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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SANTA CRUZ**

12 JEFFREY HOXSIE, as an individual on
13 behalf of himself and on behalf of all others
14 similarly situated,

15 Plaintiff,

16 vs.

17
18 HOUSING MATTERS, a California
19 Nonprofit Corporation; and DOES 1 to 100,
20 inclusive,

21 Defendant.

Case No.: 22CV01797

STIPULATION OF CLASS AND
REPRESENTATIVE ACTION SETTLEMENT
AND RELEASE

1 Thousand Dollars and Zero Cents (\$20,000.00) in litigation costs and expenses. Defendant has
2 agreed not to oppose Class Counsel’s request for attorney’s fees and costs and expenses as set forth
3 above.

4 5. “Class Counsel” means Zachary M. Crosner, Jamie K. Serb, and Michael W. Jones
5 of Crosner Legal, P.C.

6 6. “Class List” means a complete list of all Class Members that Defendant will
7 diligently and in good faith compile from their records and provide to the Settlement Administrator
8 within ten (10) business days after entry of an Order granting Preliminary Approval of this
9 Settlement. The Class List will be formatted in Microsoft Office Excel and will include each Class
10 Member’s full name; most recent mailing address and telephone number; Social Security Number;
11 and dates of employment.

12 7. “Class Member(s)” or “Settlement Class” means all individuals employed by
13 Defendant in California as an hourly-paid, non-exempt employee during the Class Period.

14 8. “Class Notice” means the Notice of Class Action Settlement substantially in the form
15 attached hereto as Exhibit A, and approved by the Court.

16 9. “Class Period” means the period from August 19, 2018 through June 28, 2023.

17 10. “Class Representative” means Plaintiff Jeffrey Hoxsie.

18 11. “Court” means the Santa Cruz County Superior Court.

19 12. “Effective Date” shall be when Final Approval of the Settlement can no longer be
20 appealed by an objector, or in the absence of any objections (or if all objections are withdrawn with
21 Court approval by the time of the Final Approval Hearing) or any plaintiff in intervention, upon
22 Notice of Entry of Judgment. If objections are heard by the Court and overruled, and no appeal is
23 taken of the Judgment by an objector or plaintiff in intervention, then the Effective Date shall be
24 sixty-five (65) calendar days after the Court enters an order granting Final Approval of the
25 Settlement. If any appeal is taken from the Court’s overruling of any objections to the Settlement,
26 then the Effective Date shall be ten (10) calendar days after all appeals are withdrawn or after an
27 appellate decision affirming the Final Approval and Judgment becomes final.

28 13. “Final Approval” means the Court’s Order granting final approval of the Settlement.

1 14. “Individual Settlement Payment” means each Participating Class Member’s
2 respective share of the Net Settlement Sum.

3 15. “Net Settlement Sum” means the portion of the Total Maximum Settlement Amount
4 remaining after deducting the Named Plaintiff Award, the PAGA Payment, Attorney’s Fees and
5 Costs, and the Administrator Payment. The entire Net Settlement Sum will be distributed to the
6 Participating Class Members. There will be no reversion of any portion of the Net Settlement Sum
7 to Defendant.

8 16. “Notice of Entry of Judgment” means a Notice of Entry of Judgment pursuant to
9 section 664.5(c) of the California Code of Civil Procedure filed and served by Plaintiff.

10 17. “Objection” means a Class Member’s valid and timely written objection to the
11 Settlement Agreement. For an Objection to be valid, it must include: (i) the objector’s full name,
12 signature, address, and telephone number; (ii) a written statement of all grounds for the objection
13 accompanied by any legal support for such objection; and (iii) copies of papers, briefs, or other
14 documents upon which the objection is based, if any. Alternatively, any Class Member may object
15 by appearing at the Final Approval Hearing either with or without submitting a written Objection.

16 18. “PAGA Group” means all individuals employed by Defendant in California as an
17 hourly-paid, non-exempt employee during the PAGA Period.

18 19. “PAGA Payment” means the Fifteen Thousand Dollars and Zero Cents (\$15,000.00)
19 from the Total Maximum Settlement Amount allocated to civil penalties under the Private Attorneys
20 General Act of 2004, California Labor Code §§ 2698, *et seq.* (“PAGA”). Seventy Five percent
21 (75%) of the PAGA Payment will be paid to the California Labor & Workforce Development
22 Agency for its portion of the civil penalties (the “PAGA Payment to the LWDA”), and twenty five
23 percent (25%) of the PAGA Payment will be paid to the PAGA Group (the “PAGA Payment to the
24 PAGA Group Members”).

25 20. “PAGA Pay Periods” means the number of pay periods that a PAGA Group Member
26 worked in California during the PAGA Period, exclusive of leaves of absence.

27 21. “PAGA Period” means the period from August 16, 2021 through June 28, 2023.

28 22. “Parties” means Plaintiff and Defendant collectively.

1 23. “Participating Class Member” means any Class Member who does not submit a
2 timely and valid Request for Exclusion.

3 24. “Plaintiff” means Jeffrey Hoxsie.

4 25. “Plaintiff’s Counsel” means Zachary M. Crosner, Jamie K. Serb, and Michael W.
5 Jones, and Crosner Legal, P.C.

6 26. “Preliminary Approval” means the Court order granting preliminary approval of the
7 Settlement.

8 27. “Qualifying Workweek(s)” means each seven-day period(s) commencing on
9 Monday at 12:00 a.m. and ending on a Sunday at 11:59 p.m. in which a Class Member was employed
10 by Defendant in California during the Class Period.

11 28. “Released Class Claims” means all claims that were alleged, or reasonably could
12 have been alleged, based on the Class Period facts stated in the Operative Complaint including but
13 not limited to, e.g., claims for: (a) failure to pay minimum wages and liquidated damages; (b) failure
14 to pay overtime wages; (c) failure to provide meal periods or compensation in lieu thereof; (d) failure
15 to provide rest periods or compensation in lieu thereof; (e) failure to furnish accurate itemized wage
16 statements; (f) failure to timely pay all wages due upon separation of employment; (g) failure to
17 reimburse business expenses; and (h) unfair competition. Except for the Released PAGA Claims,
18 Participating Class Members do not release other claims, including claims for vested benefits,
19 wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance,
20 disability, social security, workers’ compensation, or claims based on facts occurring outside the
21 Class Period. The Released Class Claims do not include any claims that cannot be released as a
22 matter of law.

23 29. “Released PAGA Claims” means all claims for PAGA penalties that were alleged,
24 or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative
25 Complaint and the PAGA Notice including but not limited to, e.g., (a) failure to provide meal
26 periods or compensation in lieu thereof; (b) failure to provide rest periods or compensation in lieu
27 thereof; (c) failure to pay minimum wages; (d) failure to pay overtime wages; (e) failure to keep and
28 maintain accurate records; (f) failure to produce records; (g) failure to provide paid sick leave; (h)

1 failure to provide supplemental paid sick leave; (i) failure to pay vested vacation and paid time off;
2 (j) failure to provide suitable seating; (k) failure to reimburse business expenses; (l) failure to
3 provide a safe and healthful workplace; (m) failure to timely pay all wages upon separation of
4 employment; and (n) unlawful criminal inquiries. The Released PAGA Claims do not include any
5 claims that cannot be released as a matter of law.

6 30. "Released Parties" means Housing Matters, including its past or present successors
7 and predecessors in interest, acquirers, subsidiaries, affiliates, parents, officers, directors,
8 employees, agents, principals, representatives, accountants, auditors, consultants, insurers, and
9 reinsurers.

10 31. "Request for Exclusion" means a timely letter submitted by a Class Member
11 indicating a request to be excluded from the Settlement. The Request for Exclusion must: (i) set
12 forth the name, address, telephone number and last four digits of the Social Security Number of the
13 Class Member requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to the
14 Settlement Administrator; (iv) clearly state that the Class Member does not wish to be included in
15 the Settlement; and (v) be postmarked on or before the Response Deadline.

16 32. "Response Deadline" means the deadline by which Class Members must postmark
17 to the Settlement Administrator Requests for Exclusion, or postmark Objections to the Settlement
18 Administrator. The Response Deadline will be forty-five (45) calendar days from the initial mailing
19 of the Class Notice by the Settlement Administrator, unless the 45th day falls on a Sunday or Federal
20 holiday, in which case the Response Deadline will be extended to the next day on which the U.S.
21 Postal Service is open.

22 33. "Settlement Administrator" means ILYM Group, Inc., a third-party class action
23 settlement administrator agreed to by the Parties to be approved by the Court for the purposes of
24 administering this Settlement. The Parties each represent that they do not have any financial interest
25 in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator
26 that could create a conflict of interest.

27 34. "Settlement Group" means the Settlement Class and PAGA Group collectively.

28 35. "Total Maximum Settlement Amount" means the amount of One Hundred Eighty

1 Thousand Dollars and Zero Cents (\$180,000.00), to be paid by Defendant in full satisfaction of all
2 claims alleged in the Action or that could have been alleged in the Action, based on the operative
3 facts alleged therein, which includes all Individual Settlement Payments to Participating Class
4 Members, the PAGA Payment, Attorney's Fees and Costs, the Named Plaintiff Award, and
5 Administrator Payment. Any employer-side payroll taxes required by law, including the employer-
6 side FICA, FUTA, and SDI contributions, will be paid by Defendant separately and apart from the
7 Total Maximum Settlement Amount. There will be no reversion of any portion of the Total
8 Maximum Settlement Amount to Defendant.

9 **TERMS OF AGREEMENT**

10 The Plaintiff, on behalf of himself and the Settlement Group, and Defendant agree as
11 follows:

12 36. **Class Certification.** For settlement purposes only, the Parties agree that the Class
13 shall be certified. This Settlement Agreement is contingent upon the approval and certification by
14 the Court of the Class for settlement purposes only. Defendant does not waive, and instead expressly
15 reserves, all rights to challenge the propriety of class certification for any purpose should the Court
16 not approve the Settlement. In connection with the proposed certification of the Class, the Parties
17 shall cooperate and present to the Court for its consideration competent evidence, as may be
18 requested by the Court, under the applicable due process requirements and standards for class
19 certification. In the event either preliminary or final approval of the Settlement is not obtained or,
20 if obtained, is reversed upon appeal, the Parties shall be returned to their respective positions in the
21 action as they existed immediately prior to the execution of this Agreement. Furthermore, nothing
22 said or represented in connection with obtaining approval of the Court with respect to this
23 settlement, either on a preliminary or final basis, shall be admissible for any purpose other than to
24 obtain approval by the Court of this Settlement.

25 37. **Funding of the Total Maximum Settlement Amount.** Defendant will deposit the
26 Total Maximum Settlement Amount via wire transfer into a Qualified Settlement Account ("QSA")
27 to be established by the Settlement Administrator within twenty (20) calendar days of the Effective
28 Date. The Total Maximum Settlement Amount was agreed upon based on Defendant's

1 representations that there were 6,220 workweeks for the Class Members between August 19, 2018
2 through June 28, 2023. If the number of workweeks worked by the Settlement Class Members
3 exceeds that number more than 10% (6,842 workweeks), the Total Maximum Settlement Amount
4 shall be increased on a pro rata basis per workweek exceeding the 10% increase (i.e., if the number
5 increases by 11%, the Total Maximum Settlement Amount shall be increased by 1%). However,
6 Defendant has the right to shorten the Class Period in lieu of increasing the Total Maximum
7 Settlement Amount.

8 **38. Attorney's Fees and Costs.** Defendant agrees not to oppose or impede any
9 application or motion by Class Counsel for Attorney's Fees and Costs, not to exceed one-third (1/3)
10 of the Total Maximum Settlement Amount, or Sixty Thousand Dollars and Zero Cents (\$60,000.00)
11 in attorney's fees, and actual litigation costs and expenses not to exceed Twenty Thousand Dollars
12 and Zero Cents (\$20,000.00). The Parties stipulate that, for purposes of settlement only, Plaintiff
13 and the Class are the prevailing parties in the Action and are entitled to attorney's fees and costs
14 under the applicable fee-shifting statutes, including, inter alia, California Code of Civil Procedure
15 section 1021.5, and Labor Code sections 218.5, 1194(a) and 2699(g). Any funds allocated to
16 Attorney's Fees and Costs but not awarded by the Court will be included in the Net Settlement Sum
17 and distributed pro rata to the Participating Class Members. The Settlement Administrator will issue
18 an IRS Form 1099 to Class Counsel for the Attorney's Fees and Costs.

19 **39. Named Plaintiff Award.** In exchange for a general release, and in recognition of
20 their effort and work in prosecuting the Action on behalf of the Settlement Group, Defendant agrees
21 not to oppose or impede any application or motion for a Named Plaintiff Award not to exceed Ten
22 Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff. The Named Plaintiff Award will be
23 paid from the Total Maximum Settlement Amount and will be in addition to each Plaintiff's
24 Individual Settlement Payment. Any funds allocated to the Named Plaintiff Award but not awarded
25 by the Court will be included in the Net Settlement Sum and distributed pro rata to the Participating
26 Class Members. Plaintiff will be solely responsible to pay any and all applicable taxes on the
27 payment made pursuant to this paragraph, and the Settlement Administrator will issue an IRS Form
28 1099 to Plaintiff for the Named Plaintiff Award.

1 40. **Administrator Payment.** The Settlement Administrator will be paid for the
2 reasonable costs of administration of the Settlement and distribution of payments from the Total
3 Maximum Settlement Amount, which Administrator Payment shall not exceed Six Thousand Three
4 Hundred Sixty Six and Sixty Cents (\$6,366.60). These costs, will include, *inter alia*, the required
5 tax reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS Forms,
6 distributing Class Notices, creating and maintaining a web site and toll-free telephone number,
7 calculating Individual Settlement Payments and employer side payroll taxes, and distributing the
8 Total Maximum Settlement Amount as set forth herein, and providing necessary reports and
9 declarations. These costs shall be paid from the Total Maximum Settlement Amount. Any funds
10 allocated to the Administrator Payment but not incurred by or otherwise paid to the Settlement
11 Administrator will be included in the Net Settlement Sum and distributed pro rata to the Participating
12 Class Members.

13 41. **PAGA Payment.** The Parties agree to allocate Fifteen Thousand Dollars and Zero
14 Cents (\$15,000.00) from the Total Maximum Settlement Amount to the resolution of all claims
15 related to the Settlement Group arising under PAGA. Pursuant to PAGA, Seventy-Five Percent
16 (75%) of the PAGA Payment, or Eleven Thousand Two Hundred and Fifty Dollars and Zero Cents
17 (\$11,250.00), will be paid to the California Labor & Workforce Development Agency as the PAGA
18 Payment to the LWDA, and the remaining Twenty Five Percent (25%) of the PAGA Payment, or
19 Three Thousand Dollars Seven Hundred and Fifty Dollars and Zero Cents (\$3,750.00), will be
20 distributed to the PAGA Group as the PAGA Payment to the PAGA Group Members.

21 42. **Individual Settlement Payment Calculations.** The Individual Settlement Payment
22 for each Participating Class Member shall be determined as follows: the Net Settlement Sum shall
23 be divided by the total number of Qualifying Workweeks of all Class Members. The result of this
24 division is referred to as the “Weekly Rate;” and (b) the amount of each Class Member’s Individual
25 Settlement Payment shall be the result of multiplying each Class Member’s number of Qualifying
26 Workweeks by the Weekly Rate. Each PAGA Group Member’s PAGA Payment shall be
27 determined as follows: the PAGA Payment to the PAGA Group Members shall be divided by the
28 total number of Qualifying Pay Periods of all PAGA Group Members. The result of this division is

1 referred to as the “PAGA Pay Period Rate”; and (b) the amount of each Class Member’s Individual
2 PAGA Payment shall be the result of multiplying each Class Member’s number of Qualifying Pay
3 Periods by the PAGA Pay Period Rate. The Settlement Administrator will perform all calculations
4 necessary to determine the Individual Settlement Payments based upon information provided by
5 Defendant with the Class List.

6 43. The Settlement Administrator shall be responsible for reducing each Individual
7 Settlement Payment based on any required deductions for each Participating Class Member and/or
8 PAGA Group Member as specifically set forth herein, including employee-side tax withholdings or
9 deductions.

10 44. The entire Net Settlement Sum will be disbursed to all Class Members who do not
11 submit timely and valid Requests for Exclusion. If there are any timely and valid Requests for
12 Exclusion from members of the Class, the Settlement Administrator shall not include all Qualifying
13 Workweeks attributable to such individuals as part of the calculation of the total class-wide
14 Qualifying Workweeks for all Participating Class Members, so that the amount available for
15 distribution to the Participating Class Members equals 100% of the Net Settlement Sum.

16 45. **No Credit To Benefit Plans.** The Individual Settlement Payments made to
17 Participating Class Members under this Settlement, as well as any other payments made pursuant to
18 this Settlement, will not be utilized to calculate any additional benefits under any benefit plans to
19 which any Class Members may be eligible, including, but not limited to: profit-sharing plans, bonus
20 plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other
21 benefit plan. Rather, it is the Parties’ intention that this Settlement Agreement will not affect any
22 rights, contributions, or amounts to which any Class Members may be entitled under any benefit
23 plans.

24 46. **Administration Process.** The Parties agree to cooperate in the administration of the
25 settlement and to make all reasonable efforts to control and minimize the costs and expenses
26 incurred in administration of the Settlement.

27 47. **Delivery of the Class List.** Within ten (10) business days of Preliminary Approval,
28 Defendant will provide the Class List to the Settlement Administrator.

1 48. **Notice by First-Class U.S. Mail.** Within seven (7) days after receiving the Class
2 List from Defendant, the Settlement Administrator will mail a Class Notice to all Class Members
3 via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the
4 Class List.

5 49. **Confirmation of Contact Information in the Class List.** Prior to mailing, the
6 Settlement Administrator will perform a search based on the National Change of Address Database
7 for information to update and correct for any known or identifiable address changes. Any Class
8 Notices returned to the Settlement Administrator as non-deliverable on or before the Response
9 Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed
10 thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class
11 Notice. If no forwarding address is provided, the Settlement Administrator will promptly attempt
12 to determine the correct address using a skip-trace or other search using the name, address and/or
13 Social Security Number of the Class Member involved, and will then perform a single re-mailing.

14 50. **Class Notices.** All Class Members will be mailed a Class Notice via First Class U.S.
15 Mail. Each Class Notice will provide: (i) information regarding the nature of the Action; (ii) a
16 summary of the Settlement's principal terms; (iii) the Class definition; (iv) the total number of
17 Qualifying Work Weeks worked by each respective Class Member during the Class Period; (v) the
18 total number of Qualifying Pay Periods worked by each respective PAGA Member during the
19 PAGA Period; (vi) each Class Member's and PAGA Member's estimated Individual Settlement
20 Payment and the formula for calculating Individual Settlement Payments; (vii) the procedure for a
21 Class Member to dispute the calculation of their estimated Individual Settlement Payments; (viii)
22 the dates that comprise the Class Period; (ix) instructions on how to submit a Request for Exclusion
23 or Objection; (x) the deadlines by which the Class Member must postmark Requests for Exclusion,
24 and the deadlines by which the Class Members must postmark Objections to the Settlement; and
25 (xi) the claims to be released. The Class Notice shall be in substantially the same form as **Exhibit**
26 **A** hereto, as approved by the Court.

27 51. The Settlement Administrator will also set up and maintain a toll-free telephone
28 number for Settlement Group Members to contact the Settlement Administrator regarding the

1 Settlement, and the toll-free telephone number will be identified in the Class Notice.

2 **52. Disputed Information on Class Notices.** Class Members will have an opportunity
3 to dispute the information provided in their Class Notices. To the extent Class Members dispute
4 their total Qualifying Work Weeks or Qualifying Pay Periods while working for Defendant as an
5 hourly-paid, non-exempt employee during the Class Period and PAGA Period, Class Members may
6 produce evidence to the Settlement Administrator showing that such information in the Class Notice
7 is inaccurate. The Settlement Administrator will decide the dispute. Defendant's records will be
8 presumed correct, but the Settlement Administrator will evaluate the evidence submitted by the
9 Class Member and will make the final decision as to the merits of the dispute, which decision shall
10 be final and unappealable by any Party or Class Member. All disputes will be resolved within ten
11 (10) business days of the Response Deadline.

12 **53. Request for Exclusion Procedures.** Any Class Member wishing to opt-out from
13 the Settlement Agreement must sign and postmark a written Request for Exclusion to the Settlement
14 Administrator within the Response Deadline. The postmark date will be the exclusive means to
15 determine whether a Request for Exclusion has been timely submitted. There is no right for PAGA
16 Group Members to opt out of receiving their respective payments from the PAGA Payment to the
17 PAGA Group Members, and any eligible Class Member who submits a timely and valid Request
18 for Exclusion will receive their payment from the PAGA Payment to the PAGA Group Members
19 and will be bound the release of all claims under PAGA.

20 **54. Defective Submissions.** If a Class Member's Request for Exclusion is defective as
21 to the requirements listed herein, that Class Member will be given an opportunity to cure the
22 defect(s). The Settlement Administrator will mail the Class Member a cure letter within three (3)
23 business days of receiving the defective submission to advise the Class Member that his or her
24 submission is defective and that the defect must be cured to render the Request for Exclusion valid.
25 The Class Member will have until the later of (i) the Response Deadline or (ii) fifteen (15) calendar
26 days from the date of the cure letter to postmark a revised Request for Exclusion. If the revised
27 Request for Exclusion is not postmarked within that period, it will be deemed untimely.

28 **55. Option to Rescind the Settlement Agreement:** Defendant may elect, at their

1 option, to rescind the Settlement if more than fifteen percent (15%) of Class Members submit timely
2 and valid Requests for Exclusion. If Defendant exercises the conditional right to rescind, it must do
3 so by written communication to Class Counsel that is received by Class Counsel within ten (10)
4 business days of being notified by the Settlement Administrator of the 15% or greater opt-out rate.
5 In the event Defendant exercises the conditional right to rescind, Defendant will be responsible for
6 all fees and costs incurred by the Settlement Administration to the date of rescission.

7 **56. Settlement Terms Bind All Class Members Who Do Not Opt-Out.** Any Class
8 Member who does not affirmatively opt-out of the Settlement Agreement by submitting a timely
9 and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the
10 Released Class Claims, as well as any Judgment that may be entered by the Court if it grants final
11 approval to the Settlement.

12 **57. Objection Procedures.** To object to the Settlement Agreement, a Class Member
13 may timely submit to the Settlement Administrator a written Objection. Any written Objection must
14 be signed by the Class Member and contain all information required by this Settlement Agreement,
15 as specified in the Class Notice. Written Objections may be mailed to the Settlement Administrator
16 as explained in the Class Notice. The Settlement Administrator will forward copies of all written
17 Objections to both Class Counsel and counsel for the Defendant within three (3) calendar days of
18 receipt. The postmark date will be deemed the exclusive means for determining whether a written
19 Objection is timely. Alternatively, any Class Member may appear at the Final Approval Hearing,
20 personally or through their own counsel, in order to have their objections heard by the Court,
21 regardless of whether such Class Member submits a written Objection. Only those Class Members
22 who do not submit a Request for Exclusion may object to the Settlement. At no time will any of the
23 Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written or
24 oral objections to the Settlement Agreement or appeal from the Order and Judgment. Class Counsel
25 will not represent any Class Members with respect to any such objections to this Settlement.

26 **58. Certification Reports.** The Settlement Administrator will provide all counsel with
27 a weekly report that certifies the number of Class Members who have submitted valid Requests for
28 Exclusion, and whether any Class Member has submitted a challenge to any information contained

1 in their Class Notice. Additionally, the Settlement Administrator will provide to counsel for both
2 Parties any updated reports regarding the administration of the Settlement Agreement as needed or
3 requested.

4 **59. Distribution of Settlement Payments.** Within ten (10) calendar days of receipt the
5 Total Maximum Settlement Amount, the Settlement Administrator will issue all Court-approved
6 payments to: (i) the Participating Class Members and PAGA Group Members; (ii) the Labor &
7 Workforce Development Agency; (iii) Plaintiff; (iv) Class Counsel, and (v) itself.

8 **60. Un-cashed Settlement Checks.** If a Participating Class Member's and/or PAGA
9 Group Member's Individual Settlement Payment check is not cashed within 150 days after its last
10 mailing, the Settlement Administrator will send such individuals a letter informing him or her that
11 unless the check is cashed in the next 30 days, it will expire and become non-negotiable, and offer
12 to replace the check if it was lost or misplaced but not cashed. All funds represented by uncashed
13 checks and funds represented by Individual Settlement Payments and/or PAGA Payments returned
14 as undeliverable will be forwarded to the California State Controller's Unclaimed Property Fund.

15 **61. Certification of Completion.** Upon completion of administration of the Settlement,
16 the Settlement Administrator will provide a written declaration under oath to certify such completion
17 to the Court and counsel for all Parties.

18 **62. Tax Treatment of Individual Settlement Payments and PAGA Payments.** All
19 Individual Settlement Payments will be allocated as follows: (i) one-third of each Individual
20 Settlement Payment will be allocated as wages for which IRS Forms W-2 will be issued; and (ii)
21 two-thirds will be allocated to expenses, penalties and interest for which IRS Forms 1099-MISC
22 will be issued. All PAGA Payments will be treated as penalties for which IRS Forms 1099-MISC
23 will be issued.

24 **63. Administration of Taxes by the Settlement Administrator.** The Settlement
25 Administrator will be responsible for issuing to Plaintiff, Participating Class Members, and Class
26 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant
27 to this Settlement. The Settlement Administrator will also be responsible for forwarding all payroll
28 taxes and penalties to the appropriate government authorities.

1 64. **Circular 230 Disclaimer.** EACH PARTY TO THIS AGREEMENT (FOR
2 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO
3 THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
4 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
5 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
6 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
7 INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
8 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
9 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART
10 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY
11 UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE
12 (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT
13 ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY
14 OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS
15 NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
16 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT
17 MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR
18 ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS
19 THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX
20 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING)
21 UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR
22 TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
23 CONTEMPLATED BY THIS AGREEMENT.

24 65. **No Prior Assignments.** The Parties and their counsel represent, covenant, and
25 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to
26 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
27 action, cause of action or right herein released and discharged.

28 66. **Nullification of Settlement Agreement.** In the event that: (i) the Court does not

1 finally approve the Settlement as provided herein; or (ii) the Settlement does not become final for
2 any other reason, then this Settlement Agreement, and any documents generated to bring it into
3 effect, will be null and void. Any order or judgment entered by the Court in furtherance of this
4 Settlement Agreement will likewise be treated as void from the beginning.

5 **67. Preliminary Approval Hearing.** Plaintiff will obtain a hearing before the Court to
6 request the Preliminary Approval of the Settlement, and the entry of a Preliminary Approval Order
7 for (a) conditional certification of the Settlement Class for settlement purposes only, (b) Preliminary
8 Approval of the proposed Settlement Agreement, and (c) setting a date for the Final Approval. The
9 Preliminary Approval Order will provide for the Class Notice to be sent to all Class Members as
10 specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this
11 Settlement Agreement, which sets forth the terms of this Settlement, and will include the proposed
12 Class Notice, which is attached hereto as Exhibit A. Plaintiff shall also timely provide notice of the
13 settlement and Preliminary Approval Hearing to the Labor & Workforce Development Agency as
14 required by PAGA.

15 **68. Final Settlement Approval Hearing and Entry of Judgment.** Upon expiration of
16 the deadline to postmark Requests for Exclusion and Objections, and with the Court's permission,
17 a Final Approval Hearing will be conducted to determine the Final Approval of the Settlement,
18 along with the amounts properly payable for: (i) Individual Settlement Payments; (ii) the Labor &
19 Workforce Development Agency Payment; (iii) the Named Plaintiff Award; (iv) Attorney's Fees
20 and Costs; and (v) the Administrator Payment. Class Counsel will be responsible for drafting all
21 documents necessary to obtain final approval of the Settlement, and approval of the Named Plaintiff
22 Award, Attorney's Fees and Costs, and the Administrator Payment, to be heard at the Final Approval
23 Hearing.

24 **69. Release by Plaintiff, the Settlement Group and LWDA.** Upon the Effective Date
25 and conditioned upon full satisfaction of Defendant's payment obligations, Plaintiff and all
26 Participating Class Members will be deemed to have released the Released Class Claims and will
27 be barred from bringing or prosecuting any of the Released Class Claims against the Released
28 Parties. Furthermore, upon the Effective Date and conditioned upon full satisfaction of Defendant's

1 payment obligations, Plaintiff and the LWDA and all PAGA Group Members will be deemed to
2 have released the Released PAGA Claims, and will be barred from bringing or prosecuting any of
3 the Released PAGA Claims against the Released Parties.

4 70. **Judgment and Continued Jurisdiction.** Upon final approval of the Settlement by
5 the Court or after the Final Approval Hearing, the Parties will present the Judgment to the Court for
6 its approval. After entry of the Judgment, under Code of Civil Procedure section 664.6, the Court
7 will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and
8 enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such
9 post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement
10 Agreement.

11 71. **Release by Plaintiff.** Upon the Effective Date, Plaintiff will release and forever
12 discharge the Released Parties, to the fullest extent permitted by law, of and from any and all claims,
13 known and unknown, asserted and not asserted, which Plaintiff has or may have against the Released
14 Parties as of the date of execution of this Settlement Agreement. To the extent the foregoing releases
15 are releases to which Section 1542 of the California Civil Code or similar provisions of other
16 applicable law may apply, Plaintiff expressly waive any and all rights and benefits conferred upon
17 them by the provisions of Section 1542 of the California Civil Code or similar provisions of
18 applicable law, which are as follows:

19 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
20 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
21 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,**
22 **WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED**
23 **HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

24 72. **Exhibit Incorporated by Reference.** The terms of this Settlement Agreement
25 include the terms set forth in the attached Exhibit, which is incorporated by this reference as though
26 fully set forth herein. Any Exhibit to this Settlement Agreement is an integral part of the Settlement.

27 73. **Entire Agreement.** This Settlement Agreement and attached Exhibit constitute the
28 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral

1 agreements may be deemed binding on the Parties. The Parties expressly recognize California Civil
2 Code Section 1625 and California Code of Civil Procedure Section 1856(a), which provide that a
3 written agreement is to be construed according to its terms and may not be varied or contradicted
4 by extrinsic evidence, and the Parties agree that no such extrinsic oral or written representations or
5 terms will modify, vary or contradict the terms of this Settlement Agreement.

6 74. **Amendment or Modification.** Except as to non-material changes required by the
7 Court, no amendment, change, or modification to this Settlement Agreement will be valid unless in
8 writing and signed by the Parties. Concerning non-material changes required by the Court, the
9 Parties agree that their counsel may submit stipulated amendments to this Settlement Agreement
10 without obtaining further signatures from the Parties.

11 75. **Authorization to Enter Into Settlement Agreement.** Counsel for all Parties
12 warrant and represent they are expressly authorized by the Parties whom they represent to negotiate
13 this Settlement Agreement and to take all appropriate action required or permitted to be taken by
14 such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other
15 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
16 counsel will cooperate with each other and use their best efforts to effect the implementation of the
17 Settlement. If the Parties are unable to reach agreement on the form or content of any document
18 needed to implement the Settlement, or on any supplemental provisions that may become necessary
19 to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
20 such disagreement.

21 76. **Binding on Successors and Assigns.** This Settlement Agreement will be binding
22 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
23 defined.

24 77. **California Law Governs.** All terms of this Settlement Agreement and Exhibit
25 hereto will be governed by and interpreted according to the laws of the State of California.

26 78. **Execution and Counterparts.** This Settlement Agreement is subject only to the
27 execution of all Parties. However, the Settlement Agreement may be executed in one or more
28 counterparts. All executed counterparts and each of them, including facsimile and scanned copies

1 of the signature page, will be deemed to be one and the same instrument provided that counsel for
2 the Parties will exchange among themselves original signed counterparts.

3 **79. Acknowledgement that the Settlement is Fair and Reasonable.** The Parties
4 believe this Settlement Agreement is a fair, adequate and reasonable settlement of the Action and
5 have arrived at this Settlement after adversarial and arm's-length negotiations before a well-
6 respected and neutral mediator, in the context of adversarial litigation, and taking into account all
7 relevant factors, present and potential. The Parties further acknowledge that they are each
8 represented by competent counsel and that they have had an opportunity to consult with their counsel
9 regarding the fairness and reasonableness of this Settlement.

10 **80. Invalidity of Any Provision.** Before declaring any provision of this Settlement
11 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
12 possible consistent with applicable precedents so as to define all provisions of this Settlement
13 Agreement valid and enforceable.

14 **81. Waiver of Certain Appeals.** The Parties agree to waive appeals; except, however,
15 that either party may appeal any court order that materially alters the Settlement Agreement's terms.

16 **82. Notices.** Unless otherwise specifically provided herein, all notices, demands or other
17 communications given hereunder shall be in writing and shall be deemed to have been duly given
18 as of the third business day after mailing by United States registered or certified mail, return receipt
19 requested, addressed as follows:

20 To Plaintiff and the Settlement Class:

21 Zachary M. Crosner
22 Jamie Šerb
23 Michael Jones
24 CROSNER LEGAL, P.C.
25 9440 Santa Monica Blvd., Ste. 301
26 Los Angeles, CA 90210

27 To Defendant:

28 Rona Layton
29 LAYTON LAW FIRM
30 111 N. Market Street,
31 San Jose, CA 95113

1 83. **Non-Admission of Liability.** The Parties enter into this Settlement to resolve the
2 dispute that has arisen between them and to avoid the burden, expense and risk of continued
3 litigation. In entering into this Settlement, Defendant does not admit, and specifically denies, that
4 it violated any federal, state, or local law; violated any regulations or guidelines promulgated
5 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any
6 contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged
7 in any other unlawful conduct with respect to their employees. Neither this Settlement Agreement,
8 nor any of its terms or provisions, nor any of the negotiations connected with it, will be construed
9 as an admission or concession by Defendant of any such violations or failures to comply with any
10 applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement, this
11 Settlement Agreement and its terms and provisions will not be offered or received as evidence in
12 any action or proceeding to establish any liability or admission on the part of Defendant or to
13 establish the existence of any condition constituting a violation of, or a non-compliance with,
14 federal, state, local or other applicable law.

15 84. **Waiver.** No waiver of any condition or covenant contained in this Settlement
16 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to
17 imply or constitute a further waiver by such party of the same or any other condition, covenant, right
18 or remedy.

19 85. **Enforcement Actions.** In the event that one or more of the Parties institutes any
20 legal action or other proceeding against any other Party or Parties to enforce the provisions of this
21 Settlement or to declare rights and/or obligations under this Settlement, the successful Party or
22 Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorney's fees
23 and costs, including expert witness fees incurred in connection with any enforcement actions.

24 86. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms
25 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
26 construed more strictly against one party than another merely by virtue of the fact that it may have
27 been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length
28 negotiations between the Parties, all Parties have contributed to the preparation of this Settlement

1 Agreement.

2 87. **Representation By Counsel.** The Parties acknowledge that they have been
3 represented by counsel throughout all negotiations that preceded the execution of this Settlement
4 Agreement, and that this Settlement Agreement has been executed with the consent and advice of
5 counsel. Further, Plaintiff and Plaintiff's Counsel warrant and represent that there are no liens on the
6 Settlement Agreement.

7 88. **All Terms Subject to Final Court Approval.** All amounts and procedures
8 described in this Settlement Agreement herein will be subject to final Court approval.

9 89. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate
10 in good faith and execute all documents to the extent reasonably necessary to effectuate the terms
11 of this Settlement Agreement.

12 90. **Binding Agreement.** The Parties warrant that they understand and have full
13 authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement
14 will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject
15 to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
16 provisions that otherwise might apply under federal or state law.

17 91. **Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in
18 the Action, except such proceedings necessary to implement and complete the Settlement, in
19 abeyance pending the Final Approval to be conducted by the Court.

20 92. **Confidentiality.** Plaintiff, Plaintiff's Counsel, Defendant and Defendant's Counsel
21 agree that they will not issue any press releases, initiate any contact with the press, respond to any
22 press inquiry or have any communication with the press about the fact, amount or terms of the
23 Settlement Agreement prior to Preliminary Approval. Nothing in this Settlement Agreement shall
24 limit Defendant's ability to fulfill disclosure obligations reasonably required by law or in furtherance
25 of business purposes, including the fulfillment of obligations stated in this Settlement Agreement.

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SIGNATURES FOLLOW ON NEXT PAGE

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SIGNATURES

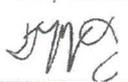
PLAINTIFF

DEFENDANT

DATED: 08 / 16 / 2023

DATED: 8/22/2023

By



Jeffrey Hoxsie

By



Name Phil Kramer
Title Chief Executive Officer
Housing Matters

APPROVED AS TO FORM: 8/22/23

DATED: 08/16/2023

DATED:

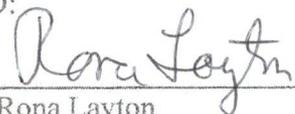
By



Jamie Serb
Crosner Legal, P.C.

Attorneys for Jeffrey Hoxsie

By



Rona Layton
Layton Law Firm

Attorneys for Housing Matter