

1 **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT**

2 This Class Action and PAGA Settlement Agreement and Release of Claims is entered into
3 by and between Plaintiff Koll Kilmade, individually and on behalf of all others similarly situated,
4 and Defendant Kaiser Enterprises, Inc., and is approved as to form by their respective counsel of
5 record, subject to the terms and conditions hereof and the Court's approval.

6 **A. Definitions**

7 1. "Action" or "Lawsuit" refers to the case entitled *Kilmade v. Kaiser Enterprises,*
8 *Inc.*, Case No. 24CV47369, pending in Calaveras County.

9 2. "Agreement," "Settlement Agreement," "Settlement," or "Stipulation" shall mean
10 this Class Action and PAGA Settlement Agreement and Release of Claims, including any
11 attached Exhibits.

12 3. "Class Claims" or "Released Class Claims" means all claims that were alleged or
13 reasonably could have been alleged based on the facts asserted in the Complaint, including but
14 not limited to claims for: (1) failure to pay overtime wages; (2) failure to provide meal periods or
15 pay premium wages in lieu thereof; (3) failure to authorize and permit rest periods or pay premium
16 wages in lieu thereof; (4) failure to pay sick wages; (5) failure to timely pay final wages upon
17 separation of employment; (6) failure to furnish accurate itemized wage statements; (7) failure to
18 reimburse necessary business expenses; (8) unfair or unlawful business practices; and (9) claims
19 for statutory penalties under California Labor Code sections 201–204, 210, 218.5, 218.6, 221,
20 226, 226.3, 226.7, 227.3, 246, 2802, 510, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1197,
21 1197.1, 1198, 1199; 2802, Civil Code sections 3287 and 3289; and Business and Professions
22 Code section 17200 et seq.

23 4. "Class Counsel" refers to Mehrdad Bokhour of Bokhour Law Group, P.C. and
24 Joshua Falakassa of Falakassa Law, P.C.

25 5. "Class Data" means a complete list of all Settlement Class Members that
26 Defendant will diligently and in good faith compile from its records and provide to the Settlement
27 Administrator on one spreadsheet and shall include the Settlement Class Members' full names;
28 last known addresses; Social Security Numbers; dates of employment and/or number of

Workweeks as non-exempt or hourly employees of Defendant during the Class Period and the PAGA Period for each Settlement Class Member.

6. “Class Period” and “Class Release Period” shall mean May 8, 2020, through the date of the Preliminary Approval Order.

7. “Class Representative” or “Plaintiff” means and refers to Koll Kilmade.

8. “Complaint” refers to the First Amended Complaint filed in the Calaveras Superior Court action entitled *Kilmade v. Kaiser Enterprises, Inc.*, Case No. 24CV47369.

9. “Court” means the California Superior Court, County of Calaveras, or any Court of competent jurisdiction.

10. “Defendant” refers to Kaiser Enterprises, Inc. also known as Insight Manufacturing.

11. “Defendant’s Counsel” or “Defense Counsel” refers to Eric J. Gitig and Douglas Johnston of Jackson Lewis P.C.

12. “Effective Date” The term “Effective Date” means the latter of (a) the Court’s final approval of the settlement if no objections by or on behalf of Class Members have been filed and not withdrawn; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed. “

13. “Final” means that the Settlement has been granted “Final Approval” by the Court and the “Effective Date” has occurred.

14. “Final Approval” refers to the order of the Court granting final approval of this Settlement Agreement and entering a judgment approving this Settlement on substantially the same terms provided herein or as may be modified by subsequent agreement of the Parties or order of the Court.

15. “Final Settlement Class” and “Final Settlement Class Member” refers to all persons who are or were previously employed by Defendant in California classified as a non-exempt employee during the Class Period, and who do not opt out of the Settlement.

16. “Individual Settlement Amount” shall have the meaning ascribed to it in Paragraph 47(d) below.

1 17. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 47(c)
2 below.

3 18. “Notice” means the notice of the proposed settlement of class action and PAGA
4 Settlement and the setting of a Final Approval Hearing that will be sent to the Settlement Class
5 Members.

6 19. “Notice Response Deadline” is 45 calendar days from the date the Notice is mailed
7 to the Settlement Class Members.

8 20. “Objecting Settlement Class Member” means a Settlement Class Member, other
9 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with
10 respect to the Class Claims pursuant to Paragraph 68(a) below.

11 21. “PAGA” shall refer to the California Labor Code Private Attorneys General Act
12 of 2004, California Labor Code Sections 2698-2699.5.

13 22. "PAGA Claims" or "Released PAGA Claims" means any and all claims for civil
14 penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), as
15 set forth in Labor Code section 2698 et seq., that were alleged or reasonably could have been
16 alleged based on the facts stated in the Complaint and the PAGA Notice during the PAGA Period,
17 including but not limited to claims for: (1) failure to pay minimum and overtime wages; (2) failure
18 to provide meal periods or pay premium wages in lieu thereof; (3) failure to authorize and permit
19 rest periods or pay premium wages in lieu thereof; (4) failure to timely pay all wages due upon
20 separation of employment; (5) failure to furnish accurate itemized wage statements; (6) failure to
21 reimburse necessary business expenses; (7) failure to pay sick pay wages; (8) unfair or unlawful
22 business practices; and (9) civil penalties for violations of California Labor Code sections 201–
23 204, 210, 218.5, 218.6, 221, 226, 226.3, 226.7, 227.3, 246, 2802–2804, 510, 512, 516, 558, 1174,
24 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, and Civil Code sections 3287 and 3289.

25 23. “PAGA Employees” include all persons who are or were previously employed by
26 Defendant in California classified as a non-exempt or hourly employee at any time from May 6,
27 2023, through the date of the Preliminary Approval Order.
28

24. “PAGA Notice” shall refer to the notice sent by Plaintiff, by and through counsel, on or about May 6, 2024, to the LWDA and Defendant, alleging that Defendant engaged in violations of the California Labor Code and California Wage Order(s).

25. “PAGA Period” and “PAGA Release Period” shall mean from May 6, 2023, through the date of the Preliminary Approval Order.

26. “Participating Class Member” means any and all Settlement Class Members who do not opt out of the settlement of the Class Claims by timely submitting valid Requests for Exclusion.

27. “Parties” or “Settling Parties” means Plaintiff, the Settlement Class Members, the PAGA Employees, and Defendant, collectively.

28. “Preliminary Approval Date” means the date the Court preliminarily approves the Settlement Agreement and the exhibits thereto and enters the Preliminary Approval Order.

29. “Preliminary Approval Order” means the judicial Order to be entered by the Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement and providing for the issuance of the Notice to the Settlement Class Members, an opportunity to opt out of settlement of the Class Claims, an opportunity to submit timely objections to the terms of this Settlement related to the Class Claims, and setting a hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and costs.

30. “QSF” means the Qualified Settlement Fund set up by the Settlement Administrator for the benefit of the Final Settlement Class, and from which the settlement payments shall be made, and which is intended to be a fund that qualifies under Internal Revenue Code Section 468.

31. “Release” shall mean the release and discharge of the Class Claims by Plaintiff and all of the Participating Class Members and the release and discharge of the PAGA Claims by Plaintiff and all of the PAGA Employees.

32. “Released Parties” shall refer to Kaiser Enterprises, Inc., and any of its past, present, and future direct or indirect parents, subsidiaries, predecessors, successors, and affiliates, as well as each of their past, present, and future officers, directors, employees, partners, members,

shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendant.

33. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 68(a) below.

34. “Service Payment” or “Service Award” means the amounts approved by the Court to be paid to the Class Representative in addition to his Individual Settlement Amount as a Participating Class Member.

35. “Settlement Administration Costs” means the actual and direct fees and expenses reasonably incurred by the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, due diligence, reporting and remittance obligations, distributing the Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs shall be paid from the Settlement Amount.

36. “Settlement Administrator” means and refers to ILYM Group, Inc., which will provide the Notice to the Class Members and perform all duties relating to the administration of the Settlement as described in this Agreement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs shall be paid from the Settlement Amount, including, if necessary, any such costs in excess of the amount represented by the Settlement Administrator as being the maximum costs necessary to administer the Settlement.

37. “Settlement Amount” or “Gross Settlement Amount” shall have the meaning ascribed to it in Paragraph 47(a) below.

38. “Settlement Class Member” or “Class Member” refers to individual members of the Settlement Class.

39. “Settlement Class” and “Settlement Class Members” refer to all persons who are or were previously employed by Defendant in California classified as a non-exempt employee during the Class Period.

40. “Workweeks” for each Settlement Class Member and PAGA Employee means any workweek during the Class Period and/or the PAGA Period, as applicable, in which the Settlement Class Member and/or PAGA Employee was employed by Defendant as a non-exempt employee in California and worked at least one shift during the workweek for or on behalf of Defendant for which a prior release of claims has not been signed. Workweeks will be calculated based on the Defendant’s business records. This information shall be treated as confidential. Workweeks of Non-Participating Class Members will not be included in the total number of Workweeks that are reported to the Settlement Administrator to calculate and distribute Individual Settlement Payments to Participating Class Members. The number of full workweeks that a Participating Class Member was on a leave of absence, sick time, or vacation during the Class Period shall be excluded from the total number of Workweeks.

B. General Terms

41. On or about May 8, 2024, Plaintiff filed a class action complaint in the Court against Defendant, including allegations of: (1) failure to pay overtime wages, (2) meal period violations, (3) rest period violations, (4) failure to pay all sick time, (5) wage statement violations, (6) waiting time penalties, (7) failure to reimburse necessary business expenses, and (8) unfair competition. On July 10, 2024, Plaintiff filed a First Amended Complaint to add a cause of action for PAGA penalties based on the foregoing Labor Code violations.

42. Defendant denies Plaintiff’s claims and allegations and contends that the Action is not suitable for class certification and/or representative treatment.

43. Class Representative believes he can proceed with their class, and representative claims that the Action is meritorious and that class certification is appropriate.

44. The Parties have thoroughly investigated the facts of the Action. This includes conducting an extensive exchange of informal discovery, including Defendant’s written policies and practices, and producing payroll and timekeeping records for Settlement Class Members and PAGA Employees. Class Counsel is both knowledgeable about and has done extensive research with respect to the applicable law and potential defenses to the claims of the Settlement Class Members and PAGA Employees. Class Counsel has diligently investigated the Class Members’

1 claims against Defendant. Based on the foregoing data and their own independent investigation
2 and evaluation, Class Counsel is of the opinion that the settlement with Defendant for the
3 consideration and on the terms outlined in this Settlement Agreement is fair, reasonable, and
4 adequate and is in the best interest of the Settlement Class Members and PAGA Employees in
5 light of all known facts and circumstances, including the risk of significant delay and uncertainty
6 associated with litigation, various defenses asserted by Defendant, and numerous potential
7 appellate issues.

8 45. On February 25, 2025, the Parties participated in mediation before Tagore
9 Subramaniam, Esq., an experienced class action mediator. After a full-day mediation and the
10 issuance of a mediator's proposal, the Parties reached a settlement.

11 46. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
12 to be performed or judgments to be entered pursuant to the terms of the Settlement and Agreement
13 shall be construed as an admission by Defendant of any wrongdoing or violation of any statute or
14 law or liability on the claims or allegations in the Action.

15 47. Stipulation for Class Certification and Representative Treatment. For settlement
16 purposes only, Defendant will stipulate that the Settlement Class Members described herein who
17 do not Request Exclusion from the Settlement Class may be conditionally certified as a settlement
18 class and that the PAGA Employees are appropriate for representative treatment for settlement
19 purposes. This stipulation to certification and representative treatment is in no way an admission
20 that class action certification and/or representative treatment is proper and shall not be admissible
21 in this or any other action except for enforcing this Agreement. Should, for whatever reason, the
22 Court fail to issue Final Approval, the Parties' stipulation to class certification and representative
23 treatment as part of the Settlement shall become null and void *ab initio* and shall have no bearing
24 on and shall not be admissible in connection with the issue of whether or not class certification
25 and/or representative treatment would be appropriate in a non-settlement context. Defendant
26 expressly reserves its right and declares that it will continue to oppose class certification,
27 representative treatment, and the substantive merits of the case should the Court fail to issue Final
28 Approval. Plaintiff expressly reserve their rights and declare that they will continue to pursue

1 class certification, representative treatment, and a trial should the Court fail to issue Final
2 Approval.

3 **C. Terms of Settlement**

4 48. The financial terms of the Settlement are as follows:

5 (a) Settlement Amount: The Parties agree to settle this Action for Three Hundred
6 Thousand Dollars (\$300,000) ("the Settlement Amount"). The Settlement Amount is the
7 maximum amount that will be paid by the Defendant and includes Individual Settlement
8 Amounts, attorneys' fees of Class Counsel, costs and expenses, the Service Payment to the Class
9 Representative, all Settlement Administration Costs, and payment to the Labor Workforce
10 Development Agency (LWDA) for PAGA penalties. Defendant shall separately pay the
11 employer's share of applicable payroll taxes.

12 (b) Based on its records, Defendant estimates that, as of the date of mediation, the
13 Class Members worked approximately 13,424 Workweeks during the Class Period. If, at the end
14 of the Class Period, the actual total Workweeks worked by Class Members during the Class Period
15 exceeds this figure by 10% (i.e., if there are 14,767 or more total Workweeks), Defendant, at its
16 sole discretion, shall either: (i) increase the Gross Settlement Amount on a proportional basis for
17 those workweeks worked in excess of 10% of the current 13,424 estimate, i.e., if there are 15,767
18 total Workweeks, Defendant shall increase the Gross Settlement Amount by \$22,350 (\$22.35 per
19 Workweek x 1,000 Workweeks), or (ii) elect to cut off the Class Period as of the date the total
20 Workweeks worked by Class Members during the Class Period does not exceed 14,767 (i.e., so
21 that the total workweeks is at or below 14,766). Defendant shall advise Plaintiff's Counsel of the
22 total number of Workweeks and its election prior to Notices being issued. (c) Net

23 Settlement Amount: The "Net Settlement Amount" is defined as the Settlement Amount less
24 attorneys' fees and litigation costs as approved and awarded by the Court, the Service Payments
25 to Class Representative as approved and awarded by the Court, the Settlement Administration
26 Costs, as approved and awarded by the Court, and the Ten Thousand Dollars (\$10,000.00)
27 allocated to payment for PAGA penalties as described in paragraph 47(d) below. If the Court
28 reduces the attorneys' fees and litigation costs or Service Awards, Settlement Administration

Costs, or either increases or decreases the amount allocated to PAGA penalties, the Net Settlement Sum shall be increased or decreased accordingly. Any Court order awarding less than the below allocations of the Settlement Amount shall not be grounds to rescind the Settlement Agreement or otherwise void the Settlement.

(d) Individual Settlement Amounts for the Settlement Class: The Settlement Administrator will use the Class Data provided by Defendant to calculate each Participating Class Member's and PAGA Employee's Individual Settlement Amounts based on the following formula:

i. PAGA Amount: \$10,000 of the Gross Settlement Amount has been designated to the PAGA claims. Twenty-five percent (25%) of the \$10,000, or \$2,500, shall be paid to PAGA Employees. Each PAGA Employee shall receive a portion of the \$2,500 proportionate to the number of Workweeks by the PAGA Employees during the PAGA Period compared to the total number of Workweeks by all PAGA Employees during the PAGA Period. PAGA Employees shall have their settlement amount for the Released PAGA claims paid one hundred percent (100%) as alleged civil penalties for which no taxes will be withheld and for which the Settlement Administrator will issue a Form 1099.

ii. Class Amount: The Net Settlement Amount shall be allocated to each Participating Class Member based on his/her/their proportionate Workweeks during the Class Period. This is determined by multiplying the Net Settlement Amount by a fraction, the numerator of which is the Participating Class Member's total Workweeks during the Class Period, and the denominator of which is the total Workweeks by all Participating Class Members during the Class Period. If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Amounts for each Participating Class Member so that the amount distributed to Participating Class Members equals 100% of the Net Settlement Amount allocated toward Released Class Claims.

(e) Allocation of Individual Settlement Amounts: The Individual Settlement Amounts will be allocated for tax purposes based on the allegations in the Action as follows: twenty percent (20%) will be paid as alleged wages subject to withholding of all applicable local, state, and

1 federal taxes; and eighty percent (80%) will be paid as alleged interest and as penalties (pursuant
2 to, e.g., California Labor Code sections 203, 226) from which no taxes will be withheld. The
3 Settlement Administrator will issue to each Participating Class Member an Internal Revenue
4 Service Form W-2 and comparable state forms concerning the wage allocation and a Form 1099
5 concerning the penalties and interest allocations.

6 (f) Service Payments to Class Representative: The amount awarded to the Class
7 Representative as Service Payments will be set by the Court in its discretion, not to exceed
8 \$10,000. Defendant agrees not to oppose this request. The Service Payments to Class
9 Representative will be paid from the Gross Settlement Amount. Class Representative will be
10 issued IRS Form 1099 in connection with this payment. Plaintiff shall be solely and legally
11 responsible for paying any and all applicable taxes on this payment. The Parties agree that any
12 amount awarded by the Court as the Service Payments to Plaintiff less than the requested amount
13 shall not be a basis for Plaintiff or Class Counsel to void this Stipulation. Should the Court
14 approve a lesser amount for the Service Payments, the difference shall be added to the Net
15 Settlement Amount to be distributed to the Participating Class Members. In the event of any
16 appeal of the amount of the service awards (if any) approved by the Court, if, after the exhaustion
17 of any such appellate review, additional amounts not awarded to the Class Representative shall
18 be added to the Net Settlement Amount to be distributed to the Participating Class Members.

19 (g) Class Counsel's Attorneys' Fees and Costs: Defendant agrees not to oppose a
20 request by Class Counsel to the Court for an award of attorneys' fees of one-third (33.33%) of
21 the Settlement Amount, plus reasonable litigation costs not to exceed \$25,000 ("Attorneys' Fees
22 and Costs Award"). For purposes of this Settlement, Defendant agrees not to oppose any
23 contention by Class Counsel that attorneys' fees should be based on the common fund theory.
24 The Attorneys' Fees and Costs Award shall be paid from the Gross Settlement Amount, and
25 except for this award, Defendant shall have no further obligation to pay any attorneys' fees, costs,
26 or expenses to Class Counsel. Should the Court approve a lesser amount than what is sought by
27 Class Counsel, the difference shall be added to the Net Settlement Amount to be distributed to
28 the Participating Class Members. Any Court order awarding less than the amount sought by Class

Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. In the event of any appeal of the amount of the awards of attorneys' fees and costs (if any) approved by the Court, final funding and administration of the portion of the attorneys' fees and/or costs award in dispute will be segregated and stayed pending the exhaustion of appellate review. If, after the exhaustion of any such appellate review, additional amounts not awarded to as attorneys' fees and costs shall be added to the Net Settlement Amount to be distributed to the Participating Class Members and/or PAGA Employees. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the Court. Class Counsel agrees that any allocation of fees between or among Class Counsel and any other attorney representing or claiming to represent the Class Members shall be the sole responsibility of Class Counsel.

(h) Settlement Administration Costs: The fees and other charges of the Settlement Administrator will be paid from the Gross Settlement Amount, not to exceed \$5,000, subject to Court approval, unless approved by all Parties and the Court.

(i) PAGA Penalties: The Parties agree that \$10,000 is allocated to alleged PAGA Penalties and will be paid from the Gross Settlement Amount, subject to Court approval. Of this amount, \$7,500 (75%) shall be paid to the LWDA in satisfaction of Plaintiff's claims for civil penalties under the PAGA, and \$2,500 (25%) will be included in the Individual Settlement Amounts, payable to the PAGA Employees as set forth in Paragraph 47(d).

(j) Tax Liability: Class Counsel, Defendant, and Defendant's Counsel make no representations as to the tax treatment or legal effect of Settlement Amounts called for hereunder, and Plaintiff and the Settlement Class Members are not relying on any statement or representation by Class Counsel, Defendant, or Defendant's Counsel in this regard. Plaintiff and Final Settlement Class Members understand and agree that they will be solely responsible for paying any taxes and penalties assessed on their respective Settlement Amounts described herein. Income tax withholding will also be made pursuant to applicable federal, state, and/or local withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement.

1 If the Code, the regulations promulgated thereunder, or other applicable tax law are changed after
2 the date of this Agreement, the processes set forth in this Section may be modified to bring
3 Defendant into compliance with any such changes.

4 49. “Non-Reversionary” Settlement. This is a “non-reversionary” settlement. Under
5 no circumstances will any portion of the Settlement Amount revert to Defendant. Final Settlement
6 Class Members will not have to make a claim to receive an Individual Settlement Amount. In the
7 form of Individual Settlement Amounts, Distributions will be made directly to each Final
8 Settlement Class Member. The Settlement Administrator shall be responsible for accurately and
9 timely reporting any remittance obligations with respect to unclaimed funds as a result of a Final
10 Settlement Class Member not cashing an Individual Settlement Amount by the check cashing
11 deadline, as set forth herein.

12 50. Class Counsel and Plaintiff believe that the Settlement is fair, reasonable, and
13 adequate and will so represent same to the Court.

14 **D. Release by Plaintiff and the Final Settlement Class**

15 51. Upon the Effective Date of this Settlement, Plaintiff and each Participating Class
16 Member, for themselves and their respective spouses, domestic partners, marital community,
17 children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors,
18 administrators, trustees, conservators, guardians, assigns, and Representative, will forever
19 completely release and discharge the Released Parties from all claims under state, federal or local
20 law, whether statutory, common law or administrative law, arising out of or related to allegations
21 set forth in the Operative Complaint, including but not limited to claims for failure to pay overtime
22 wages, failure to provide meal periods or pay premium wages in lieu thereof, failure to authorize
23 and permit rest periods or pay premium wages in lieu thereof, failure to pay sick wages, failure
24 to timely pay final wages upon separation of employment, failure to furnish accurate itemized
25 wage statements, failure to reimburse necessary business expenses, unfair or unlawful business
26 practices, and claims for statutory penalties under California Labor Code sections 201–204, 210,
27 218.5, 218.6, 221, 226, 226.3, 226.7, 227.3, 246, 2802, 510, 512, 516, 558, 1174, 1174.5, 1194,
28 1194.2, 1197, 1197.1, 1198, 1199; 2802, Civil Code sections 3287 and 3289, and Business and

Professions Code section 17200 et seq, including, but not limited to, claims for injunctive relief, liquidated damages, penalties of any nature, interest, fees, costs; and all other claims and allegations made or which could have been made in the Action based on the facts and allegations pled in the Operative Complaint during the Class Period.

52. Each Participating Class Member will be deemed to have made the foregoing Release as if by manually signing it.

53. Upon the Effective Date of this Settlement, Plaintiff, the LWDA, and each PAGA Employee, for themselves and their respective spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and Representative, will forever completely release and discharge all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts and allegations set forth in the Operative Complaint and Plaintiff's PAGA Notice, including but not limited to claims for failure to pay overtime wages, failure to provide meal periods or pay premium wages in lieu thereof, failure to authorize and permit rest periods or pay premium wages in lieu thereof, failure to pay sick wages, failure to timely pay final wages upon separation of employment, failure to furnish accurate itemized wage statements, and failure to reimburse necessary business expenses. .

54. Plaintiff, PAGA Employees, and the LWDA will be deemed to have made the foregoing Release as if by manually signing it.

55. Plaintiff and Defendant intend that the Settlement described in this Agreement will release and preclude any claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Participating Class Members to obtain a recovery based on, arising out of, and/or related to any and all of the Released Class Claims. The Settlement Class Members shall be notified in the Notice. This paragraph does not apply to any Settlement Class Member who timely and validly opts out of the Settlement for purposes of Class Claims.

56. Plaintiff and Defendant intend that the Settlement described in this Agreement will release and preclude any claim, whether by lawsuit, administrative claim or action, arbitration,

1 demand, or other action of any kind, by each and all of the PAGA Employees and the LWDA to
2 obtain a recovery based on, arising out of, and/or related to any and all of the Released PAGA
3 Claims. The PAGA Employees and the LWDA shall be notified in the Notice. The Parties agree
4 that there is no statutory right for any PAGA Employee to opt out or otherwise exclude himself
5 or herself from the PAGA Settlement and corresponding release of PAGA claims described in
6 Paragraph 53.

7 57. Class Representative, on behalf of himself and the Participating Settlement Class
8 Members, acknowledge and agree that the claims for unpaid wages and unreimbursed expenses
9 in the Action, inaccurate wage statements, and untimely payment of wages in the Action, are
10 disputed and that the payments set forth herein constitute payment of all sums allegedly due to
11 them. Class Representative, on behalf of himself and the Participating Settlement Class Members,
12 acknowledge and agree that California Labor Code Section 206.5 does not apply to the Parties
13 hereto. Section 206.5 provides in pertinent part as follows:

14 An employer shall not require the execution of any release of any claim or right on
15 account of wages due, or to become due, or made as an advance on wages to be
16 earned unless payment of those wages has been made.

17 **E. General Release by Plaintiff**

18 58. With the exception of Plaintiff's claims that cannot be released as matter of law,
19 such as claims for workers' compensation, and in addition to Class Representative release of the
20 Released Class Claims and Released PAGA Claims, as discussed in Paragraphs 51 and 53 above,
21 Class Representative does hereby, for himself and for his respective spouse, domestic partner,
22 marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees,
23 legatees, executors, administrators, trustees, conservators, guardians, assigns, and Representative,
24 forever completely releases and discharges the Released Parties from any and all charges,
25 complaints, claims, liabilities, obligations, promises, agreements, contracts, controversies,
26 damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses
27 (including for back wages, statutory penalties, civil penalties, liquidated damages, exemplary
28 damages, interest, attorneys' fees, and costs) of any nature whatsoever, from the beginning of

1 time through the execution of this Settlement Agreement, whether known or unknown, suspected
2 or unsuspected, concealed or hidden, including but not limited to all claims arising out of, based
3 upon, or relating to Class Representative' employment with Defendant or the remuneration for or
4 termination of such employment (collectively, the "Class Representative' Claims").

5 59. Class Representative expressly waives and relinquishes all rights and benefits
6 afforded by Section 1542 of the Civil Code of the State of California, understanding and
7 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of
8 the State of California states:

9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
10 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
11 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
12 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
13 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
14 DEBTOR OR RELEASED PARTY.

15 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and
16 complete release and discharge of all parties, Class Representative and Class Counsel expressly
17 acknowledge that this Settlement Agreement is intended to include in its effect, without
18 limitation, all claims that Class Representative knew of, as well as all claims that they do not
19 know or suspect to exist in their favor against the Released Parties, or any of them, for the time
20 period from the beginning of time to the execution of this Settlement Agreement, and that this
21 Settlement Agreement contemplates the extinguishment of any such Class Representative's
22 claims.

23 **F. Interim Stay of Proceedings**

24 60. Pending completion of all prerequisites necessary to effectuate this Settlement, the
25 Parties agree, subject to Court approval, to a stay of all proceedings in the Action except such as
26 are necessary to effectuate the Settlement, including amending the Complaint.

27 **G. Notice Process**

28 61. Appointment of Settlement Administrator. The Parties have agreed to the
appointment of the Settlement Administrator to perform the duties of a settlement administrator,

1 including mailing the Notice, using standard devices to obtain forwarding addresses,
2 independently reviewing and verifying documentation associated with any claims or opt-out
3 requests, resolving any disputes regarding the calculation or application of the formula for
4 determining the Individual Settlement Amounts, drafting and mailing the settlement checks to
5 Final Settlement Class Members, issuing Forms W-2 and 1099, reporting to taxing authorities,
6 due diligence, reporting and remittance obligations, and performing such other tasks as set forth
7 herein or as the Parties mutually agree or that the Court orders.

8 62. Disputes Regarding Settlement Administration. Any and all disputes relating to
9 the administration of the Settlement by the Settlement Administrator (except for disputes
10 regarding Class Data) shall be referred to the Court, if necessary, which will have continuing
11 jurisdiction over the terms and conditions of this Settlement Agreement until Plaintiff and
12 Defendant notify the Court that all payments and obligations contemplated by this Settlement
13 Agreement have been fully carried out. Before presenting any issue to the Court, counsel for the
14 Parties will confer in good faith to resolve the dispute without the necessity of Court intervention.
15 The Settlement Administrator shall also be responsible for issuing to Plaintiff, Final Settlement
16 Class Members, and Class Counsel any Forms W-2, Forms 1099, or other Tax Forms as may be
17 required by law for all amounts paid pursuant to this Agreement. The Settlement Administrator
18 shall also be responsible for setting up all necessary tax accounts and forwarding all payroll taxes
19 and penalties to the appropriate government authorities.

20 63. Class Data. Within thirty (30) days after the Preliminary Approval Order entry,
21 Defendant shall provide the Class Data to the Settlement Administrator. The Settlement
22 Administrator will check the Class Members' addresses against those on file with the U.S. Postal
23 Service's National Change of Address List. The Class Data provided to the Settlement
24 Administrator will not be provided to Class Counsel, and it will remain confidential; it shall be
25 used solely to administer the Settlement, and it will not be used or disclosed to anyone except as
26 required by applicable tax authorities, absent Defendant's express written consent, or by order of
27 the Court.

28 64. Notice. The Notice, as approved by the Court, shall be sent by the Settlement

1 Administrator to the Settlement Class Members by first-class mail, in English, within fourteen
2 (14) calendar days following the Settlement Administrator's receipt of the Class Data. The
3 Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding
4 addresses of Settlement Class Members if any notices are returned.

5 65. Returned Notices. The Settlement Administrator will take steps to ensure that the
6 Notice is received by all Settlement Class Members, including utilization of the National Change
7 of Address Database maintained by the United States Postal Service, to review the accuracy of
8 and, if possible, update a mailing address. Notices will be re-mailed to any Settlement Class
9 Member for whom an updated address is located within ten (10) calendar days following the
10 Settlement Administrator's learning of the failed mailing and its receipt of the updated address.
11 The Notice shall be identical to the original Notice, except that it shall notify the Settlement Class
12 Member that the exclusion (opt-out) request or objection must be returned by the later of the
13 Notice Response Deadline or fifteen (15) days after remailing the Notice.

14 66. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
15 if an envelope has not been returned within thirty (30) days of the mailing the Settlement Class
16 Member received the Notice.

17 67. Disputes Regarding Class Data. Settlement Class Members are deemed to
18 participate in the Settlement unless they opt out. The Notice will inform Settlement Class
19 Members of his/her/their estimated Individual Settlement Amount and the number of Workweeks
20 during the Class Period and the PAGA Period. Settlement Class Members may dispute their
21 Workweeks if they believe they were employed more workweeks in the Class Period in California
22 than the Defendant's records show by timely submitting evidence to the Settlement
23 Administrator. Defendant's records will be presumed determinative absent reliable evidence to
24 rebut the Defendant's records, but the Settlement Administrator will evaluate the evidence
25 submitted by the Settlement Class Member and provide the evidence submitted to Defense
26 Counsel. The Administrator's determination of each Class Member's allocation of Workweeks
27 and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The
28 Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or

1 Pay Periods to Defense Counsel and shall promptly provide Defense Counsel and Class Counsel
2 of the Administrator's determination of the challenges. If the Settlement Administrator increases
3 the number of Workweeks for any Settlement Class Member, then the Settlement Administrator
4 will recalculate the Participating Class Members' Individual Settlement Amounts; accordingly,
5 in no event will Defendant be required to increase the Gross Settlement Amount.

6 68. Declaration of Due Diligence. The Settlement Administrator shall provide counsel
7 for the Parties, at least twenty-five (25) days before the final approval hearing, a declaration of
8 due diligence and proof of mailing with regard to the mailing of the Notice.

9 69. Settlement Class Members' Rights. Each Settlement Class Member will be fully
10 advised of the Settlement, the ability to object to the provisions in the Settlement related to the
11 Class Claims, and the ability to opt-out or request exclusion from the Class Claims provisions of
12 the Settlement. The Notice will inform the Settlement Class Members of the Court-established
13 deadlines for filing objections or requesting exclusion from the Class Claims provisions of the
14 Settlement in accordance with the following guidelines:

15 (a) Requests for Exclusion from Participating Settlement Class. Any
16 Settlement Class Member, other than Plaintiff, may request to be excluded from the Participating
17 Settlement Class by submitting a "Request for Exclusion" to the Settlement Administrator,
18 postmarked on or before the Notice Response Deadline. The Request for Exclusion should be
19 stated in words to this effect:

20
21 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN
22 THE KILMADE V. KAISER ENTERPRISES LAWSUIT. I
23 UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE
24 SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM
THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT.

25 Any Request for Exclusion must include the full name, address, last four digits of the
26 social security number, and signature of the Settlement Class Member requesting exclusion. The
27 Request for Exclusion must be returned by mail to the Settlement Administrator at the specified
28 address. Any such Request must be made in accordance with the terms set forth in the Notice. A

1 Request for Exclusion will be timely only if postmarked by the Notice Response Deadline unless
2 the Parties agree in writing. Any Settlement Class Member who timely requests exclusion in
3 compliance with these requirements: (i) will not have any rights under this Agreement with
4 respect to the Class Claims, including the right to object, appeal, or comment on the Settlement;
5 (ii) will not be entitled to receive any payments under this Agreement with respect to Class
6 Claims; and (iii) will not be bound by this Agreement, or the Judgment, with respect to the Class
7 Claims. However, a Settlement Class Member who timely requests exclusion in compliance with
8 the requirements described above will remain a PAGA Employee, will continue to receive
9 his/her/their portion of the PAGA Settlement, and will remain bound by the PAGA Release.

10 (b) Binding Effect on Participating Settlement Class Members. Except for
11 those Settlement Class Members who exclude themselves in compliance with the procedures set
12 forth above, all Settlement Class Members will: (i) be deemed to be Final Settlement Class
13 Members for all purposes under this Agreement; (ii) will be bound by the terms and conditions
14 of this Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise
15 provided herein, will be deemed to have waived all objections and oppositions to the fairness,
16 reasonableness, and adequacy of the Settlement.

17 (c) Objections to Settlement of Class Claims. Any Settlement Class Member,
18 other than Plaintiff, may object to the terms of this Agreement with respect to the Class Claims
19 and may appear at the Final Approval Hearing and object whether or not they have filed a written
20 objection as outlined herein. To object, a Settlement Class Member shall inform the Settlement
21 Administrator, in writing, of his/her/their objection, which must be postmarked by the Notice
22 Response Deadline at the address set forth in the Notice. Such objection shall include the full
23 name, address, dates of employment with Defendant of the Objecting Settlement Class Member,
24 the case name and number, the basis for the objection. The Settlement Administrator shall provide
25 objections, if any, to Class Counsel and Defense Counsel within three (3) days of receipt, and the
26 Settlement Administrator shall attach the same to its declaration of due diligence filed with the
27 Court before the Final Approval Hearing. Any Participating Class Member who files an objection
28 remains eligible to receive monetary compensation from the Settlement. Plaintiff and Defendant

1 shall not be responsible for any fees, costs, or expenses incurred by any Class Member and/or
2 his/her/their counsel related to any objections to the Settlement. Submitting an objection does not
3 preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming
4 a party of record by timely and properly intervening or filing a motion to vacate the judgment
5 under Code of Civil Procedure section 663. Settlement Class Members and PAGA Employees
6 may not object to or opt out of the Settlement with respect to the PAGA Claims.

7 (d) Failure to Object. Any Settlement Class Member who desires to object
8 with respect to the Class Claims but fails to submit a written objection timely waives any right to
9 object will be foreclosed from making any objection to this Settlement. Any Settlement Class
10 Member who does not timely and properly become a party of record by intervening or filing a
11 motion to vacate the judgment waives any and all rights to appeal from the Judgment, including
12 all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate
13 judgment, motion for new trial, a motion under California Code of Civil Procedure section 473,
14 and extraordinary writs.

15 (e) Responses to Objections. Counsel for the Parties may file a response to any
16 objections submitted by Objecting Settlement Class Members at least five (5) court days before
17 the date of the Final Approval Hearing.

18 70. Settlement Class Members will have until the Notice Response Deadline to object
19 or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement
20 Administrator shall disclose jointly to Class Counsel and Defendant's counsel what objections or
21 Requests for Exclusion were timely submitted every week and upon the request of Class Counsel
22 or Defense Counsel.

23 71. Funding of the Settlement Amount. Defendant shall fund the Settlement by: (i)
24 making an initial payment of One Hundred Thousand Dollars (\$100,000) within 10 days of the
25 Effective Date; and (ii) funding the remaining Settlement Amount, plus its share of employer
26 payroll taxes as calculated and directed by the Settlement Administrator, within six (6) months of
27 the Effective Date.

28 72. Qualified Settlement Fund. The Qualified Settlement Fund shall be established at

1 a federally insured bank acceptable to the Defendant and the Settlement Administrator. The
2 Parties agree that the Qualified Settlement Fund is intended to be a “Qualified Settlement Fund”
3 under section 468B of the Code and Treas. Reg. §1.468B-1, 26 CFR § 1.468B-1, *et seq.*, and will
4 be administered by the Settlement Administrator as such. With respect to the Qualified
5 Settlement Fund, the Settlement Administrator shall: (1) open and administer a Settlement
6 Account in such a manner as to qualify and maintain the qualification of the Qualified Settlement
7 Fund as a “Qualified Settlement Fund” under Section 468B of the Code and Treas. Reg. §1.468B-
8 1; (2) calculate, withhold, remit and report each Participating Class Member’s share of applicable
9 payroll taxes (including, without limitation, federal, state and local income tax withholding,
10 FICA, Medicare and any state or local employment taxes), and indemnify Defendant for any
11 penalty arising out of any error or incorrect calculation and/or interest with respect to any late
12 deposit of the same; (3) calculate and cooperate with Defendant to remit and to permit Defendant
13 to report Defendant’s share of applicable taxes (including, without limitation, federal, state and
14 local income tax withholding, FICA, Medicare, unemployment insurance, employment training
15 tax, state disability insurance and any state or local employment taxes), and indemnify Defendant
16 for any penalty arising out of any error or incorrect calculation and/or interest with respect to the
17 same; (4) satisfy all federal, state and local income and other tax reporting, return, and filing
18 requirements with respect to the Qualified Settlement Fund and any interest or other income
19 earned by the Qualified Settlement Fund; and (5) satisfy out of the Qualified Settlement Fund all
20 (i) taxes (including any estimated taxes, interest or penalties) with respect to the interest or other
21 income earned by the Qualified Settlement Fund, if any, and (ii) fees, expenses and costs incurred
22 in connection with the opening and administration of the Qualified Settlement Fund and the
23 performance of its duties and functions as described in this Agreement. The aforementioned
24 taxes, fees, costs, and expenses shall be treated as and included in the costs of administering the
25 Qualified Settlement Fund and Settlement Administration Costs. The Parties and the Settlement
26 Administrator shall treat the Qualified Settlement Fund as coming into existence as a Qualified
27 Settlement Fund on the earliest date permitted as set forth in 26 CFR §1.468B-1(j)(2)(i), and such
28 election statement shall be attached to the appropriate returns as required by 26 CFR §1.468B-

1 1(j)(2)(ii). The Parties agree to cooperate with the Settlement Administrator and one another to
2 the extent reasonably necessary to carry out the provisions of this Section.

3 73. Distribution of Funds. No later than ten (10) calendar days after the Settlement is
4 fully funded, the Settlement Administrator will mail the payments to the Participating Class
5 Members, the payment for the attorneys' fees and costs to Class Counsel, any Service Payment
6 to the Class Representative, the payment to the LWDA for PAGA penalties, and will pay itself
7 the Settlement Administration Costs.

8 74. Deadline for Cashing Settlement Checks. Final Settlement Class Members shall
9 have 180 calendar days after mailing by the Settlement Administrator to cash their settlement
10 checks. If any Final Settlement Class Member's check is not cashed within that period, the check
11 will be void, and a stop-payment will be issued. For any Class Member whose Individual Class
12 Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date,
13 the Administrator shall transmit the funds represented by such checks to the California
14 Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no
15 "unpaid residue" subject to the requirements of California Code of Civil Procedure § 384(b). The
16 release will be binding upon all Final Settlement Class Members who do not cash their checks
17 within the 180-day period. If any settlement check is returned to the Settlement Administrator
18 within 180 days of mailing, the Settlement Administrator will, within five (5) business days of
19 receipt of the returned settlement check, perform a skip trace to locate the individual. If a new
20 address is located by these means, the Administrator will have ten (10) business days to re-issue
21 the check and notify Defense Counsel and Class Counsel that a re-issued check has been sent.
22 Neither the Defendant, defense counsel, Class Counsel, Plaintiff, or settlement administrator will
23 have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or
24 unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event that a
25 Final Settlement Class Member notifies the Settlement Administrator that he/she/they believe that
26 a settlement check has been lost or stolen, the Settlement Administrator shall immediately stop
27 payment on such check. If the check-in question has not been negotiated before the stop payment
28 order, the Settlement Administrator will issue a replacement check.

75. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on mailings, distributions, payments, or reports made in accordance with or pursuant to this Agreement. This provision does not, however, prevent a Party from seeking enforcement of this Agreement.

76. Without prejudice to any other remedies, the Settlement Administrator shall agree to be responsible for any breach of its obligations (whether committed by the Settlement Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from and against all liabilities, claims, causes of action, costs and expenses (including legal fees and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

77. The payment of Individual Settlement Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

H. Duties of the Parties Prior to the Court's Approval

78. Upon completion of the execution of this Settlement Agreement, Plaintiff will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

(a) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable, and adequate as to the Class Members and a hearing on fees, costs, and the Service Payment;

(b) Approving as to form and content of the proposed Notice;

(c) Directing the mailing of the Notice by first class mail to the Settlement Class Members;

(d) Preliminarily approving this Settlement; and

(e) Preliminarily certifying the class for purposes of this Settlement.

Plaintiff counsel shall provide a draft of the motion for preliminary approval of the settlement to Defendant's counsel for review and comment prior to filing it. The Proposed Preliminary Approval Order is to be mutually agreed upon by the Parties prior to Plaintiff filing the Proposed Order with the Court. Plaintiff will also provide Defendant with the opportunity to

review and comment upon drafts of all other pleadings to be filed in connection with the Motion for Preliminary Approval (e.g., notice of motion, memorandum of points and authorities, and supporting declarations) at least seven (7) days prior to filing the Preliminary Approval motion with the Court. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Preliminary Approval prior to Plaintiff filing the Motion with the Court. Good faith efforts will be made to have the preliminary approval hearing within 60 days of execution of this Settlement Agreement.

79. Prior to filing the Motion for Preliminary Approval, Plaintiff will timely transmit to the LWDA all necessary PAGA documents (initial notice of violations (Labor Code § 2699.3(a)), Operative Complaint (Labor Code § 2699(1)(1)), this Agreement (Labor Code § 2699(1)(2)). Plaintiff's compliance with this requirement will be confirmed by Plaintiff's Counsel in its declaration(s) in support of the Motion for Preliminary Approval.

80. Reallocation of Settlement Proceeds. In the event the Court fails, on its first hearing, to approve this Agreement because the amount of the PAGA penalties is not adequate, then the Parties shall cooperate in good faith to reallocate the total settlement proceeds within this Agreement, to try to achieve Final Approval of the Agreement upon any subsequent Court hearings.

I. Duties of the Parties Following Court's Final Approval

81. In connection with the Final Approval Hearing provided for in this Settlement Agreement, Class Counsel shall submit a proposed Final Approval Order:

(a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;

(b) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Class Representative, and the payment to the Settlement Administrator for costs of administering the settlement; and

(c) Entering judgment approving the settlement, thereby permanently barring all

1 Participating Class Members from prosecuting any Released Class Claims against any of the
2 Released Parties and permanently barring all PAGA Employees and the LWDA from prosecuting
3 any Released PAGA Claims against any of the Released Parties.

4 Plaintiff counsel shall provide drafts of the motion for final approval of the settlement,
5 and the proposed Final Approval Order, to Defendant's counsel for review and comment prior to
6 filing. The Proposed Final Approval Order is to be mutually agreed upon by the Parties prior to
7 Plaintiff filing the Proposed Order with the Court. Plaintiff will also provide Defendant with the
8 opportunity to review and comment upon drafts of all other pleadings to be filed in connection
9 with the Motion for Final Approval (e.g., notice of motion, memorandum of points and
10 authorities, and supporting declarations) at least seven (7) days prior to filing the Final Approval
11 motion with the Court. Class Counsel and Defense Counsel will expeditiously meet and confer in
12 person or by telephone, and in good faith, to resolve any disagreements concerning the Motion
13 for Final Approval prior to Plaintiff filing the Motion with the Court.

14 **J. Voiding the Agreement**

15 82. If the Court fails or refuses to issue the Final Approval Order or fails to approve
16 any material condition of this Settlement Agreement which effects a fundamental change of the
17 Settlement, the entire Settlement Agreement shall be rendered voidable and unenforceable as to
18 all Parties herein at the option of either Party. Reduction of the amount of attorney's fees and/or
19 costs sought or Class Representative awards sought shall not be considered a failure to approve a
20 material condition.

21 83. If five percent (5%) or more of the Settlement Class Members timely submit a
22 Request for Exclusion and/or if the combined Workweeks worked by Class Members who timely
23 exclude themselves amounts to more than five percent (5%) of the total Workweeks worked by
24 all Class Members, Defendant shall have the option of terminating or modifying this Agreement
25 without prejudice to its pre-settlement positions and defenses in the Action. If Defendant exercises
26 such option under this paragraph, it shall be relieved of any obligation to pay the Settlement
27 Amount or any other obligations from the Settlement by giving notice to Plaintiff's Counsel and
28 the Settlement Administrator within ten (10) days of being notified by the Settlement

1 Administrator of a 5% or greater opt-out rate. In such an event, the Parties shall be restored to
2 their respective positions in all respects as though the contemplated settlement never occurred.
3 In the event of such termination, no party may use the fact that the Parties agreed to settle or the
4 terms provided herein as an admission, as evidence, or for any other purpose, including, without
5 limitation, to prove any liability or the amount of any sum allegedly owed by any Party. All
6 parties and counsel shall not encourage opt-outs or objections to this Agreement. The parties agree
7 not to solicit opt-outs, directly or indirectly, through any means.

8 84. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will
9 have no further obligations under the Settlement, including any obligation by Defendant to pay
10 the Settlement Amount or any amounts that otherwise would have been owed under this
11 Settlement.

12 85. If the Settlement is voided or fails for any reason, any costs incurred by the
13 Settlement Administrator shall be borne equally by Defendant and Plaintiff unless otherwise
14 specified in this Agreement.

15 **K. Other Terms**

16 86. Full and Complete Defense. Any Released Party may plead this Agreement as a
17 full and complete defense to and may be used as the basis for an injunction against any action,
18 suit, or other proceeding that has been or may be instituted, prosecuted, or attempted, asserting
19 any Released Claim.

20 87. Waiver. The waiver by one Party of any breach of this Agreement by another Party
21 shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

22 88. Parties' Authority. The signatories hereto represent that they are fully authorized
23 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
24 hereof.

25 89. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
26 accomplish the terms of this Settlement Agreement, including but not limited to the execution of
27 such documents and to take such other action as may reasonably be necessary to implement the
28 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best

1 efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that
2 may become necessary by order of the Court or otherwise, to effectuate this Settlement
3 Agreement and the terms set forth herein. As soon as practicable after executing this Settlement
4 Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and
5 Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval
6 of the settlement and the final entry of judgment.

7 90. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
8 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
9 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
10 cause of action, or rights released and discharged by this Settlement Agreement.

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

24 92. Confidentiality Prior to Preliminary Approval. Plaintiff and Class Counsel will not
25 make any public disclosures of any kind regarding the Settlement, including but not limited to
26 postings on Class Counsel's website and postings on any social media sites/outlets except public
27 postings or filings necessary for getting approval of the Settlement from the court including
28 submission of the Settlement and other relevant documents to LWDA prior to preliminary

1 approval motion filing or in response to a court order or subpoena or in response to an inquiry or
2 subpoena issued by a state or federal government agency. Class Counsel will take all steps
3 necessary to ensure Plaintiff is aware of, and will encourage him to adhere to, the restriction
4 against any public disclosures regarding the Settlement. Class Counsel will not include or use the
5 Settlement for any marketing or promotional purposes, or for attempting to influence Defendant's
6 business relationships, either before or after the Motion for Preliminary Approval is filed.

7 93. Confidentiality Following Preliminary Approval. Following preliminary approval
8 of the Settlement, Plaintiff and Class Counsel will not initiate any communications with the media
9 or third parties regarding the Settlement. If contacted by the media or third parties will only
10 discuss information publicly available. Class Counsel will take all steps necessary to ensure
11 Plaintiff is aware of, and will encourage him to adhere to, the restriction against initiating any
12 media comment. Class Counsel further agrees not to use the Settlement or any of its terms for
13 any marketing or promotional purposes. Nothing herein will restrict Class Counsel from including
14 publicly available information regarding this settlement in future judicial submissions regarding
15 Class Counsel's qualifications and experience or for purposes of getting approval of this
16 Settlement from this court; for public postings or filings necessary for getting approval of the
17 Settlement from the court including submission of the Settlement and other relevant documents
18 to LWDA prior to Settlement approval motion filing; in response to a court order or subpoena or
19 in response to an inquiry or subpoena issued by a state or federal government agency; to the
20 Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement
21 confidential; to the extent necessary to report income to appropriate taxing authorities or from
22 providing publicly available information regarding this Settlement in communication with Class
23 Members.

24 94. Use and Return of Class Data. Information provided to Class Counsel pursuant to
25 Evidence Code § 1152, and all copies and summaries of the Class Data provided to Class Counsel
26 by Defendant in connection with the mediation, other settlement negotiations, or in connection
27 with the Settlement, may be used only with respect to this Settlement, and no other purpose, and
28 may not be used in any way that violates any existing contractual agreement, statute, or rule of

court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant.

95. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and it, along with all related documents such as the notices and motions for preliminary and final approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement. The stipulation for class certification as part of this Settlement Agreement is for settlement purposes only, and if, for any reason, the settlement is not approved, the stipulation will be of no force or effect.

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

To the Settlement Class Members and PAGA Employees:

Mehrdad Bokhour <i>mehrdad@bokhourlaw.com</i> 1901 Avenue of the Stars, Suite 920 Los Angeles, California 90067 Tel: (310) 975-1493; Fax: (310) 675-0861	Joshua Falakassa <i>josh@falakassalaw.com</i> 1901 Avenue of the Stars, Suite 920 Los Angeles, California 90067 Tel: (818) 456-6168; Fax: (888) 505-0868
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To Defendant:

Eric J. Gitig <i>Eric.Gitg@jacksonlewis.com</i> 725 South Figueroa Street, Suite 2800 Los Angeles, California 90017 Tel: (213) 630-8242	Douglas Johnston <i>Douglas.Johnston@jacksonlewis.com</i> 50 California Street, 9th Floor San Francisco, CA 94111 Tel: (415) 796-5432
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1 97. Construction. The Parties hereto agree that the terms and conditions of this
2 Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the
3 Parties and that this Settlement Agreement shall not be construed in favor of or against any Party
4 because of the extent to which any Party or their counsel participated in the drafting of this
5 Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory
6 rule of construction that ambiguities should be construed against the drafter of an agreement and
7 further agree, covenant, and represent that the language in all parts of this Agreement shall be in
8 all cases construed as a whole, according to its fair meaning.

9 98. Captions and Interpretations. Paragraph titles or captions contained herein are
10 inserted as a matter of convenience and for reference and in no way define, limit, extend, or
11 describe the scope of this Settlement Agreement or any provision hereof. Each term of this
12 Settlement Agreement is contractual and not merely a recital.

13 99. Modification. This Settlement Agreement may not be changed, altered, or
14 modified except in writing and signed by the Parties hereto and approved by the Court. This
15 Settlement Agreement may not be discharged except by performance in accordance with its terms
16 or by writing signed by all of the Parties hereto.

17 100. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
18 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide
19 written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and
20 Plaintiff and Defendant agree to seek the help of the mediator identified in this Agreement to
21 resolve any dispute they are unable to resolve informally. During this period, the Parties shall
22 bear their attorneys' fees and costs. This provision shall not apply to any legal action or other
23 proceeding instituted by any person or entity other than Plaintiff or Defendant.

24 101. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of
25 dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure
26 section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action
27 over all Parties to interpret, enforce, and effectuate the terms, conditions, intents, and obligations
28 of this Agreement.

1 102. Enforceability. Pursuant to California Evidence Code section 1123(a) and (b), this
2 Agreement is intended by the Parties to be and shall be, enforceable, binding, and admissible in
3 a court of law.

4 103. Choice of Law. This Settlement Agreement shall be governed by and construed,
5 enforced, and administered in accordance with the laws of the State of California, without regard
6 to its conflicts-of-law rules.

7 104. Integration Clause. This Settlement Agreement contains the entire agreement
8 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
9 or contemporaneous agreements, understandings, representations, and statements, whether oral
10 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
11 hereunder may be waived except in writing.

12 105. Binding On Assigns. This Settlement Agreement shall be binding upon and inure
13 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
14 successors, and assigns.

15 106. Signatures of All Class Members Unnecessary to be Binding. It is agreed that
16 because the members of the Settlement Class are numerous, it is impossible or impractical to have
17 each Final Class Member execute this Settlement Agreement. The Notice will advise all
18 Settlement Class Members of the binding nature of the releases provided herein, and such shall
19 have the same force and effect as if each Final Settlement Class Member executed this Settlement
20 Agreement.

21 107. Counterparts. This Settlement Agreement may be executed in counterparts, and
22 when each Party has signed and delivered at least one such counterpart, each counterpart shall be
23 deemed an original and, when taken together with other signed counterparts, shall constitute one
24 fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties.
25 Electronic signatures shall have the same force and effect as an original.

26 **APPROVAL AND EXECUTION BY PARTIES:**
27
28

4/30/2025

Dated: _____, 2025

CLASS REPRESENTATIVE:

Signed by:

E3B31A8C20F84E7...

Koll Kilmade

Dated: _____, 2025

DEFENDANT:

KAISER ENTERPRISES, INC.

By:

Its:

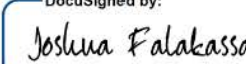
APPROVED AS TO FORM:

4/30/2025

Dated: _____, 2025

CLASS COUNSEL

FALAKASSA LAW, P.C.

DocuSigned by:

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Joshua Falakassa
Attorneys for Plaintiff

5/1/2025

Dated: _____, 2025

BOKHOUR LAW GROUP, P.C.

Signed by:

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Mehrdad Bokhour
Attorneys for Plaintiff

Dated: _____, 2025

DEFENDANT'S COUNSEL:

JACKSON LEWIS, P.C.

Eric J. Gitig
Douglas Johnston
Attorneys for Defendant,
Kaiser Enterprises, Inc.

1 Dated: _____, 2025

CLASS REPRESENTATIVE:

2
3
4 _____
Koll Kilmade

5 5/1/2025
6 Dated: _____, 2025

DEFENDANT:

7 KAISER ENTERPRISES, INC.

8 *Herman Kaiser*

9 _____
By: Herman Kaiser
10 Its:

11 **APPROVED AS TO FORM:**

12 **CLASS COUNSEL**

13 Dated: _____, 2025

FALAKASSA LAW, P.C.

14
15 _____
16 Joshua Falakassa
Attorneys for Plaintiff

17
18 Dated: _____, 2025

BOKHOUR LAW GROUP, P.C.

19
20 _____
21 Mehrdad Bokhour
Attorneys for Plaintiff

22
23 Dated: May 1, 2025

DEFENDANT'S COUNSEL:

24 **JACKSON LEWIS, P.C.**

25 
26 _____
27 Eric J. Gitig
28 Douglas Johnston
Attorneys for Defendant,
Kaiser Enterprises, Inc.