from the
13 Settlement and includes the Class Member's name, address and email address or
14 telephone number. To be valid, a Request for Exclusion must be timely postmarked by
15 the Response Deadline.

16 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it
17 fails to contain all the information specified in the Class Notice. The Administrator
18 shall accept any Request for Exclusion as valid if the Administrator can reasonably
19 ascertain the identity of the person as a Class Member and the Class Member's desire
20 to be excluded. The Administrator's determination shall be final and not appealable or
21 otherwise susceptible to challenge. If the Administrator has reason to question the
22 authenticity of a Request for Exclusion, the Administrator may demand additional proof
23 of the Class Member's identity. The Administrator's determination of authenticity shall
24 be final and not appealable or otherwise susceptible to challenge.

25 7.5.3. Every Class Member who does not submit a timely and valid Request for
26 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled
27 to all benefits and bound by all terms and conditions of the Settlement, including the
28 Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement,

1 regardless whether the Participating Class Member actually receives the Class Notice
2 or objects to the Settlement.

3 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a
4 Non-Participating Class Member and shall not receive an Individual Class Payment or
5 have the right to object to the class action components of the Settlement. Because future
6 PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-
7 Participating Class Members who are Aggrieved Employees are deemed to release the
8 claims identified in Paragraph 5.4 of this Agreement and are eligible for an Individual
9 PAGA Payment.

10 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have forty-five (45)
11 days after the Administrator mails the Class Notice (plus an additional fifteen (15) days for Class
12 Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and
13 PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class
14 Member may challenge the allocation by communicating with the Administrator via mail. The
15 Administrator must encourage the challenging Class Member to submit supporting
16 documentation. In the absence of any contrary documentation, the Administrator is entitled to
17 presume that the Workweeks contained in the Class Notice are correct so long as they are
18 consistent with the Class Data. The Administrator’s determination of each Class Member’s
19 allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise
20 susceptible to challenge. The Administrator shall promptly provide copies of all challenges to
21 calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the
22 Administrator’s determination the challenges.

23 7.7. Objections to Settlement

24 7.7.1. Only Participating Class Members may object to the class action components of
25 the Settlement and/or this Agreement, including contesting the fairness of the
26 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
27 Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

28 ///

1 7.7.2. Participating Class Members may send written objections to the Administrator, by
2 mail. In the alternative, Participating Class Members may appear in Court (or hire an
3 attorney to appear in Court) to present verbal objections at the Final Approval Hearing.
4 A Participating Class Member who elects to send a written objection to the
5 Administrator must do so not later than forty-five (45) days after the Administrator's
6 mailing of the Class Notice (plus an additional fifteen (15) days for Class Members
7 whose Class Notice was re-mailed).

8 7.7.3. Non-Participating Class Members shall have no right to object to any of the class
9 action components of the Settlement.

10 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
11 performed or observed by the Administrator contained in this Agreement or otherwise.

12 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will maintain
13 and use an internet website to post information of interest to Class Members including
14 the date, time and location for the Final Approval Hearing and copies of the Settlement
15 Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class
16 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment,
17 Class Counsel Litigation Expenses Payment and Class Representative Service Payment,
18 the Final Approval and the Judgment. The Administrator will also maintain and monitor
19 an email address and a toll-free telephone number to receive Class Member calls and
20 emails.

21 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
22 promptly review on a rolling basis Requests for Exclusion to ascertain their validity.
23 Not later than five (5) days after the expiration of the deadline for submitting Requests
24 for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel
25 containing (a) Exclusion List; (b) the names and other identifying information of Class
26 Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests
27 for Exclusion from Settlement submitted (whether valid or invalid).

28 ///

1 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written
2 Weekly Reports reports to Class Counsel and Defense Counsel that, among other things,
3 tally the number of: Class Notices mailed or re-mailed, Class Notices returned
4 undelivered, Requests for Exclusion (whether valid or invalid) received, objections
5 received, challenges to Workweeks and/or Pay Periods received and/or resolved, and
6 checks mailed for Individual Class Payments and Individual PAGA Payments. The
7 Weekly Reports must include provide the Administrator's assessment of the validity of
8 Requests for Exclusion and attach copies of all Requests for Exclusion and objections
9 received.

10 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to
11 address and make final decisions consistent with the terms of this Agreement on all
12 Class Member challenges over the calculation of Workweeks and/or Pay Periods. The
13 Administrator's decision shall be final and not appealable or otherwise susceptible to
14 challenge.

15 7.8.5. Administrator's Declaration. Before the date by which Plaintiff is required to file
16 the Motion for Final Approval of the Settlement, the Administrator will provide to Class
17 Counsel and Defense Counsel, a declaration suitable for filing in Court attesting to its
18 due diligence and compliance with all of its obligations under this Agreement,
19 including, but not limited to, its mailing of Class Notice, the Class Notices returned as
20 undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total
21 number of Requests for Exclusion from Settlement it received (both valid or invalid),
22 the number of written objections and attach the Exclusion List. The Administrator will
23 supplement its declaration as needed or requested by the Parties and/or the Court. Class
24 Counsel is responsible for filing the Administrator's declaration(s) in Court.

25 7.8.6. Final Report by Settlement Administrator. Within ten (10) days after the
26 Administrator disburses all funds in the Gross Settlement Amount, the Administrator
27 will provide Class Counsel and Defense Counsel with a final report detailing its
28 disbursements by employee identification number only of all payments made under this

1 Agreement. At least seven (7) days before any deadline set by the Court, the
2 Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed
3 declaration suitable for filing in Court attesting to its disbursement of all payments
4 required under this Agreement. Class Counsel is responsible for filing the
5 Administrator's declaration in Court.

6 **8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE**

7 Based on its records, Defendant estimates that, as of the date of this Settlement
8 Agreement, (1) there are 121 Class Members and 25,567 Total Workweeks during the Class
9 Period and (2) there are 59 Aggrieved Employees who worked 15,681 Pay Periods during the
10 PAGA Period.

11 8.1. Increase in Workweeks. Defendant represents that there are no more than 25,567
12 Workweeks during the Class Period. In the event the number of Workweeks during the Class
13 Period increases by more than 10%, or 2,557 Workweeks, then, at Defendant's election: (1) the
14 Gross Settlement Amount shall be increased proportionally by the Workweeks in excess of
15 28,124 multiplied by the Workweek Value; or (2) the Class Period shall end on the date the
16 number of Workweeks reaches 28,124. The Workweek Value shall be calculated by dividing the
17 Gross Settlement Amount by 25,567. The Parties agree that the Workweek Value amounts to and
18 the settlement amounts to \$43.02 per Workweek (\$1,100,000.00/25,567 Workweeks). Thus, for
19 example, should there be 29,000 Workweeks in the Class Period, then the Gross Settlement
20 Amount shall be increased by \$37,685.52. [(29,000 Workweeks – 28,124 Workweeks) x
21 \$43.02/Workweek.]. Defendant shall make its election above no later than ten (10) days before
22 the preliminary approval hearing. Defendant shall also provide the class data attesting to the
23 number of workweeks to the settlement administration no later than ten (10) days before the
24 preliminary approval hearing.

25 **9. MOTION FOR FINAL APPROVAL**

26 Prior to the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for
27 final approval of the Settlement that includes a request for approval of the PAGA settlement
28 under Labor Code section 2699, subd. (1), a Proposed Final Approval Order and a proposed

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

5 9.1. Response to Objections. Each Party retains the right to respond to any objection raised
6 by a Participating Class Member, including the right to file responsive documents in Court no
7 later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or
8 accepted by the Court.

9 9.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
10 Approval on any material change to the Settlement (including, but not limited to, the scope of
11 release to be granted by Class Members), the Parties will expeditiously work together in good
12 faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final
13 Approval. The Court’s decision to award less than the amounts requested for the Class
14 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
15 Expenses Payment, Administrator Expenses Payment and/or individual claims of plaintiff for
16 alleged wrongful termination, shall not constitute a material modification to the Agreement
17 within the meaning of this paragraph.

18 9.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the
19 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of
20 (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters,
21 and (iii) addressing such post-Judgment matters as are permitted by law.

22 9.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
23 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class
24 Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
25 respective counsel, and all Participating Class Members who did not object to the Settlement as
26 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
27 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
28 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver

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

5 9.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
6 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material
7 modification of this Agreement (including, but not limited to, the scope of release to be granted
8 by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
9 expeditiously work together in good faith to address the appellate court's concerns and to obtain
10 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
11 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
12 the Court's award of the Class Representative Service Payment or any payments to Class Counsel
13 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
14 as long as the Gross Settlement Amount remains unchanged

15 **10. AMENDED JUDGMENT**

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

18 **11. ADDITIONAL PROVISIONS**

19 11.1. No Admission of Liability, Class Certification or Representative Manageability for Other
20 Purposes. This Agreement represents a compromise and settlement of highly disputed claims.
21 Nothing in this Agreement is intended or should be construed as an admission by Defendant that
22 any of the allegations in the Operative Complaint have merit or that Defendant have any liability
23 for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that
24 Defendant' defenses in the Action have merit. The Parties agree that class certification and
25 representative treatment is for purposes of this Settlement only. If, for any reason the Court does
26 grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserve the right to
27 contest certification of any class for any reasons, and Defendant reserve all available defenses to
28 the claims in the Action, and Plaintiff reserves the right to move for class certification on any

1 grounds available and to contest Defendant’ defenses. The Settlement, this Agreement and
2 Parties' willingness to settle the Action will have no bearing on, and will not be admissible in
3 connection with, any litigation (except for proceedings to enforce or effectuate the Settlement
4 and this Agreement).

5 11.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and
6 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement
7 is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit
8 another person to disclose, disseminate or publicize, any of the terms of the Agreement directly
9 or indirectly, specifically or generally, to any person, corporation, association, government
10 agency, or other entity except:

- 11 (1) to the Parties’ attorneys, accountants, or spouses, all of whom will be
12 instructed to keep this Agreement confidential;
- 13 (2) counsel in a related matter;
- 14 (3) to the extent necessary to report income to appropriate taxing authorities;
- 15 (4) in response to a court order or subpoena; or
- 16 (5) in response to an inquiry or subpoena issued by a state or federal government
17 agency.

18 Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry,
19 or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel
20 separately agree not to, directly or indirectly, initiate any conversation or other communication,
21 before the filing of the Motion for Preliminary Approval, any with third party regarding this
22 Agreement or the matters giving rise to this Agreement except to respond only that “the matter
23 was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s
24 communications with Class Members in accordance with Class Counsel’s ethical obligations
25 owed to Class Members.

26 11.3. No Solicitation. The Parties separately agree that they and their respective counsel and
27 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal
28 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s

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

3 11.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
4 together with its attached exhibits shall constitute the entire agreement between the Parties
5 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or
6 inducements made to or by any Party.

7 11.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
8 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate
9 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
10 its terms, and to execute any other documents reasonably required to effectuate the terms of this
11 Agreement including any amendments to this Agreement.

12 11.6. Cooperation. The Parties and their counsel will cooperate with each other and use their
13 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
14 Settlement Agreement, submitting supplemental evidence and supplementing points and
15 authorities as requested by the Court. In the event the Parties are unable to agree upon the form
16 or content of any document necessary to implement the Settlement, or on any modification of the
17 Agreement that may become necessary to implement the Settlement, the Parties will seek the
18 assistance of a mediator and/or the Court for resolution.

19 11.7. No Prior Assignments. The Parties separately represent and warrant that they have not
20 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
21 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
22 action, or right released and discharged by the Party in this Settlement.

23 11.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are
24 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
25 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR
26 Part 10, as amended) or otherwise.

27 11.9. Modification of Agreement. This Agreement, and all parts of it, may be amended,
28 modified, changed, or waived only by an express written instrument signed or agreed to by all

1 Parties or their representatives, and approved by the Court. Plaintiff and Defendant expressly
2 agree that should the Parties agree to amend, modify, change, or waive this Agreement, or any
3 part of it, Class Counsel and Defense Counsel are authorized to submit to the Court any
4 amendments of this Agreement, amended Agreements, or amendments to the Agreement, on
5 behalf of the Parties once fully executed, which includes, but is not limited to, authorization of
6 the use of signatures previously provided by the Parties.

7 11.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to
8 the benefit of, the successors of each of the Parties.

9 11.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
10 governed by and interpreted according to the internal laws of the state of California, without
11 regard to conflict of law principles.

12 11.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
13 this Agreement. This Agreement will not be construed against any Party on the basis that the
14 Party was the drafter or participated in the drafting

15 11.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
16 during Action and in this Agreement relating to the confidentiality of information shall survive
17 the execution of this Agreement

18 11.14. Use of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code
19 §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant
20 in connection with the mediation, other settlement negotiations, or in connection with the
21 Settlement, may be used only with respect to this Settlement, and no other purpose, and may not
22 be used in any way that violates any existing contractual agreement, statute, or rule of court.

23 11.15. Headings. The descriptive heading of any section or paragraph of this Agreement is
24 inserted for convenience of reference only and does not constitute a part of this Agreement.


25 11.16. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall
26 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
27 weekend or federal legal holiday, such date or deadline shall be on the first business day
28 thereafter.

1 11.17. Execution in Counterparts. This Agreement may be executed in one or more counterparts
2 by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall
3 be accepted as an original. All executed counterparts and each of them will be deemed to be one
4 and the same instrument if counsel for the Parties will exchange between themselves signed
5 counterparts. Any executed counterpart will be admissible in evidence to prove the existence
6 and contents of this Agreement.

7 11.18. Stay of Litigation. The Parties agree that upon the execution of this Agreement the
8 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
9 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend
10 the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
11 process.

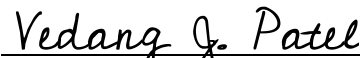
12 11.19. Severability. In the event that one or more of the provisions contained in this Agreement
13 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,
14 illegality, or unenforceability shall in no way effect any other provision if Defendant' Counsel
15 and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing
16 to proceed as if such invalid, illegal, or unenforceable provision had never been included in this
17 Agreement.


18 **IT IS SO AGREED:**

19 
20 Gary Foster (Mar 11, 2025 16:59 PDT)
Plaintiff, Gary E. Foster


For Defendant, MTGL, Inc.

22 **AGREED AS TO FORM ONLY:**

23
24 
25 David D. Bibyan
26 Vedang J. Patel
Counsel for Plaintiff


Megan K. Lieber
27 Bao D. Nguyen
28 Counsel for Defendant