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WHOLESALE MART

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

ERICH TRAN, an individual and on behalf of  
all others similarly situated,

Plaintiff,

v.

MARUKAI CORPORATION, a Hawaii  
corporation doing business as MARUKAI  
WHOLESALE MART; MARIE BREEN, an  
individual, and DOES 1 through 100  
inclusive,

Defendants.

CASE NO.: 24STCV12039

[Assigned for all purposes to Honorable  
Carolyn B. Kuhl in Dept. 12]

**CLASS AND PAGA SETTLEMENT  
AGREEMENT**

Action Filed: May 14, 2024  
Trial Date: None Set

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and  
2 between plaintiff Erich Tran (“Plaintiff”) and defendant Marukai Corporation, dba Marukai  
3 Wholesale Mart (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as  
4 “Parties,” or individually as “Party.”

5 **1. DEFINITIONS**

6 1.1. “Action(s)” means the Plaintiff’s wage and hour class action against Defendant, captioned  
7 *Erich Tran v. Marukai Corporation, et al.*, Case No. 24STCV20189, initiated on May 14, 2024,  
8 and pending in the Superior Court of the State of California, County of Los Angeles; and separate  
9 representative action under PAGA captioned *Erich Tran v. Marukai Corporation, et al.*, Case  
10 No. 24STCV20189, initiated on August 9, 2024, and pending in the Superior Court of the State  
11 of California, County of Los Angeles.

12 1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to  
13 appoint to administer the Settlement.

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

18 1.4. “Aggrieved Employee” means a person employed by Defendant in California and  
19 classified as a non-exempt, hourly-paid employee who worked for Defendant during the PAGA  
20 Period.

21 1.5. “Class” means all persons employed by Defendant in California and classified as a non-  
22 exempt, hourly-paid employee who worked for Defendant during the Class Period.

23 1.6. “Class Counsel” means David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group,  
24 P.C.

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

28 1.8. “Class Data” means Class Member identifying information in Defendant’s custody,

1 possession, or control, including the Class Member's (1) name; (2) last known address(es); (3)  
2 last known telephone number(s); (4) last known Social Security Number(s); and (5) the dates of  
3 employment (i.e., hire dates, and, if applicable, re-hire date(s) and/or separation date(s)).

4 1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as either  
5 a Participating Class Member or Non-Participating Class Member (including a Non- Participating  
6 Class Member who qualifies as an Aggrieved Employee).

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

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

15 1.12. "Class Period" means the period from May 14, 2020, through August 18, 2025.

16 1.13. "Class Representative" means the named Plaintiff in the operative complaint in the Action  
17 seeking Court approval to serve as a Class Representative.

18 1.14. "Class Representative Service Payment" means the payment to the Class Representative  
19 for initiating the Action and providing services in support of the Action.

20 1.15. "Court" means the Superior Court of California, County of Los Angeles.

21 1.16. "Defendant" means named defendant Marukai Corporation, dba Marukai Wholesale  
22 Mart.

23 1.17. "Defense Counsel" means Michael R. Goldstein and Michael A. Mauge of Musick, Peeler  
24 & Garrett LLP.

25 1.18. "Effective Date" means the later of: (a) the Court enters a Judgment on its Order Granting  
26 Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the  
27 latest of the following occurrences: (a) if no Participating Class Member objects to the  
28 Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members

1 objects to the Settlement, the day after the deadline for filing a notice of appeal from the  
2 Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court  
3 affirms the Judgment and issues a remittitur.

4 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.

5 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval  
6 of the Settlement.

7 1.21. “Final Judgment” means the Judgment entered by the Court based upon the Final  
8 Approval.

9 1.22. “Gross Settlement Amount” means \$4,000,000.00 (Four Million Dollars and Zero Cents)  
10 which is the total amount Defendant agrees to pay under the Settlement, except as provided in  
11 Paragraph 8.1 below and any and all employer payroll taxes owed on the Wage Portions of the  
12 Individual Class Payments. The Gross Settlement Amount will be used to pay Individual Class  
13 Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class  
14 Counsel Expenses, Class Representative Service Payment, and Administrator’s Expenses.

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

18 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of  
19 the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA  
20 Period.

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

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

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

26 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following  
27 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA  
28 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel

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

3 1.29. “Non-Participating Class Member” means any Class Member who opts out of the  
4 Settlement by sending the Administrator a valid and timely Request for Exclusion.

5 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked  
6 for Defendant for at least one day during the PAGA Period, based on hire dates, re-hire dates (as  
7 applicable), and termination dates (as applicable).

8 1.31. “PAGA Period” means the period from May 14, 2023, through the end of the Class  
9 Period.

10 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

11 1.33. “PAGA Notice” means plaintiff’s May 14, 2024, letter to defendant and the LWDA,  
12 providing notice pursuant to Labor Code section 2699.3 subd. (a).

13 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the  
14 Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$100,000.00) and the  
15 75% to the LWDA (\$300,000.00) in settlement of PAGA claims.

16 1.35. “Participating Class Member” means a Class Member who does not submit a valid and  
17 timely Request for Exclusion from the Settlement.

18 1.36. “Plaintiff” means Erich Tran, the named plaintiff in the Action.

19 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the  
20 Settlement.

21 1.38. “Preliminary Approval Order” means the proposed Order granting Preliminary Approval  
22 and Approval of PAGA Settlement.

23 1.39. “Released Class Claims” means the claims being released as described in Paragraph 5.2  
24 below.

25 1.40. “Released PAGA Claims” means the claims being released as described in Paragraph 5.4  
26 below.

27 1.41. “Released Parties” means: Defendant, Marie Breen, and each of their former, present and  
28 future owners, parents, affiliated companies and subsidiaries, and all of their current, former, and

1 future officers, directors, attorneys, members, managers, employees, consultants, partners,  
2 shareholders, joint venturers, agents, predecessors, successors, assigns, accountants, insurers,  
3 reinsurers, and/or legal representatives.

4 1.42. “Request for Exclusion” means a Class Member’s submission of a written request to be  
5 excluded from the Class Settlement signed by the Class Member.

6 1.43. “Response Deadline” means forty-five (45) days after the Administrator mails Notice to  
7 Class Members and Aggrieved Employees, and shall be the last date on which Class Members  
8 may: (a) mail Requests for Exclusion from the Settlement, or (b) mail his or her Objection to the  
9 Settlement. Class Members to whom Notice Packets are resent after having been returned  
10 undeliverable to the Administrator shall have an additional 15 days beyond the Response  
11 Deadline has expired.

12 1.44. “Settlement” means the disposition of the Action effected by this Agreement and the  
13 Judgment.

14 1.45. “Workweek” means any week during which a Class Member worked for Defendant, for  
15 at least one day during the Class Period, based on hire dates, re-hire dates (as applicable), and  
16 termination dates (as applicable).

## 17 **2. RECITALS**

18 2.1. On May 14, 2024, Plaintiff commenced this Action by filing a class action complaint  
19 against Defendant for: (1) failure to pay overtime; (2) failure to pay minimum wages; (3) failure  
20 to provide meal periods; (4) failure to provide rest periods, or compensation in lieu thereof; (5)  
21 waiting time penalties; (6) wage statement violations; (7) failure to timely pay wages; (8) failure  
22 to indemnify; (9) violation of labor code sections 227.3 and (10) unfair competition (“Class  
23 Action”).

24 2.2. Also on May 14, 2024, Plaintiff filed with the LWDA and served on Defendant a notice  
25 under Labor Code section 2699, et seq. seeking to represent other non-exempt employees against  
26 Defendant for various Labor Code violations (“PAGA Notice”).

27 2.3. On August 9, 2024, after sixty-five (65) days had passed without any action by the LWDA  
28 with respect to the Labor Code violations alleged in the PAGA Notice, Plaintiff filed a separate

1 representative action under PAGA against Defendant in the Superior Court of California, County  
2 of Los Angeles, Case No. 24STCV20189, for the Labor Code violations set out in the PAGA  
3 Notice (the “PAGA Action”).

4 2.4. Thereafter, the Parties agreed to exchange informal discovery and attend mediation.

5 2.5. Prior to mediation Plaintiff obtained, through informal discovery: (1) a sampling of time  
6 and payroll records for Class Members during the Class Period; (2) class data points, including  
7 the number of Class Members and Workweeks during the Class Period, the number of Aggrieved  
8 Employees and Pay Periods during the PAGA Period; (3) Defendant’s wage and hour policy  
9 documents, including two employee handbooks; (4) all documents pertaining to Plaintiff  
10 available to Defendant, including Plaintiff’s personnel and payroll records.

11 2.6. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in  
12 *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker*  
13 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

14 2.7. On August 18, 2025, the Parties participated in an all-day mediation presided over by  
15 Todd Smith, Esquire. The mediation was successful, and the Parties agreed to globally resolve  
16 all class and PAGA claims in the Action. As part of this Agreement, the Parties agree to stipulate  
17 to Plaintiff’s filing of a First Amended Complaint in the Class Action, adding all allegations  
18 brought in the PAGA Action, and request for dismissal without prejudice of the PAGA Action,  
19 thereby effectively consolidating the two actions for purposes of Settlement (hereinafter, the  
20 “Action”). The First Amended Complaint is the operative complaint in the Action (“Operative  
21 Complaint”).

22 2.8. The Court has not granted class certification.

23 2.9. The Parties, Class Counsel, and Defense Counsel represent that they are not aware of any  
24 other pending matter or action asserting claims that will be extinguished or affected by the  
25 Settlement.

### 26 **3. MONETARY TERMS**

27 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8.1 below,  
28 Defendant promises to pay \$4,000,000.00 as the Gross Settlement Amount, unless increased

1 pursuant to Paragraph 8.1 of this Agreement, and to separately pay any and all employer payroll  
2 taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation  
3 to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in  
4 Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement  
5 Amount without asking or requiring Participating Class Members or Aggrieved Employees to  
6 submit any claim as a condition of payment. None of the Gross Settlement Amount will revert  
7 to Defendant.

8 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct  
9 the following payments from the Gross Settlement Amount, in the amounts specified by the Court  
10 in the Final Approval:

11 3.2.1. To Plaintiff: Class Representative Service Payment to Plaintiff of not more than  
12 \$7,500.00 in addition to any Individual Class Payment and any Individual PAGA  
13 Payment Plaintiff is entitled to receive as a Participating Class Member. Defendant will  
14 not oppose Plaintiff's request for a Class Representative Service Payment that does not  
15 exceed this amount. As part of the motion for Class Counsel Fees Payment and Class  
16 Litigation Expenses Payment, Plaintiff will seek Court approval for any Class  
17 Representative Service Payments no later than 16 court days prior to the Final Approval  
18 Hearing. If the Court approves a Class Representative Service Payment less than the  
19 amount requested, the Administrator will retain the remainder in the Net Settlement  
20 Amount. The Administrator will pay the Class Representative Service Payment using  
21 IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes  
22 owed on the Class Representative Service Payment.

23 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one third (1/3)  
24 of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph 8.1 of  
25 this Agreement, is currently estimated to be \$1,333,333.33 and a Class Counsel  
26 Litigation Expenses Payment of not more than \$50,000.00. Defendant will not oppose  
27 requests for these payments provided that do not exceed these amounts. Plaintiff and/or  
28 Class Counsel will endeavor to file a motion for Class Counsel Fees Payment and Class

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

20          3.2.3.    To the Administrator: An Administrator Expenses Payment not to exceed  
21                  \$19,950.00 except for a showing of good cause and as approved by the Court. To the  
22                  extent the Administration Expenses are less or the Court approves payment less than  
23                  \$19,950.00, the Administrator will retain the remainder in the Net Settlement Amount.

24          3.2.4.    To Each Participating Class Member: An Individual Class Payment calculated  
25                  by (a) dividing the Net Settlement Amount by the total number of Workweeks worked  
26                  by all Participating Class Members during the Class Period and (b) multiplying the result  
27                  by each Participating Class Member's Workweeks.

28                  3.2.4.1.    Tax Allocation of Individual Class Payments. 20% of each Participating

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

9 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual  
10 Class Payments. Non-Participating Class Members will not receive any  
11 Individual Class Payments. The Administrator will retain amounts equal to  
12 their Individual Class Payments in the Net Settlement Amount for distribution  
13 to Participating Class Members on a pro rata basis.

14 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of  
15 \$400,000.00 to be paid from the Gross Settlement Amount, with 75% (\$300,000.00)  
16 allocated to the LWDA PAGA Payment and 25% (\$100,000.00) allocated to the  
17 Individual PAGA Payments.

18 3.2.5.1. The Administrator will calculate each Individual PAGA  
19 Payment by (a) dividing the amount of the Aggrieved Employees' 25% share  
20 of PAGA Penalties \$100,000.00 by the total number of PAGA Period Pay  
21 Periods worked by all Aggrieved Employees during the PAGA Period and (b)  
22 multiplying the result by each Aggrieved Employee's PAGA Period Pay  
23 Periods. Aggrieved Employees assume full responsibility and liability for any  
24 taxes owed on their Individual PAGA Payment.

25 3.2.5.2. If the Court approves PAGA Penalties of less than the  
26 amount requested, the Administrator will allocate the remainder to the Net  
27 Settlement Amount. The Administrator will report the Individual PAGA  
28 Payments on IRS 1099 Forms.

1           **4. SETTLEMENT FUNDING AND PAYMENTS**

2 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records  
3 to date, Defendant estimates there are 3,244 Class Members who collectively worked a total of  
4 200,000 Workweeks, and 1,779 Aggrieved Employees who worked a total of 42,605 PAGA Pay  
5 Periods.

6 4.2. Class Data. Not later than 14 days after the Court grants Preliminary Approval of the  
7 Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the  
8 form of a Microsoft Excel spreadsheet. To protect Class Members’ privacy rights, the  
9 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes  
10 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator  
11 employees who need access to the Class Data to effect and perform under this Agreement.  
12 Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class  
13 Data omitted class member identifying information and to provide corrected or updated Class  
14 Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant  
15 must send the Class Data to the Administrator, the Parties and their counsel will expeditiously  
16 use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or  
17 omitted Class Data.

18 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement  
19 Amount, and also fund the amounts necessary to fully pay Defendant’s share of payroll taxes by  
20 transmitting the funds into a Qualified Settlement Fund (“QSF”) within the meaning of Treasury  
21 Regulation Section 1.468B-1, et seq., to be established by the Settlement Administrator no later  
22 than 14 days after the Effective Date.

23 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the  
24 Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments,  
25 all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses  
26 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and  
27 the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment,  
28 the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment

1 shall not precede disbursement of Individual Class Payments, and the Individual PAGA  
2 Payments.

3 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or  
4 Individual PAGA Payments and send them to the Class Members via First Class U.S.  
5 Mail, postage prepaid. The face of each check shall prominently state the date (not less  
6 than 180 days after the date of mailing) when the check will be voided. The  
7 Administrator will cancel all checks not cashed by the void date. The Administrator  
8 will send checks for Individual Settlement Payments to all Participating Class Members  
9 (including those for whom Class Notice was returned undelivered). The Administrator  
10 will send checks for Individual PAGA Payments to all Aggrieved Employees including  
11 Non-Participating Class Members who qualify as Aggrieved Employees (including  
12 those for whom Class Notice was returned undelivered). The Administrator may send  
13 Participating Class Members a single check combining the Individual Class Payment  
14 and the Individual PAGA Payment. Before mailing any checks, the Settlement  
15 Administrator must update the recipients' mailing addresses using the National Change  
16 of Address Database.

17 4.4.2. The Administrator must conduct a Class Member Address Search for all other  
18 Class Members whose checks are returned undelivered without USPS forwarding  
19 address. Within 7 days of receiving a returned check the Administrator must re-mail  
20 checks to the USPS forwarding address provided or to an address ascertained through  
21 the Class Member Address Search. The Administrator need not take further steps to  
22 deliver checks to Class Members whose re-mailed checks are returned as undelivered.  
23 The Administrator shall promptly send a replacement check to any Class Member whose  
24 original check was lost or misplaced, requested by the Class Member prior to the void  
25 date.

26 4.4.3. For any Class Member whose Individual Class Payment check or Individual  
27 PAGA Payment check is uncashed and cancelled after the void date, the Administrator  
28 shall transmit the funds represented by such checks to the California State Controller's

1 Office, Unclaimed Property Division in the name of the Aggrieved Employee thereby  
2 leaving no unpaid residue pursuant to the requirements of Code of Civil Procedure  
3 section 384.

4 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall  
5 not obligate Defendant to confer any additional benefits or make any additional  
6 payments to Class Members (such as 401(k) contributions or bonuses) beyond those  
7 specified in this Agreement.

8 **5. RELEASE OF CLAIMS**

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

13 5.1. Plaintiff's Release. Plaintiff and his respective former and present spouses,  
14 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release  
15 and discharge Released Parties from all any and all claims, debts, liabilities, demands,  
16 obligations, guarantees, costs, expenses, attorneys' fees, damages, or causes of action of any kind  
17 or nature whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted,  
18 arising out of, relating to, or resulting from his employment and/or separation of employment  
19 with Defendant, which Plaintiff, at any time up until the execution of this Settlement Agreement,  
20 had or claimed to have or may have including, but not limited to: (a) all claims that were, or  
21 reasonably could have been, alleged, based on the facts contained, in the Operative Complaint  
22 and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts  
23 contained in the Operative Complaint and Plaintiff's PAGA Notice. ("Plaintiff's Release.")  
24 Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any  
25 claims for vested benefits, unemployment benefits, disability benefits, social security benefits,  
26 workers' compensation benefits that arose at any time, or based on occurrences outside the Class  
27 Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in  
28 addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless,

1 that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such  
2 different or additional facts or Plaintiff's discovery of them.

3 5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For  
4 purposes of Plaintiff's Release only, Plaintiff expressly waives and relinquish the  
5 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,  
6 which reads:

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

11 5.2. Release by Participating Class Members Who Are Not Aggrieved Employees: For the  
12 duration of the Class Period, all Participating Class Members, on behalf of themselves and their  
13 respective former and present representatives, agents, attorneys, heirs, administrators, successors,  
14 and assigns, release Released Parties from all claims that were alleged, or reasonably could have  
15 been alleged, based on the facts stated in the Operative Complaint including: (1) all claims for  
16 failure to pay overtime wages; (2) all claims for failure to pay minimum wages; (3) all claims for  
17 failure to provide meal periods, or compensation in lieu thereof; (4) all claims for failure to provide  
18 compliant rest periods, or compensation in lieu thereof; (5) all claims for waiting time penalties;  
19 (6) all claims for non-compliant wage statements; (7) all claims for failure to timely pay wages;  
20 (8) all claims for failure to failure to reimburse business expenses; (9) all claims for violation of  
21 labor code section 227.3; and (10) unfair competition. Except as set forth in Section 5.2 of this  
22 Agreement, Participating Class Members do not release any other claims, including claims for  
23 vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,  
24 unemployment insurance, disability, social security, workers' compensation, or claims based on  
25 facts occurring outside the Class Period.

26  
27 5.3. Release by Non-Participating Class Members Who Are Aggrieved Employees: For the  
28 duration of the PAGA Period, all Non-Participating Class Members who are Aggrieved

1 Employees are deemed to release, on behalf of themselves and their respective former and present  
2 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released  
3 Parties from all claims for PAGA penalties that were alleged, or reasonably could have been  
4 alleged, based on the facts stated in the Operative Complaint and the PAGA Notice.

5  
6 **6. MOTION FOR PRELIMINARY APPROVAL**

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

10 6.1. Defendant’s Declaration in Support of Preliminary Approval. Within 7 days of full  
11 execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed  
12 declaration from Defendant and Defense Counsel disclosing all facts relevant to any actual or  
13 potential conflicts of interest with the Administrator .

14 6.2. Plaintiff’s Responsibilities. Plaintiff will prepare and to deliver to Defense Counsel all  
15 documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and  
16 memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the  
17 Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor  
18 Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and  
19 Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from  
20 the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting  
21 to its willingness to serve; competency; operative procedures for protecting the security of Class  
22 Data; amounts of insurance coverage for any data breach, defalcation of funds or other  
23 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;  
24 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense  
25 Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve  
26 and disclosing all facts relevant to any actual or potential conflicts of interest with Class  
27 Members; (v) a signed declaration from each Class Counsel firm attesting to its competency to  
28 represent the Class Members; its timely transmission to the LWDA of all necessary PAGA

1 documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative  
2 Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor Code section 2699,  
3 subd. (1)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class  
4 Members and the Administrator.

5 6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible  
6 for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days  
7 after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for  
8 Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for  
9 Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary  
10 Approval to the Administrator.

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

19 **7. SETTLEMENT ADMINISTRATION**

20 7.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve  
21 as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees  
22 to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this  
23 Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel  
24 represent that they have no interest or relationship, financial or otherwise, with the Administrator  
25 other than a professional relationship arising out of prior experiences administering settlements.

26 7.2. Employer Identification Number. The Administrator shall have and use its own Employer  
27 Identification Number for purposes of calculating payroll tax withholdings and providing reports  
28 state and federal tax authorities.

1 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets  
2 the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section  
3 468B-1.

4 7.4. Notice to Class Members

5 7.4.1. No later than three (3) business days after receipt of the Class Data, the  
6 Administrator shall notify Class Counsel that the list has been received and state the  
7 number of Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the  
8 Class Data.

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

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

25 7.4.4. The deadlines for Class Members’ written objections, Challenges to Workweeks  
26 and/or Pay Periods, and Requests for Exclusion will be extended an additional 15 days  
27 beyond the 45 days otherwise provided in the Class Notice for all Class Members whose  
28 notice is re-mailed. The Administrator will inform the Class Member of the extended

1 deadline with the re-mailed Class Notice.

2 7.4.5. If the Administrator, Defendant or Class Counsel are contacted by or otherwise  
3 discover any persons who believe they should have been included in the Class Data and  
4 should have received Class Notice, the Parties will expeditiously meet and confer, and  
5 in good faith, in an effort to agree on whether to include them as Class Members. If the  
6 Parties agree, such persons will be Class Members entitled to the same rights as other  
7 Class Members, and the Administrator will send, via email or overnight delivery, a Class  
8 Notice requiring them to exercise options under this Agreement not later than 15 days  
9 after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are  
10 later.

11 7.5. Requests for Exclusion (Opt-Outs).

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

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

1 7.5.3. Every Class Member who does not submit a timely and valid Request for  
2 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled  
3 to all benefits and bound by all terms and conditions of the Settlement, including the  
4 Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement,  
5 regardless whether the Participating Class Member actually receives the Class Notice  
6 or objects to the Settlement.

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

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

27 7.7. Objections to Settlement

28 7.7.1. Only Participating Class Members may object to the class action components of

1 the Settlement and/or this Agreement, including contesting the fairness of the  
2 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class  
3 Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

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

11 7.7.3. Non-Participating Class Members have no right to object to any of the class action  
12 components of the Settlement.

13 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be  
14 performed or observed by the Administrator contained in this Agreement or otherwise.

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

24 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will  
25 promptly review on a rolling basis Requests for Exclusion to ascertain their validity.  
26 Not later than 5 days after the expiration of the deadline for submitting Requests for  
27 Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel  
28 containing (a) the names and other identifying information of Class Members who have

1 timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and  
2 other identifying information of Class Members who have submitted invalid Requests  
3 for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted  
4 (whether valid or invalid).

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

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

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

1 7.8.6. Final Report by Settlement Administrator. Within 10 days after the Administrator  
2 disburses all funds in the Gross Settlement Amount, the Administrator will provide  
3 Class Counsel and Defense Counsel with a final report detailing its disbursements by  
4 employee identification number only of all payments made under this Agreement. At  
5 least 7 days before any deadline set by the Court, the Administrator will prepare, and  
6 submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in  
7 Court attesting to its disbursement of all payments required under this Agreement. Class  
8 Counsel is responsible for filing the Administrator's declaration in Court.

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

10 Based on its records, Defendant estimates that, as of the date of this Settlement  
11 Agreement, (1) there are approximately 3,244 Class Members and 200,000 Total Workweeks  
12 during the Class Period and (2) there are approximately 1,779 Aggrieved Employees who worked  
13 42,605 Pay Periods during the PAGA Period.

14 8.1. Increase in Workweeks. Defendant represents that there are no more than 200,000  
15 Workweeks worked during the Class Period. In the event the number of Workweeks worked by  
16 Class Members during the Class Period increases by more than 10%, or 20,000 Workweeks,  
17 then the Gross Settlement Amount shall be increased proportionally by the Workweeks in  
18 excess of 200,000 Workweeks multiplied by the Workweek Value. The Workweek Value shall  
19 be calculated by dividing the originally agreed-upon Gross Settlement Amount (\$4,000,000) by  
20 200,000, which amounts to a Workweek Value of \$20.00. Thus, for example, should there be  
21 230,000 Workweeks in the Class Period, then the Gross Settlement Amount shall be increased  
22 by \$600,000 ((230,000 Workweeks – 200,000 Workweeks) x \$20.00 per Workweek.)

23 **9. DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests  
24 for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members,  
25 Defendant may, but IS not obligated, elect to withdraw from the Settlement. The Parties agree  
26 that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect  
27 whatsoever, and that no Party will have any further obligation to perform under this  
28 Agreement; provided, however, Defendant will remain responsible for paying all Settlement

1 Administration Expenses incurred to that point. Defendant must notify Class Counsel and the  
2 Court of its election to withdraw not later than [seven] days after the Administrator sends the  
3 final Exclusion List to Defense Counsel; late elections will have no effect.

4 **10. MOTION FOR FINAL APPROVAL**

5 Not later than 16 court days before the Final Approval Hearing, Plaintiff will file in  
6 Court, a motion for final approval of the Settlement that includes a request for approval of the  
7 PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order  
8 and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall endeavor to  
9 provide drafts of these documents to Defense Counsel not later than 7 court days prior to filing  
10 the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and  
11 confer, and in good faith, to resolve any disagreements concerning the Motion for Final  
12 Approval.

13 10.1. Response to Objections. Each Party retains the right to respond to any objection raised  
14 by a Participating Class Member, including the right to file responsive documents in Court no  
15 later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted  
16 by the Court.

17 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final  
18 Approval on any material change to the Settlement (including, but not limited to, the scope of  
19 release to be granted by Class Members), the Parties will expeditiously work together in good  
20 faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final  
21 Approval. The Court’s decision to award less than the amounts requested for the Class  
22 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation  
23 Expenses Payment, Administrator Expenses Payment and/or individual claims of plaintiff for  
24 alleged wrongful termination, shall not constitute a material modification to the Agreement  
25 within the meaning of this paragraph.

26 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the  
27 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of  
28 (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters,

1 and (iii) addressing such post-Judgment matters as are permitted by law.

2 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and  
3 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class  
4 Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their  
5 respective counsel, and all Participating Class Members who did not object to the Settlement as  
6 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to  
7 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions  
8 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver  
9 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the  
10 Parties' obligations to perform under this Agreement will be suspended until such time as the  
11 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect  
12 the amount of the Net Settlement Amount.

13 10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the  
14 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material  
15 modification of this Agreement (including, but not limited to, the scope of release to be granted  
16 by Class Members), this Agreement shall be null and void. The Parties shall nevertheless  
17 expeditiously work together in good faith to address the appellate court's concerns and to obtain  
18 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration  
19 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify  
20 the Court's award of the Class Representative Service Payment or any payments to Class Counsel  
21 shall not constitute a material modification of the Judgment within the meaning of this paragraph,  
22 as long as the Gross Settlement Amount remains unchanged

## 23 **11. AMENDED JUDGMENT**

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

## 26 **12. ADDITIONAL PROVISIONS**

27 12.1. No Admission of Liability, Class Certification or Representative Manageability for Other  
28 Purposes. This Agreement represents a compromise and settlement of highly disputed claims.

1 Nothing in this Agreement is intended or should be construed as an admission by Defendant that  
2 any of the allegations in the Operative Complaint have merit or that Defendant has any liability  
3 for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that  
4 Defendant's defenses in the Action have merit. The Parties agree that class certification and  
5 representative treatment is for purposes of this Settlement only. If, for any reason the Court does  
6 grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to  
7 contest certification of any class for any reasons, and Defendant reserves all available defenses  
8 to the claims in the Action, and Plaintiff reserves the right to move for class certification on any  
9 grounds available and to contest Defendant's defenses. The Settlement, this Agreement and  
10 Parties' willingness to settle the Action will have no bearing on, and will not be admissible in  
11 connection with, any litigation (except for proceedings to enforce or effectuate the Settlement  
12 and this Agreement).

13 12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and  
14 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement  
15 is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit  
16 another person to disclose, disseminate or publicize, any of the terms of the Agreement directly  
17 or indirectly, specifically or generally, to any person, corporation, association, government  
18 agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom  
19 will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the  
20 extent necessary to report income to appropriate taxing authorities; (4) in response to a court  
21 order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal  
22 government agency. Each Party agrees to immediately notify each other Party of any judicial or  
23 agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant  
24 and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or  
25 other communication, before the filing of the Motion for Preliminary Approval, any with third  
26 party regarding this Agreement or the matters giving rise to this Agreement except to respond  
27 only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class  
28 Counsel's communications with Class Members in accordance with Class Counsel's ethical

1 obligations owed to Class Members.

2 12.3. No Solicitation. The Parties separately agree that they and their respective counsel and  
3 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal  
4 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's  
5 ability to communicate with Class Members in accordance with Class Counsel's ethical  
6 obligations owed to Class Members.

7 12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement  
8 together with its attached exhibits shall constitute the entire agreement between the Parties  
9 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or  
10 inducements made to or by any Party.

11 12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and  
12 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate  
13 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate  
14 its terms, and to execute any other documents reasonably required to effectuate the terms of this  
15 Agreement including any amendments to this Agreement.

16 12.6. Cooperation. The Parties and their counsel will cooperate with each other and use their  
17 best efforts, in good faith, to implement the Settlement by, among other things, modifying the  
18 Settlement Agreement, submitting supplemental evidence and supplementing points and  
19 authorities as requested by the Court. In the event the Parties are unable to agree upon the form  
20 or content of any document necessary to implement the Settlement, or on any modification of the  
21 Agreement that may become necessary to implement the Settlement, the Parties will seek the  
22 assistance of a mediator and/or the Court for resolution.

23 12.7. No Prior Assignments. The Parties separately represent and warrant that they have not  
24 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or  
25 encumber to any person or entity and portion of any liability, claim, demand, action, cause of  
26 action, or right released and discharged by the Party in this Settlement.

27 12.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are  
28 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied

1 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR  
2 Part 10, as amended) or otherwise.

3 12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended,  
4 modified, changed, or waived only by an express written instrument signed or agreed to by all  
5 Parties or their representatives, and approved by the Court. Plaintiff and Defendant expressly  
6 agree that should the Parties agree to amend, modify, change, or waive this Agreement, or any  
7 part of it, Class Counsel and Defense Counsel are authorized to submit to the Court any  
8 amendments of this Agreement, amended Agreements, or amendments to the Agreement, on  
9 behalf of the Parties once fully executed, which includes, but is not limited to, authorization of  
10 the use of signatures previously provided by the Parties.

11 12.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to  
12 the benefit of, the successors of each of the Parties.

13 12.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be  
14 governed by and interpreted according to the internal laws of the state of California, without  
15 regard to conflict of law principles.

16 12.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of  
17 this Agreement. This Agreement will not be construed against any Party on the basis that the  
18 Party was the drafter or participated in the drafting

19 12.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered  
20 during Action and in this Agreement relating to the confidentiality of information shall survive  
21 the execution of this Agreement

22 12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to  
23 Evidence Code section 1152, and all copies and summaries of the Class Data provided to Class  
24 Counsel by Defendant in connection with the mediation, other settlement negotiations, or in  
25 connection with the Settlement, may be used only with respect to this Settlement, and no other  
26 purpose, and may not be used in any way that violates any existing contractual agreement, statute  
27 or California Rules of Court rule. Not later than 90 days after the date when the Court discharges  
28 the Administrator's obligation to provide a Declaration confirming the final pay out of all

1 Settlement funds, Plaintiff shall destroy all paper and electronic versions of Class Data received  
2 from Defendant unless, prior to the Court’s discharge of the Administrator’s obligation,  
3 Defendant makes a written request to Class Counsel for the return, rather than the destruction, of  
4 Class Data.

5 12.15. Headings. The descriptive heading of any section or paragraph of this Agreement is  
6 inserted for convenience of reference only and does not constitute a part of this Agreement.

7 12.16. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall  
8 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a  
9 weekend or federal legal holiday, such date or deadline shall be on the first business day  
10 thereafter.

11 12.17. Notice. All notices, demands or other communications between the Parties in connection  
12 with this Agreement will be in writing and deemed to have been duly given as of the third  
13 business day after mailing by United States mail, or the day sent by email or messenger,  
14 addressed as follows:

15 Plaintiff – David D. Bibiyani and Vedang J. Patel, Bibiyani Law Group, P.C., 1460 Westwood  
16 Blvd., Los Angeles, CA 90024

17 Defendant – Michael R. Goldstein and Michael R. Mauge, Musick Peeler & Garrett LLP, 333  
18 South Hope Street, Suite 2900, Los Angeles, CA 90017.

19 12.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts  
20 by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall  
21 be accepted as an original. All executed counterparts and each of them will be deemed to be one  
22 and the same instrument if counsel for the Parties will exchange between themselves signed  
23 counterparts. Any executed counterpart will be admissible in evidence to prove the existence  
24 and contents of this Agreement.

25 12.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the  
26 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further  
27 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend  
28 the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement

1 process.

2 12.20. Severability. In the event that one or more of the provisions contained in this Agreement  
3 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,  
4 illegality, or unenforceability shall in no way effect any other provision if Defendants' Counsel  
5 and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing  
6 to proceed as if such invalid, illegal, or unenforceable provision had never been included in this  
7 Agreement.

8 ///

9 **IT IS SO AGREED:**

10 *Erich Tran*

11 \_\_\_\_\_  
Plaintiff, Erich Tran

12 \_\_\_\_\_  
13 For Defendant, Marukai Corporation dba  
14 Marukai Wholesale Mart

15  
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18  
19  
20 **AGREED AS TO FORM ONLY:**

21 *David Bibiyan*

22 \_\_\_\_\_  
23 David D. Bibiyan  
24 Vedang J. Patel  
25 Counsel for Plaintiff

26 \_\_\_\_\_  
27 Michael R. Goldstein  
28 Michael R. Mauge  
Counsel for Defendant

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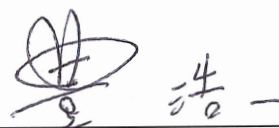
process.

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

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**IT IS SO AGREED:**

\_\_\_\_\_  
Plaintiff, Erich Tran

  
\_\_\_\_\_  
Koichi Toyo  
For Defendant, Marukai Corporation dba  
Marukai Wholesale Mart

**AGREED AS TO FORM ONLY:**

\_\_\_\_\_  
David D. Bibiyan  
Vedang J. Patel  
Counsel for Plaintiff

  
\_\_\_\_\_  
Michael R. Goldstein  
Michael R. Mauge  
Counsel for Defendant