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19 H&T INTERNATIONAL, INC.

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 FOR THE COUNTY OF VENTURA - HALL OF JUSTICE

22 OSMAN MORALES, on behalf of
23 himself and all others similarly situated

24 Plaintiff,

25 v.

26 H&T INTERNATIONAL, INC., a
27 California corporation; and DOES 1
28 through 10, inclusive,

Defendants.

CASE NO.: 56-2022-00564419-CU-OE-VTA

[Unlimited Jurisdiction]

CLASS ACTION

**JOINT STIPULATION OF CLASS ACTION
AND PAGA SOTTEMENT**

*Assigned for all purposes to the
Honorable Jeffrey Bennett, Dept. 21*

Complaint Filed: April 6, 2022
Trial Date: Not Set

1 **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT**

2 This Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement”
3 or “Settlement Agreement”) is made and entered into by and between Plaintiff Osman Morales,
4 on his own behalf, on behalf of all similarly situated employees, and on behalf of aggrieved
5 employees pursuant to the Private Attorneys General Act (“PAGA”) (“Plaintiff” or “Class
6 Representative”), and Defendant H&T International, Inc. (“Defendant”). Plaintiff and Defendant
7 are sometimes referred to individually as a “Party” and collectively referred to herein as the
8 “Parties.” This Joint Stipulation of Class Action Settlement and Release of Claims shall be
9 binding on Plaintiff, the current and former employees he seeks to represent, the Settlement Class
10 and PAGA Settlement Group, and on Defendant, subject to the definitions, recitals, and terms
11 set forth herein and the approval of the Court. **THE PARTIES STIPULATE AND AGREE** as
12 follows:

13 **1. DEFINITIONS.**

14 The following definitions are applicable to this Settlement Agreement. Definitions
15 contained elsewhere in this Settlement Agreement will also be effective:

16 1.1 “Action” means Plaintiff Osman Marales’s lawsuit alleging wage and hour
17 violations against H&T International, Inc., captioned *Osman Morales v. H &T International,*
18 *Inc., et al.*, Case No. 56-2022-00564419-CU-OE-VTA initiated on April 6, 2022, and originally
19 filed in the Superior Court of the State of California, County of Ventura.

20 1.2 “Administrator” means the neutral third-party entity the Parties jointly agree to
21 appoint to administer the Settlement.

22 1.3 “Administration Expenses Payment” means the amount the Administrator will be
23 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
24 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
25 with Preliminary Approval of the Settlement.

26 1.4 “Aggrieved Employee” means all current and former non-exempt employees of
27 Defendant in the State of California who worked for Defendant at E+Mon during the PAGA
28 Period of January 7, 2021 through March 1, 2023.

1 1.5 “Attorneys’ Fees and Costs” means attorneys’ fees and costs approved by the
2 Court for Class Counsel’s litigation and resolution of the Action.

3 1.6 “Class” means all current and former non-exempt hourly employees of H&T
4 International, Inc. employed at E+Mon in the State of California who worked for Defendant
5 during the Class Period of April 6, 2018 through March 1, 2023.

6 1.7 “Class Claims” refers to all claims in the Class Action Complaint.

7 1.8 “Class Counsel” means Matthew A. Kaufman of The Kaufman Law Firm, who
8 subject to court approval shall act as counsel for the Class Members.

9 1.9 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
10 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees
11 and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal
12 work in connection with the Action, including their pre-filing investigation, their filing of the
13 Action, all related litigation activities, all Settlement work, all post-Settlement compliance
14 procedures, and related litigation expenses billed in connection with the Action.

15 1.10 “Class Data” means Class Member identifying information in Defendant’s
16 possession including the Class Member’s name, last-known mailing address, Social Security
17 number, dates of employment and Eligible Pay Periods, or data that will allow the Settlement
18 Administrator to reasonably determine Eligible Pay Periods. Defendant will in good faith
19 compile from its records and provide the Class Data to the Administrator.

20 1.11 “Class Member” or “Settlement Class Member” means a member of the Class, as
21 either a Participating Class Member or Non-Participating Class Member (including a Non-
22 Participating Class Member who qualifies as an Aggrieved Employee).

23 1.12 “Class Member Address Search” means the Administrator’s investigation and
24 search for current Class Member mailing addresses using all reasonably available sources,
25 methods and means including, but not limited to, the National Change of Address database, skip
26 traces, and direct contact by the Administrator with Class Members.

27 1.13 “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION
28 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to

1 Class Members in English with a Spanish translation in the form, without material variation,
2 attached as **Exhibit A** and incorporated by reference into this Agreement.

3 1.14 “Class Period” means the period from April 6, 2018 through March 1, 2023.

4 1.15 “Class Representative” means Plaintiff Osman Morales in the operative complaint
5 in the Action seeking Court approval to serve as Class Representative.

6 1.16 “Class Representative Service Payment” means the amount that the Court
7 authorizes to be paid to Plaintiff, in addition to Plaintiff’s Individual Settlement Payment, in
8 recognition of Plaintiff’s efforts and risks in assisting with the prosecution of the Lawsuit and in
9 return for executing a general release with Defendant.

10 1.17 “Complaint” means the operative complaint, filed in the Action.

11 1.18 “Court” means the Superior Court of California, County of Ventura.

12 1.19 “Defendant” means H&T International, Inc.

13 1.20 “Defense Counsel” means Nicole Kamm, Anet Drapalski, and Drew Tate of
14 FISHER & PHILLIPS LLP

15 1.21 “Effective Date” means: (a) the date of entry of the Court’s order granting final
16 approval of the Settlement Agreement and Judgment, if no Objections have been filed or if an
17 Objection was filed and later withdrawn; or (b) if an Objection to the Settlement Agreement is
18 filed, then the date when the time expires to file an appeal of the Court’s granting of final approval
19 of the Settlement Agreement; or (c) if an Objection is filed, as well as a timely Notice of Appeal
20 of the Court’s granting of final approval of the Settlement Agreement, then the date the appeal is
21 finally resolved, with the Final Approval unaffected. It is the intention of the Parties that the
22 Settlement shall not become effective until the Court’s Order Granting final approval approving
23 the Settlement has become completely final and Judgment has been entered in accordance with
24 the terms of the Settlement, and no timely recourse remains for an appellant or objector to contest
25 the Settlement.

26 1.22 “Eligible Pay Periods” means an estimate of the number of pay periods in which
27 Settlement Class Member(s) performed work for Defendant in the State of California, excluding
28 vacation, leaves of absence, or any gaps in employment, during the Class Period based on

1 Defendant's records.

2 1.23 "Final Approval" means the Court's order granting final approval of the
3 Settlement, in a form substantially similar to the order attached hereto as **Exhibit C**.

4 1.24 "Final Approval Hearing" means the Court's hearing on the Motion for Final
5 Approval of the Settlement to ascertain the fairness, reasonableness, and adequacy of the
6 Settlement.

7 1.25 "Final Judgment" means the Judgment Entered by the Court upon Granting Final
8 Approval of the Settlement. The Final Judgment shall constitute a judgment respecting the
9 Parties within the meaning and for purposes of California Code of Civil Procedure sections 577,
10 581d, and 904.1(a), and on the PAGA claims for purposes of enforcing the rule announced in
11 *Arias v. Superior Court*, 46 Cal. 4th 969 (2009).

12 1.26 "Gross Settlement Amount" means Sixty-Seven Thousand Five Hundred Dollars
13 and Zero Cents (\$67,500) which is the total amount Defendant agrees to pay under the Settlement
14 except as provided in Paragraph 10 below and except with respect to the employer's share of
15 payroll taxes. The Gross Settlement Amount will be used to pay Individual Class Payments,
16 Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel
17 Litigation Expenses, Class Representatives Service Payment and the Administrator's Expenses.

18 1.27 "Individual Class Payment" means the Participating Class Member's pro rata
19 share of the Net Settlement Amount calculated according to the number of Pay Periods worked
20 during the Class Period.

21 1.28 "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of
22 25% of the PAGA Penalties calculated according to the number of Pay Periods worked during
23 the PAGA Period. Aggrieved Employees will automatically receive their Individual PAGA
24 Payments even if they opt out of the Settlement.

25 1.29 "Judgment" means the judgment entered by the Court based upon the Final
26 Approval.

27 1.30 "LWDA" means the California Labor and Workforce Development Agency, the
28 agency entitled, under Labor Code section 2699, subd. (i).

1 1.31 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the
2 LWDA under Labor Code section 2699, subd. (i).

3 1.32 “Net Settlement Amount” means the Gross Settlement Amount, less the following
4 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
5 Payment, Class Representatives Service Payment, Class Counsel Fees Payment, Class Counsel
6 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to
7 be paid to Participating Class Members as Individual Class Payments.

8 1.33 “Non-Participating Class Member” means any Class Member who timely opts out
9 of the Settlement by sending the Administrator a valid and timely Request for Exclusion, as
10 outlined in Paragraph 7.5 This Agreement.

11 1.34 “Notice of Class Action and PAGA Settlement” means the notice of settlement,
12 attached hereto as **Exhibit A**, to be mailed as part of the Notice Packet to all prospective Class
13 Members upon Preliminary Approval.

14 1.35 “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee
15 worked for Defendant for at least one day during the PAGA Period.

16 1.36 “PAGA Period” means the period from January 7, 2021 through March 1, 2023.

17 1.37 “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

18 1.38 “PAGA Notice” means Plaintiff’s January 7, 2022 letter to Defendant and the
19 LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

20 1.39 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid
21 from the Gross Settlement Amount (\$5,000.00) allocated 25% to the Aggrieved Employees
22 (\$1,250.00) and the 75% to LWDA (\$3,750.00) in settlement of PAGA claims.

23 1.40 “Participating Class Member” means a Class Member who does not submit a valid
24 and timely Request for Exclusion from the Settlement pursuant to Section Paragraph 7.5 of this
25 Agreement.

26 1.41 “Plaintiff” means Osman Morales the named plaintiff in the Action.

27 1.42 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval
28 of the Settlement.

1 1.43 “Preliminary Approval Order” means the proposed Order Granting Preliminary
2 Approval and Approval of PAGA Settlement in a form substantially similar to the order attached
3 hereto as **Exhibit B**.

4 1.44 “Released Class Claims” means the claims being released as described in
5 Paragraph 5.2 below.

6 1.45 “Released PAGA Claims” means the claims being released as described in
7 Paragraph 5.3 below.

8 1.46 “Released Parties” means: Defendant H&T International, Inc. and each of its
9 former and present parents, subsidiaries, affiliates, managing agents, owners, insurers, insurance
10 policies, and benefit plans; each of the former and present officers, directors, employees, equity
11 holders (including, without limitation, partners, shareholders, holders of membership interests,
12 or any other person or entity with an interest in or obligation regarding Defendant’s assets or
13 liabilities), agents, representatives, administrators, fiduciaries, and attorneys of the entities and
14 plans described in this sentence; and any other predecessors, successors, transferees, and assigns
15 of each of the persons and entities described in this sentence.

16 1.47 “Request for Exclusion” means a Class Member’s submission of a written request
17 to be excluded from the Class Settlement signed by the Class Member and setting forth the Class
18 Member’s name, present address, and a simple statement electing to be excluded from the Class
19 Settlement.

20 1.48 “Response Deadline” means 30 days after the Administrator mails Notice to Class
21 Members, and shall be the last date on which Class Members may (a) fax, email, or mail Requests
22 for Exclusion from the Settlement, (b) fax, email, or mail his or her Objection to the Settlement,
23 or (c) dispute the information contained in the Notice of Class Action and PAGA Settlement.
24 Class Members to whom Notice Packets are resent after having been returned undeliverable to
25 the Administrator shall have an additional 14 calendar days beyond the Response Deadline has
26 expired.

27 1.49 “Settlement” means the disposition of the Action effected by this Agreement and
28 the Judgment.

1 **2. STIPULATED BACKGROUND**

2 2.1 On January 7, 2022, Plaintiff filed the PAGA Notice with the LWDA. Thereafter,
3 on April 6, 2022, Plaintiff Morales filed a class action Complaint alleging causes of action against
4 Defendant for (1) Failure to Pay Minimum Wages, (2) Failure to Pay Overtime Pay, (3) Failure
5 to Provide Meal Periods, (4) Failure to Authorize and Permit Rest Periods, (5) Failure to Provide
6 Accurate Itemized Wage Statements, (6) Failure to Reimburse Necessary Business Expenses,
7 and (7) Violation of the Private Attorney’s General Act.

8 2.2 On March 14, 2022, the LWDA did not take any action to investigate or prosecute
9 the matters alleged in Plaintiff’s January 7, 2022 PAGA Notice. Pursuant to Labor Code section
10 2699.3, subd.(a), Plaintiff Morales gave timely written notice to Defendant and the LWDA by
11 sending the PAGA Notice.

12 2.3 In June 2022, the Parties begin informally discussing informal resolution of the
13 action. Prior to negotiating the Settlement, Plaintiff obtained, through informal discovery
14 Plaintiff’s personnel records, earnings histories, and copies of wage statements. Defendant also
15 provided Plaintiff’s counsel with pertinent data for the Class Members so that the Parties could
16 fully-investigate the claims at issue and understand their strengths and weaknesses. Plaintiff’s
17 investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot*
18 *Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.*
19 (2008) 168 Cal.App.4th 116, 129-130 (“Dunk/Kullar”). On March 20, 2023, after various
20 informal settlement communication the parties negotiated this Settlement.

21 2.4 The Court has not granted class certification.

22 2.5 The Parties, Class Counsel and Defense Counsel represent that they are not aware
23 of any other pending matter or action asserting claims that will be extinguished or affected by
24 the Settlement. Solely for purposes of settling the Action, the Parties and their respective counsel
25 stipulate and agree that the requisites for establishing conditional class certification with respect
26 to the Class Members have been met and are met. If the Court does not grant either preliminary
27 or final approval of this Settlement, the Parties agree that this stipulation regarding class
28 certification will be revoked and the Parties will return to a point in litigation prior to the

1 execution of this Agreement. More specifically, for settlement purposes only, the Parties stipulate
2 and agree that:

3 2.5.1 The Class is ascertainable and so numerous as to make it impracticable to
4 join all Class Members.

5 2.5.2 There are common questions of law and fact including, but not limited to,
6 the following:

7 2.5.2.1 Whether Defendant paid proper wages to the Class;

8 2.5.2.2 Whether Defendant paid proper minimum wages to the Class;

9 2.5.2.3 Whether Defendant paid proper overtime wages to the Class;

10 2.5.2.4 Whether Defendant provided meal periods to the Class;

11 2.5.2.5 Whether Defendant provided rest periods to the Class;

12 2.5.2.6 Whether Defendant indemnified the Class for employment-related
13 expenditures;

14 2.5.2.7 Whether Defendant paid compensation timely throughout Class
15 Members' employment;

16 2.5.2.8 Whether Defendant provided accurate itemized wage statements
17 to the Class;

18 2.5.2.9 Whether Defendant paid proper meal period pay or rest period pay
19 to the Class; and

20 2.5.3 Plaintiff's claims are typical of the claims of the Class Members.

21 2.5.4 Plaintiff and Class Counsel will fairly and adequately protect the interests
22 of the Class.

23 2.5.5 The prosecution of separate actions by individual members of the Class
24 would create the risk of inconsistent or varying adjudications, which would establish
25 incompatible standards of conduct.

26 2.5.6 With respect to the Class, questions of law and fact common to the
27 members of the Class predominate over any questions affecting any individual member
28 in such Class, and a class action is superior to other available means for the fair and

1 efficient adjudication of the controversy.

2 2.6 Should, for whatever reason, the Settlement not become effective, the fact that the
3 Parties were willing to stipulate to class certification as part of the Settlement shall have no
4 bearing on, and shall not be admissible in connection with, the issue of whether the Class
5 Members and/or the Class Claims should be certified in a non-Settlement context in this Action
6 or in any other lawsuit. Further, Should, for whatever reason, the Court deny Final Approval, or
7 this Settlement not become effective, the Parties' stipulation to class certification as part of the
8 Settlement shall become null and void *ab initio* and shall have no bearing on and shall not be
9 admissible in connection with the issue of whether or not certification would be appropriate in a
10 non-settlement context. Defendant expressly reserves their right to oppose class certification in
11 the Action or any other action should this Settlement not become effective.

12 2.7 Defendant denies any liability or wrongdoing of any kind whatsoever associated
13 with the claims alleged in the Class Action Complaint, and Defendant further denies, for any
14 purpose other than settling the Action, that the Action is appropriate for class or representative
15 treatment. With respect to Plaintiff's claims, Defendant contends, among other things, that
16 Plaintiff, the Class Members, and the Aggrieved Employees have been paid proper wages, have
17 been paid proper minimum wages, have been paid proper overtime wages, have been provided
18 meal periods or they have been made available as required, have been provided rest periods or
19 they have been authorized and permitted as required, have been paid meal and rest period
20 premiums when appropriate at the correct rate, have been reimbursed for all employment-related
21 expenditures, have been paid timely wages during employment, have been paid timely wages
22 upon separation from employment, and have been provided with accurate itemized wage
23 statements. Defendant contends, among other things, that they have complied at all times with
24 the Labor Code and the applicable Wage Orders of the Industrial Welfare Commission.
25 Furthermore, with respect to all claims, Defendant contends that they have complied at all times
26 with the California Business and Professions Code.

27 2.8 It is the desire of the Parties to fully, finally, and forever settle, compromise, and
28 discharge all disputes and claims arising from or related to the Class Action Complaint, and the

1 Action.

2 2.9 Class Counsel has conducted a thorough investigation into the facts of the Action,
3 including an extensive review of relevant documents, and has diligently pursued an investigation
4 of the claims of the Class and Aggrieved Employees against Defendant. Based on their own
5 independent investigation and evaluation, Class Counsel is of the opinion that the Settlement
6 with Defendant for the consideration and on the terms set forth in this Joint Stipulation of Class
7 Action and PAGA Settlement is fair, reasonable, and adequate, and is in the best interest of the
8 Class in light of all known facts and circumstances, including the risk of significant delay, the
9 risk the Class will not be certified by the Court, defenses asserted by Defendant, and numerous
10 potential appellate issues. Defendant and Defendant's Counsel also agree that the Settlement is
11 fair and in the best interest of the Class.

12 2.10 Defendant has concluded that any further defense of this litigation would be
13 protracted and expensive for all Parties. Substantial amounts of Defendant's time, energy, and
14 resources have been and, unless this Settlement is completed, will continue to be devoted to, the
15 defense of the claims asserted by Plaintiff and Settlement Class Members. Defendant has also
16 taken into account the risks of further litigation in reaching its decision to enter into this
17 Settlement. Even though Defendant continues to contend that it is not liable for any of the claims
18 set forth by Plaintiff in this Action, Defendant has agreed, nonetheless, to settle in the manner
19 and upon the terms set forth in this Agreement to put to rest the claims in this Action. Defendant
20 contends that it has complied with all applicable state, federal, and local laws.

21 2.11 It is agreed by Plaintiff (on behalf of himself and the Class) and Defendant, that
22 the Action and any claims, damages, or causes of action arising out of the disputes that are the
23 subject of the Action, be settled and compromised as between Plaintiff, the Class and the
24 Aggrieved Employees, on one hand, and Defendant, on the other, subject to the terms and
25 conditions set forth in this Settlement and approval of the Court, as of the Effective Date.

26 2.12 This Agreement is a compromise of disputed claims. Defendant has claimed and
27 continues to claim that the Released Claims have no merit and do not give rise to liability.
28 Settlement Class Members have claimed and continue to claim that the Released Claims have

1 merit and give rise to liability on the part of Defendant. This Agreement is a compromise of
2 disputed claims.

3 2.13 The Parties agree to cooperate and take all steps necessary and appropriate to
4 obtain preliminary and final approval of this Settlement.

5 2.14 The Parties agree to stay all proceedings in the Action, except such proceedings
6 necessary to implement and complete the Settlement, pending the final approval hearing to be
7 conducted by the Court.

8

9 **3. MONETARY TERMS.**

10 3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 10 below,
11 Defendant promises to pay Sixty-Seven Thousand Five Hundred Dollars and Zero Cents
12 (\$67,500) and no more as the Gross Settlement Amount and to separately pay any and all
13 employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant
14 has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline
15 stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross
16 Settlement Amount without asking or requiring Participating Class Members or Aggrieved
17 Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount
18 will revert to Defendant.

19 3.2 The Net Settlement Amount will be determined by the Settlement Administrator
20 by Subtracting the Class Representative Service Payment, Class Counsel’s Counsel Fees
21 Payment, Class Counsel Litigation Expenses Payment, the LWDA Payment, and the
22 Administrator’s Expenses. The anticipated Net Settlement Amount is \$31,996.67. The Parties
23 estimate the amount of the Net Settlement Fund as follows, subject to the Court’s approval:

24

25	Gross Settlement Fund:	\$	67,500.00
	Class Representative Service Payment:	\$	5,000.00
26	Class Counsel Fees Payment:	\$	20,250.00
	Class Counsel Litigation Expenses:	\$	1,504.33.00
27	LWDA Payment:	\$	3,750
28			<i>(\$3,750 the LWDA and \$1,250.00 to remain in Net Settlement Fund for</i>

	<i>distribution to PAGA Settlement Group)</i>	
Administrator's Expenses:	\$	5,000.00
Net Settlement Amount	\$	31,996.67

This is a non-reversionary Settlement in which Defendant is required to pay the entire Gross Settlement Amount, which includes, Class Representative Service Payment, Class Counsel's Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the LWDA Payment, Individual Class Payments, Individual PAGA Payments, and the Administrator's Expenses. No portion of the Gross Settlement Fund will revert to Defendant.

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

3.3.1 To Plaintiff: Plaintiff will request that the court approve a Class Representative Service Payment to the Class Representative of not more than Five Thousand Dollars and Zero Cent (\$5,000.00) (in addition to any Individual Class Payments and, as to Plaintiff, any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves the Class Representative Service Payment less than the amounts requested, the Administrator will retain the remainder in the Net Settlement Amount for allocation to Participating Class Members. The Administrator will pay the Class Representatives Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment and shall hold harmless Defendant and Class Counsel from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Service

1 Payment.

2 3.3.2 To Class Counsel: Class counsel will request that the Court approve a
3 Class Counsel Fees Payment of not more than 30% of the Gross Settlement Payment,
4 which is currently estimated to be \$20,250.00 and a Class Counsel Litigation Expenses
5 Payment of not more than \$5,000.00 and estimated presently to be \$1,504.33. Defendant
6 will not oppose requests for these payments provided that do not exceed these amounts.
7 Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and
8 Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval
9 Hearing. This Settlement is not contingent upon the Court awarding Class Counsel any
10 particular amount in attorneys' fees and costs. If the Court approves a Class Counsel
11 Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts
12 requested, the Administrator will allocate the remainder to the Net Settlement Amount to
13 Participating Class Members. Released Parties shall have no liability to Class Counsel
14 or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel
15 Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will
16 pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment
17 using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and
18 liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel
19 Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant,
20 from any dispute or controversy regarding any division or sharing of any of these
21 Payments.

22 3.3.3 To the Administrator: The Administrator will pay out of the Gross
23 Settlement Amount to itself its reasonable fees and expenses that are documented and
24 approved by the Court in an amount that are presently estimated to be \$5,000.00. To the
25 extent the Settlement Administration Expenses that are documented and approved by the
26 Court are less than \$5,000.00 the remainder will be retained in the Net Settlement Amount
27 for distribution to Participating Class Members. The Administrator shall have the
28 authority and obligation to make payments, credits and disbursements to Class Members

1 and Aggrieved Employees in the manner set forth herein, calculated in accordance with
2 the methodology set out in this Agreement and orders of the Court. The Parties agree to
3 cooperate in the settlement administration process and to make all reasonable efforts to
4 control and minimize the cost and expenses incurred in administration of the Settlement

5 3.3.4 To Each Participating Class Member/Class Member Payment Ratio:

6 Participating Class Members will be paid on a pro-rata basis. To determine each
7 prospective Class Member's estimated Individual Settlement Payment, the Administrator
8 will use the following formula: the Net Settlement Amount will be divided by the
9 aggregate total number of pay periods worked by all prospective Class Members during
10 the Class Period, resulting in the Eligible Pay Period Value for Class Members. Each
11 prospective Class Member's estimated Individual Settlement Payment will then be
12 calculated by multiplying each prospective Class Member's total number of Eligible Pay
13 Periods by the Eligible Pay Period Value for Class Members.

14 3.3.4.1 Tax Allocation of Individual Class Payments. All Individual Class

15 Settlement Payments to Participating Class Members will be allocated as follows:
16 Twenty percent (20%) of each Participating Class Member's Individual Class
17 Payment will be allocated to settlement of wage claims (the "Wage Portion"), and
18 eighty percent (80%) as interest and penalties ("the Non-Wage Portion"). The
19 Wage Portions are subject to tax withholding and will be reported on an IRS W-
20 2 Form. The Non-Wage Portions are not subject to wage withholdings and will
21 be reported on IRS 1099 Forms. Participating Class Members assume full
22 responsibility and liability for any employee taxes owed on their Individual Class
23 Payment and shall hold harmless Defendant and Class Counsel from any claim or
24 liability for taxes, penalties, or interest arising as a result of the Individual Class
25 Payment.

26 3.3.4.2 Effect of Non-Participating Class Members on Calculation of
27 Individual Class Payments. Non-Participating Class Members will not receive
28 any Individual Class Payments. The Administrator will retain amounts equal to

1 their Individual Class Payments in the Net Settlement Amount for distribution to
2 Participating Class Members on a pro rata basis.

3 3.3.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount
4 of Five Thousand Dollars and Zero Cents (\$5,000.00) to be paid from the Gross
5 Settlement Amount, with 75% (\$750.00) allocated to the LWDA PAGA Payment and
6 25% (\$1,250.00) allocated to the Individual PAGA Payments. One hundred percent
7 (100%) of the PAGA Penalties is in settlement of claims for penalties and not be subject
8 to wage withholdings, and shall be reported on IRS Form 1099.

9 3.3.5.1 Individual PAGA Payments to Aggrieved Employees will be
10 calculated and apportioned from the percentage of the PAGA Allocation allocated
11 to the Aggrieved Employees (i.e., 25% of the PAGA Allocation or \$1,250.00)
12 based on the number of Pay Periods the PAGA Employee worked during the
13 PAGA Period as an hourly, non-exempt employee of Defendant in California.
14 Calculations of Individual PAGA Payments will be made as follows:

15 3.3.5.1.1 The Settlement Administrator will first calculate the
16 total number of Pay Periods worked by each Aggrieved Employee as a
17 non-exempt hourly-paid employee in California during the PAGA Period
18 and the aggregate total number of Pay Periods worked by all Aggrieved
19 Employees as non-exempt, hourly employees in California during the
20 PAGA Period. An Aggrieved Employee who worked any portion of a
21 PAGA Pay Period will be credited with the entire Pay Period. Aggrieved
22 Employees assume full responsibility and liability for any taxes owed on
23 their Individual PAGA Payment and shall hold harmless the Released
24 Parties and Class Counsel from any claim or liability for taxes, penalties,
25 or interest arising as a result of the Individual PAGA Payment.

26 3.3.5.2 If the Court approves PAGA Penalties of less than the amount requested,
27 the Administrator will allocate the remainder to the Net Settlement Amount. The
28 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

1 3.3.5.3 The Participating Class Members and Aggrieved Employees agree
2 to hold harmless the Released Parties, Class Counsel, Defendant’s Counsel, and
3 the Settlement Administrator for any tax liability, including penalties and interest,
4 arising out of or relating to the Participating Class Members’ or Aggrieved
5 Employees’ failure to pay taxes on any amounts paid pursuant to this Settlement.

6 3.3.6 No Credit Toward Benefit Plans. All settlement payments to Class
7 Members and Aggrieved Employees shall be deemed to be paid to such Class Members
8 and Aggrieved Employees solely in the year in which such payments actually are received
9 by the Class Member or Aggrieved Employee. It is expressly understood and agreed that
10 the Individual Settlement Payments made to Class Members and Individual PAGA
11 Payments made to Aggrieved Employees under this Settlement, as well as any other
12 payments made pursuant to this Settlement, will not be used to calculate any additional
13 benefits under any benefit plans to which any Class Members or Aggrieved Employees
14 may be eligible, including, but not limited to: (a) profit-sharing plans; (b) bonus plans;
15 (c) 401(k) plans; (d) stock purchase plans; (e) vacation plans; (f) sick leave plans; (g)
16 PTO plans; and (h) any other benefit plan. It is the Parties’ intention that this Settlement
17 will not affect any rights, contributions, or amounts to which any Class Members or
18 Aggrieved Employees may be entitled under any benefit plans.

19 3.3.7 Tax Liability and Medicare. The Parties make no representations as to the
20 tax treatment or legal effect of the payments called for hereunder, and Class Members
21 and/or Aggrieved Employees are not relying on any statement or representation by the
22 Parties in this regard. Participating Class Members understand and agree that they will
23 be responsible for the payment of taxes and penalties assessed on the payments described
24 herein and will hold the Parties free and harmless from and against any claims resulting
25 from treatment of such payments as non-taxable damages, including the treatment of such
26 payment as not subject to withholding or deduction for payroll and employment taxes.
27 Moreover, this Agreement is based upon a good faith determination of the Parties to
28 resolve a disputed claim. The Parties have not shifted responsibility of medical treatment

1 to Medicare in contravention of 42 U.S.C. Sec. 1395y(b), especially since this is strictly
2 a wage and hour case. The Parties resolved this matter in compliance with both state and
3 federal law. The Parties made every effort to adequately protect Medicare’s interest and
4 incorporate such into the settlement terms. Plaintiff warrants that she is not a Medicare
5 beneficiary as of the date of this Agreement. Because Plaintiff is not a Medicare recipient
6 as of the date of this Agreement, no conditional payments have been made by Medicare.

7 **4. SETTLEMENT FUNDING AND PAYMENTS.**

8 4.1 Class Member and Aggrieved Employee Pay Periods. Based on a review of its
9 records to date, Defendant estimates there are 74 Class Members who collectively worked a total
10 of 1,333 Pay Periods. Defendant estimates there are 2,853 workweeks during the Class Period
11 and 1,326 Pay Periods during the PAGA Period.

12 4.2 Class Data. No later than 21 days after the Court enters an Order Granting
13 Preliminary Approval of the Settlement, Defendant will provide to the Administrator an
14 electronic database containing each Class Member’s Class Data. If any or all of the Class Data
15 is unavailable to Defendant, Defendant will inform Class Counsel and the Parties will make their
16 best efforts to reconstruct or otherwise agree upon the Class Data prior to when it must be
17 submitted to the Administrator. This information will otherwise remain confidential and will not
18 be disclosed to anyone, except as required to applicable taxing authorities, in order to carry out
19 the reasonable efforts described in section 7, or pursuant to Defendant’s express written
20 authorization or by order of the Court. All Class Data will be used for settlement notification
21 and settlement administration and shall not be used for any other purpose by Class Counsel or
22 the Administrator. This provision shall not be construed to impede Class Counsel’s ability to
23 discharge their fiduciary duties to the Settlement Class, and if additional disclosures are
24 necessary, Class Counsel will obtain written authorization of Defendant and/or an order from the
25 Court. The Administrator shall provide reasonable and appropriate administrative, physical, and
26 technical safeguards for any personally identifiable information (“PII”) that it receives from
27 Defendant; and promptly provide Defendant with notice if PII is subject to unauthorized access,
28 use, disclosure, modification, or destruction.

1 4.3 Funding of Gross Settlement Amount. The Gross Settlement Amount shall be
2 paid in two (2) payments as follows: (1) \$45,000.00 plus the amount to fully pay Defendant’s
3 share of payroll taxes, shall be paid by transmitting the funds to the Administrator no later than
4 twenty-one (21) days after the Effective Date (“Initial Payment) and (2) \$22,500.00 shall be due
5 sixty (60) days after the initial payment. The Administrator must provide no later than five (5)
6 days after the Effective Date to Defendant the total amount to be paid by Defendant to cover its
7 share of payroll taxes.

8 4.4 Payments from the Gross Settlement Amount. Within fifteen (15) days after
9 Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all
10 Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the
11 Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel
12 Litigation Expenses Payment, and the Class Representatives Service Payment. Disbursement
13 of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the
14 Class Representatives Service Payment shall not precede disbursement of Individual Class
15 Payments and Individual PAGA Payments.

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

3 4.4.2 The Administrator must conduct a Class Member Address Search for all
4 other Class Members whose checks are returned undelivered without USPS forwarding
5 address. Within 7 days of receiving a returned check the Administrator must re-mail
6 checks to the USPS forwarding address provided or to an address ascertained through the
7 Class Member Address Search. The Administrator need not take further steps to deliver
8 checks to Class Members whose re-mailed checks are returned as undelivered. The
9 Administrator shall promptly send a replacement check to any Class Member whose
10 original check was lost or misplaced, requested by the Class Member prior to the void
11 date.

12 4.4.3 For any Class Member whose Individual Class Payment check or
13 Individual PAGA Payment check is uncashed and cancelled after the void date, the
14 Administrator shall transmit the funds represented by such checks to the Court-approved
15 nonprofit organization or foundation consistent with Code of Civil Procedure
16 Section 384, subd. (b), Bet Tzedek Legal Services ("Cy Pres Recipient"). The Parties,
17 Class Counsel and Defense Counsel represent that they have no interest or relationship,
18 financial or otherwise, with the intended Cy Pres Recipient. The Parties agree that there
19 is a nexus between the mission of Bet Tzedek and the interests of the Settlement Class
20 Members.

21 4.4.4 The payment of Individual Class Payments and Individual PAGA
22 Payments will not result in any modification of previously credited hours of service or
23 other eligibility criteria under any employee pension or employee welfare benefit plan
24 sponsored by Defendant or any of the Released Parties or any additional benefit payments
25 (including without limitation vacation pay, holiday pay, bonus pay, pension or 401(k)
26 plan contributions) beyond those provided by this Agreement to Plaintiff or Participating
27 Class Members, and Plaintiff and Participating Class Members will be deemed to have
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1 waived all such claims, whether known or unknown by them, as part of their release of
2 claims under this Agreement.

3 **5. RELEASES OF CLAIMS.** On the Effective Date, Plaintiff, Participating Class
4 Members, and Aggrieved Employees will release claims against all Released Parties as follows:

5 5.1 Plaintiff's Releases. Plaintiff and his respective former and present spouses,
6 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
7 and discharge Released Parties from all from any and all claims, actions, charges, complaints,
8 grievances and causes of action, of whatever nature, whether known or unknown, which exist or
9 may exist on Plaintiff's behalf as of the date of this Agreement, including, but not limited to, any
10 and all tort claims, contract claims, wage claims, wrongful termination claims, disability claims,
11 benefit claims, public policy claims, retaliation claims, harassment claims, statutory claims,
12 personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims,
13 fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or
14 other governmental statute, law, regulation or ordinance, including, but not limited to, claims for
15 violation of the Fair Labor Standards Act (including the Equal Pay Act), the California Labor
16 Code, specifically including but not limited to the Private Attorney General Act pursuant to Labor
17 Code 2699, the Wage Orders of California's Industrial Welfare Commission, other state wage
18 and hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act
19 (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of
20 1964, 1866, and 1991, the California Fair Employment and Housing Act, the California Family
21 Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California
22 Business & Professions Code §§17200 et seq., Section 503 of the Rehabilitation Act of 1973,
23 the California Constitution, the California Government Code, the Employee Retirement Income
24 Security Act, the California Pregnancy Discrimination Act, the Immigration Reform and Control
25 Act, the National Labor Relations Act, California's Occupational Safety and Health Act, or the
26 Federal equivalent, the Families First Coronavirus Response Act, the California Supplemental
27 paid sick leave law or any other federal, state, or local paid sick leave law, and any and all claims
28 arising under any federal, state or other governmental statute, law, regulation or ordinance.

1 Plaintiff may hereafter discover claims or facts in addition to, or different from,
2 those which he now knows or believes to exist, but Plaintiff expressly agrees to fully, finally and
3 forever settle and release any and all claims against the Released Parties, known or unknown,
4 suspected or unsuspected, which exist or may exist on behalf of or against the other at the time
5 of execution of this Agreement, including, but not limited to, any and all claims relating to or
6 arising from Plaintiff's alleged employment with Defendant. This Release is intended to resolve
7 any claims that can be validly released.

8 This Release does not release claims that cannot be released by Plaintiff as a
9 matter of law, including but not limited to Plaintiff's right to file a charge with or participate in
10 a charge by the Department of Fair Employment and Housing or any other federal, state, or local
11 administrative body or government agency authorized to enforce laws related to employment,
12 claims for Workers' Compensation, unemployment compensation, or state disability insurance
13 benefits pursuant to the terms of applicable state law

14 5.1.1. Plaintiff's Waivers of Rights Under California Civil Code Section 1542.

15 For purposes of Plaintiff's Releases, Plaintiff expressly waives and relinquishes the
16 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which
17 reads:

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

23 5.2. Release by Participating Class Members: All Participating Class Members, on
24 behalf of themselves and their respective former and present representatives, agents, attorneys,
25 heirs, administrators, successors, and assigns, release Released Parties from all claims arising
26 under federal, state, and/or local statutory, constitutional, contractual, or common law for wages,
27 damages, costs, penalties, liquidated damages, punitive damages, interest, attorney fees, litigation
28 costs, expenses, other fees of any kind, restitution, equitable relief, other relief under California

1 Business & Professions Code Section 17200 et seq. (“Section 17200”), whether known or
2 unknown, asserted or unasserted, accrued or un-accrued, that, based on the facts alleged in the
3 Complaint in this Action, have been, could have been, or in the future can or might be asserted
4 by or on behalf of any of the Participating Class Members, which the Participating Class
5 Members ever had, now have, or may have had, from the beginning of time to the Effective Date,
6 by reason of, arising out of, relating to, or in connection with the acts, events, facts, matters,
7 transactions, occurrences, statements, representations, misrepresentations, omissions, or any
8 other matter whatsoever related directly or indirectly to the Action or based on the facts alleged
9 in the Complaint including, but not limited to, including, e.g., (1) Failure to Pay All Minimum
10 Wages in Violation of Labor Code §§ 1182, 1181.12, 1194, 1194.2, 1187 1198, 204, 218.6, and
11 558; California Wage Order 1, California Civil Code § 1021.5, 3287(b), and 3289; (2) Failure to
12 pay overtime wages in violation of California Labor Code §§ 204, 510, 558, and 1198; (3) Failure
13 to provide compliant meal breaks in violation of Labor Code §§ 226.7, 512, and California Labor
14 Code and Wage Order 1, § 11.; (4) Failure to provide compliant rest breaks in violation of Labor
15 Code §§ 226.7, 512, and 516; (5) Failure to pay wages during employment in violation of Labor
16 Code § 204; (6) Failure to timely furnish an accurate itemized wage statement upon payment of
17 wages in violation of California Labor Code §226 and failure to maintain accurate records; (7)
18 Failure to pay all wages at time of termination in violation of California Labor Code §§201-203;
19 (8) Failure to reimburse business expenses in violation of Labor Code § 2802; (11) Violations of
20 Business & Professions Code section 17200 et seq.; and (12) Penalties pursuant to Labor Code
21 §§2698 et seq. for violations of Labor Code §§201, 202, 203, 204, 210, 226, 226.3, 226.7, 510,
22 512, 516, 558, 1174, 1174.5, 1182, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802, 6720, and
23 the applicable IWC Wage Order, as well as California Business & Professions Code Section
24 17200. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not
25 release any other claims, including claims for vested benefits, wrongful termination, violation of
26 the Fair Employment and Housing Act, unemployment insurance, disability, social security,
27 workers’ compensation, or claims based on facts occurring outside the Class Period.

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1 5.3 Release by Aggrieved Employees (Including Non-Participating Class Members
2 who are Aggrieved Employees): All Aggrieved Employees during the PAGA Period (including
3 but not limited to non-participating Class Members who are aggrieved employees). are deemed
4 to release, on behalf of themselves and their respective former and present representatives,
5 agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all
6 claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on
7 the PAGA Period facts and theories alleged in the Action, Complaint, and PAGA Notices
8 including, e.g., (1) Failure to Pay All Minimum Wages in Violation of Labor Code §§ 1182,
9 1181.12, 1194, 1194.2, 1187 1198, 204, 218.6, and 558; California Wage Order 1, California
10 Civil Code § 1021.5, 3287(b), and 3289; (2) Failure to pay overtime wages in violation of
11 California Labor Code §§ 204, 510, 558, and 1198; (3) Failure to provide compliant meal breaks
12 in violation of Labor Code §§ 226.7, 512, and California Labor Code and Wage Order 1, § 11.;
13 (4) Failure to provide compliant rest breaks in violation of Labor Code §§ 226.7, 512, and 516;
14 (5) Failure to pay wages during employment in violation of Labor Code § 204; (6) Failure to
15 timely furnish an accurate itemized wage statement upon payment of wages in violation of
16 California Labor Code §226 and failure to maintain accurate records; (7) Failure to pay all wages
17 at time of termination in violation of California Labor Code §§201-203; (8) Failure to reimburse
18 business expenses in violation of Labor Code § 2802; (11) Violations of Business & Professions
19 Code section 17200 et seq.; and (12) Penalties pursuant to Labor Code §§2698 et seq. for
20 violations of Labor Code §§201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 516, 558, 1174,
21 1174.5, 1182, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802, 6720, and the applicable IWC
22 Wage Order.

23 5.4 No Unalleged Claims. Plaintiff and Class Counsel represent that they are not
24 currently aware of any (a) unalleged claims in addition to, or different from, those which are
25 finally and forever settled and released against the Released Parties by this Settlement; and/or (b)
26 unalleged facts or legal theories upon which any claims or causes of action could be brought
27 against Defendant, except such facts and theories specifically alleged in the Action, Complaint,
28 and PAGA Notices. Plaintiff and Class Counsel further represent that, other than the instant

1 Action, they have no current intention of asserting any other claims against Defendant or
2 Released Parties in any judicial or administrative forum. Plaintiff and Class Counsel further
3 represent that they do not currently know of or represent any persons who have expressed any
4 interest in pursuing litigation or seeking any recovery against Defendant or Released Parties. The
5 Parties acknowledge, understand, and agree the representations described in this paragraph are
6 essential to the Settlement and that this Settlement would not have been entered into were it not
7 for this representation

8 5.5 Confirmation of No Parallel Actions. Defendant confirm they are not aware of
9 any currently pending class or representative claims against it for violations subject to the releases
10 in Paragraphs 5.2 through 5.3.

11 **6. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and
12 file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with
13 the Court’s current checklist for Preliminary Approvals.

14 6.1 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel
15 all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice,
16 and memorandum in support, of the Motion for Preliminary Approval that includes an analysis
17 of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under
18 Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary
19 Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (v) signed
20 declaration from Plaintiff confirming willingness and competency to serve and disclosing all
21 facts relevant to any actual or potential conflicts of interest with Class Members, the
22 Administrator, and/or the proposed Cy Pres; (v) a signed declaration from each Class Counsel
23 firm attesting to its competency to represent the Class Members; its timely transmission to the
24 LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section
25 2699.3, subd. (a)), operative Complaints (Labor Code section 2699, subd. (l)(1)), this Agreement
26 (Labor Code section 2699, subd. (l)(2)); and (vi) all facts relevant to any actual or potential
27 conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient.

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1 6.2 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion
2 for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
3 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person
4 or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant
5 Preliminary Approval or conditions Preliminary Approval on any material change to this
6 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of
7 the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and
8 otherwise satisfy the Court’s concerns.

9 **7 SETTLEMENT ADMINISTRATION.**

10 7.1 Selection of Administrator. The Parties verify that, as a condition of appointment,
11 the Administrator agrees to be bound by this Agreement and to perform, as a fiduciary, all duties
12 specified in this Agreement in exchange for payment of Administration Expenses. The Parties
13 and their Counsel represent that they have no interest or relationship, financial or otherwise, with
14 the Administrator other than a professional relationship arising out of prior experiences
15 administering settlements.

16 7.2 Employer Identification Number. The Administrator shall have and use its own
17 Employer Identification Number for purposes of calculating payroll tax withholdings and
18 providing reports state and federal tax authorities. However, to the extent there is any tax refund
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1 related to the employer-side taxes, the Parties agree that Defendant is the beneficial owners of
2 that refund.

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

6 7.4 Notice to Class Members.

7 7.4.1 No later than five (5) business days after receipt of the Class Data, the
8 Administrator shall notify Class Counsel that the list has been received and state the
9 number of Class Members, PAGA Members, and Pay Periods in the Class Data.

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

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

27 7.4.4 The deadlines for Class Members’ written objections, Challenges to Pay
28 Periods, and Requests for Exclusion will be extended an additional 14 days beyond the

1 30 days otherwise provided in the Class Notice for all Class Members whose notice is re-
2 mailed. The Administrator will inform the Class Member of the extended deadline with
3 the re-mailed Class Notice.

4 7.4.5 If the Administrator, Defendant or Class Counsel is contacted by or
5 otherwise discovers any persons who believe they should have been included in the Class
6 Data and should have received Class Notice, the Parties will expeditiously meet and
7 confer in good faith in an effort to agree on whether to include them as Class Members.
8 If the Parties agree, such persons will be Class Members entitled to the same rights as
9 other Class Members, and the Administrator will send, via email or overnight delivery, a
10 Class Notice requiring them to exercise options under this Agreement not later than 14
11 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever
12 are later.

13 7.5 Requests for Exclusion (Opt-Outs).

14 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
15 Settlement must send the Administrator, by fax, email, or mail, a signed written Request
16 for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus
17 an additional 14 days for Class Members whose Class Notice is re-mailed) (“the Response
18 Deadline”). A Request for Exclusion must: (1) contain the name, address, and telephone
19 number of the Class Member requesting exclusion; (2) contain a statement expressing
20 that the Settlement Class Member elects to be excluded from the Settlement; (3) be signed
21 by the Settlement Class Member; and (4) be postmarked or fax stamped by the Response
22 Deadline and returned to the Settlement Administrator at the specified address, email
23 address, or fax number. The Request for Exclusion will be deemed invalid if it does not
24 contain a Settlement Class Member’s name, address, telephone number, and signature.
25 The date of the postmark on the return mailing envelope, email, or fax stamp on the
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1 Request for Exclusion shall be the exclusive means used to determine whether a Request
2 for Exclusion has been timely submitted.

3 7.5.2 If the Administrator has reason to question the authenticity of a Request
4 for Exclusion, the Administrator may demand additional proof of the Class Member's
5 identity. The Administrator's determination of authenticity shall be final and not
6 appealable or otherwise susceptible to challenge.

7 7.5.3 Every Class Member who does not submit a timely and valid Request for
8 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled
9 to all benefits and bound by all terms and conditions of the Settlement and any Final
10 Judgment in this Action if the Settlement is approved by the Court, including the
11 Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement,
12 regardless whether the Participating Class Member actually receives the Class Notice or
13 objects to the Settlement.

14 7.5.4 Every Class Member who submits a valid and timely Request for
15 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class
16 Payment or have the right to object to the class action components of the Settlement.
17 Non-Participating Class Members who are Aggrieved Employees are deemed to release
18 Released PAGA Claims as outlined in Paragraph 5.3 and are eligible for an Individual
19 PAGA Payment.

20 7.6 Challenges to Calculation of Pay Periods. Each Class Member shall have 30 days
21 after the Administrator mails the Class Notice (plus an additional 14 days for Class Members
22 whose Class Notice is re-mailed) to challenge the number of Class and/or PAGA Pay Periods (if
23 any) allocated to the Class Member in the Class Notice. The Class Member may challenge the
24 allocation by communicating with the Administrator via fax, email or mail. The Administrator
25 must encourage the challenging Class Member to submit supporting documentation. In the
26 absence of any contrary documentation, the Administrator is entitled to presume that the Pay
27 Periods contained in the Class Notice are correct so long as they are consistent with the Class
28 Data. The Administrator's determination of each Class Member's allocation of Pay Periods shall

1 be final and not appealable or otherwise susceptible to challenge. The Administrator shall
2 promptly provide copies of all challenges to calculation of Pay Periods to Defense Counsel and
3 Class Counsel and the Administrator's determination the challenges. In the absence of
4 circumstances indicating fraud, manipulation or destruction, Defendant's records will be given a
5 rebuttable presumption of accuracy.

6 7.7 Objections to Settlement.

7 7.7.1 Only Participating Class Members may object to the class action
8 components of the Settlement and/or this Agreement, including contesting the fairness
9 of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
10 Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

11 7.7.2 Participating Class Members may send written objections to the
12 Administrator, by fax, email, or mail. In the alternative, Participating Class Members
13 may appear in Court (or hire an attorney to appear in Court) to present verbal objections
14 at the Final Approval Hearing. A Participating Class Member who elects to send a written
15 objection to the Administrator must do so not later than 30 days after the Administrator's
16 mailing of the Class Notice (plus an additional 14 days for Class Members whose Class
17 Notice was re-mailed). The date of mailing on the envelope shall be deemed the exclusive
18 means for determining that a Notice of Objection was timely received.

19 7.7.3 The Notice of Objection must be signed by the Class Member and state:
20 (1) the full name of the Class Member; (2) the dates of employment of the Class Member;
21 (3) the basis for the objection; and (4) if the Class Member intends to appear at the final
22 approval hearing.

23 7.7.4 Class Counsel will ensure that any Notice of Objection received by the
24 Administrator by the Response Deadline are filed with the Court along with the Motion
25 for Final Approval. Either of the Parties may file a responsive document to any objection
26 before the Final Approval Hearing. Any attorney who will represent an individual
27 objecting to this Settlement who has not filed a written objection must file a notice of
28 appearance with the Court and serve Class Counsel and counsel for Defendant no later

1 than the Response Period Deadline. Class Counsel shall not represent any Settlement
2 Class Members with respect to any such objections.

3 7.7.5 Any Class Member who fails to submit a timely written objection or to
4 present an objection in person at the Final Approval Hearing shall be deemed to have waived
5 any objections and shall be foreclosed from making any objection to the Settlement whether
6 by appeal or otherwise

7 7.7.6 Non-Participating Class Members have no right to object to any of the
8 class action components of the Settlement.

9 7.8 No Solicitation of Settlement Objections and Exclusions. The Parties agree to use
10 their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties or
11 their counsel seek to solicit or otherwise encourage Class Members to submit either written
12 objections to the Settlement, requests for exclusion from the Settlement, or to appeal from the
13 Court's Final Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's
14 ability to communicate with Class Members in accordance with Class Counsel's ethical
15 obligations owed to Class Members.

16 7.9 Administrator Duties. The Administrator, as a condition of appointment, will
17 agree to be bound by this Agreement with respect to the performance of its duties and its
18 compensation. The Administrator has a duty to perform or observe all tasks to be performed or
19 observed by the Administrator contained in this Agreement or otherwise.

20 7.9.1 *Website, Email Address and Toll-Free Number.* The Administrator will
21 establish and maintain and use an internet website to post information of interest to Class
22 Members including the date, time and location for the Final Approval Hearing and copies
23 of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary
24 Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel
25 Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative
26 Service Payment, the Final Approval and the Judgment. The Administrator will also
27
28

1 maintain and monitor an email address and a toll-free telephone number to receive Class
2 Member calls, faxes and emails.

3 7.9.2 *Requests for Exclusion (Opt-outs) and Exclusion List.* The Administrator
4 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity.
5 Not later than 5 days after the expiration of the deadline for submitting Requests for
6 Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel
7 containing (a) the names and other identifying information of Class Members who have
8 timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other
9 identifying information of Class Members who have submitted invalid Requests for
10 Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether
11 valid or invalid).

12 7.9.3 *Weekly Reports.* The Administrator must, on a weekly basis, provide
13 written reports to Class Counsel and Defense Counsel that, among other things, tally the
14 number of: Class Notices mailed or re-mailed, Class Notices returned undelivered,
15 Requests for Exclusion (whether valid or invalid) received, objections received,
16 challenges to Pay Periods received and/or resolved, and checks mailed for Individual
17 Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly
18 Reports must include provide the Administrator’s assessment of the validity of Requests
19 for Exclusion and attach copies of all Requests for Exclusion and objections received.

20 7.9.4 *Pay Period Challenges.* The Administrator has the authority to address
21 and make final decisions consistent with the terms of this Agreement on all Class Member
22 challenges over the calculation of Pay Periods. Class Members will have the opportunity,
23 should they disagree with Defendant’s records regarding the dates of employment stated
24 on their Notice of Class Action Settlement, to provide documentation and/or an
25 explanation to show contrary information by the Response Deadline. If there is a dispute,
26 the Administrator will consult with the Parties to determine whether an adjustment is
27 warranted. The Administrator shall determine the eligibility for, and the amounts of, any
28 Individual Settlement Payments under the terms of this Agreement. The Settlement

1 Administrator's determination of the eligibility for and amount of any Individual
2 Settlement Payment shall be binding upon the Settlement Class Members and the Parties.
3 In the absence of circumstances indicating fraud, manipulation or destruction,
4 Defendant's records will be given a rebuttable presumption of accuracy.

5 7.9.5 *Administrator's Declaration.* Not later than 14 days before the date by
6 which Plaintiff is required to file the Motion for Final Approval of the Settlement, the
7 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration
8 suitable for filing in Court attesting to its due diligence and compliance with all of its
9 obligations under this Agreement, including, but not limited to, its mailing of Class
10 Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices,
11 attempts to locate Class Members, the total number of Requests for Exclusion from
12 Settlement it received (both valid or invalid), the number of written objections and attach
13 the Exclusion List. The Administrator will supplement its declaration as needed or
14 requested by the Parties and/or the Court. Class Counsel is responsible for filing the
15 Administrator's declaration(s) in Court.

16 7.9.6 *Final Report by Settlement Administrator.* Within 10 days after the
17 Administrator disburses all funds in the Gross Settlement Amount, the Administrator will
18 provide Class Counsel and Defense Counsel with a final report detailing its disbursements
19 by employee identification number only of all payments made under this Agreement. At
20 least 15 days before any deadline set by the Court, the Administrator will prepare, and
21 submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in
22 Court attesting to its disbursement of all payments required under this Agreement. Class
23 Counsel is responsible for filing the Administrator's declaration in Court.

24 7.9.7 *Disputes Regarding Administration of Settlement.* Any disputes not
25 resolved by the Settlement Administrator concerning the administration of the Settlement
26 will be resolved by the Court, under the laws of the State of California. Prior to any such
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1 involvement of the Court, counsel for the Parties will confer in good faith to resolve the
2 disputes without the necessity of involving the Court

3 7.9.8 The Settlement Administrator shall have its own Employer Identification
4 Number under Internal Revenue Service Form W-9 and shall use its own Employer
5 Identification Number in calculating payroll withholdings for taxes and shall transmit the
6 required employers' and employees' share of the withholdings to the appropriate state
7 and federal tax authorities. The Settlement Administrator shall establish a settlement
8 fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US
9 Treasury Regulation section 468B-1 in which the Gross Settlement Amount and
10 employer's share of payroll taxes shall be deposited.

11
12 **8 CLASS SIZE ESTIMATES.** Based on its records, Defendant estimates that, as of the
13 end date of the Class Period, there are approximately 74 Class Members and 1,374 Total Pay
14 Periods during the Class period. Defendant estimates that there are 2932 workweeks during the
15 Class Period and 1,302 Pay Periods during the PAGA Period.

16
17 **9 DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for
18 Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members,
19 Defendant, at its sole discretion, shall have the right but not the obligation to revoke the
20 Settlement. The Parties agree that, if Defendant exercises its revocation rights, the Settlement
21 shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any
22 further obligation to perform under this Agreement; provided, however, Defendant will remain
23 responsible for paying all Settlement Administration Expenses incurred to that point. Defendant
24 must notify Class Counsel and the Court of its election to revoke not later than 14 days after the
25 Administrator sends the final Exclusion List to Defense Counsel.

26
27 **10 ESCALATOR CLAUSE.** Defendant has estimated that as of March 1, 2023, there are
28 approximately seventy-four (74) prospective Class Members who worked approximately 1,333

1 Total Pay Periods during the Class Period. The Maximum Settlement Amount will increase
2 proportionally with added Pay Periods if the number of such additional Pay Periods is more than
3 fifteen percent (15%) of the estimate number of Pay Periods stated herein. In other words, if the
4 number of actual pay periods during the Class Period exceeds 1,333 pay periods by more than
5 200 pay periods, the Gross Settlement Amount shall be increased by the actual percentage. For
6 example, if the number of pay periods increases by 11%, Defendant shall increase the Gross
7 Settlement Amount by 1%. Defendant has the option of cutting off and/or excluding from this
8 Settlement any pay periods and or “Class Members” that exceed a 15% increase on the 1,333 pay
9 periods agreed upon.

10
11 **11 MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the
12 calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the
13 Settlement that includes a request for approval of the PAGA settlement under Labor Code section
14 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion
15 for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel a
16 reasonable period prior to filing the Motion for Final Approval. Class Counsel and Defense
17 Counsel will expeditiously meet and confer in good faith, to resolve any disagreements
18 concerning the Motion for Final Approval. Upon expiration of the deadlines to postmark
19 Requests for Exclusion or Objection Forms, and with the Court’s permission, a Final
20 Approval/Settlement Fairness Hearing will be conducted to determine the final approval of the
21 Settlement Agreement along with the amounts properly payable for: (a) Individual Settlement
22 Payments; (b) Individual PAGA Payments; (c) Class Representative Enhancement Payments; (d)
23 Attorneys’ Fees and Costs; and (e) Settlement Administration Costs. Class Counsel will be
24 responsible for drafting all documents necessary to obtain final approval. Class Counsel will also
25 be responsible for drafting the attorneys’ fees and costs application to be heard at the Final
26 Approval/Settlement Fairness Hearing.

27 11.1 Response to Objections. Each Party retains the right to respond to any objection
28 raised by a Participating Class Member, including the right to file responsive documents in Court

1 no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or
2 accepted by the Court.

3 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
4 Approval on any material change to the Settlement (including, but not limited to, the scope of
5 release to be granted by Class Members), the Parties will expeditiously work together in good
6 faith to address the Court's concerns by revising the Agreement as necessary to obtain Final
7 Approval. The Court's decision to award less than the amounts requested for the Class
8 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
9 Expenses Payment and/or Administrator Expenses Payment shall not constitute a material
10 modification to the Agreement within the meaning of this paragraph.

11 11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of
12 Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely
13 for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
14 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

15 11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
16 and conditions of this Agreement, specifically including the Class Counsel Fees Payment and
17 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties,
18 their respective counsel, and all Participating Class Members who did not object to the Settlement
19 as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights
20 to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
21 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver
22 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
23 Parties' obligations to perform under this Agreement will be suspended until such time as the
24 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
25 the amount of the Net Settlement Amount.

26 11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If,
27 after a notice of appeal, a petition for review, or a petition for certiorari, or any other motion,
28 petition, or application, the reviewing Court vacates, reverses, or modifies the Judgment such

1 that there is a material modification to the Settlement (including, but not limited to, the scope of
2 release to be granted by Participating Class Members), and that Court's decision is not
3 completely reversed and the Judgment is not fully affirmed on review by a higher Court, then the
4 Parties shall work together in good faith to address any concerns raised by the reviewing Court
5 and propose a revised Settlement for the approval of the Court not later than fourteen days after
6 the reviewing Court's decision vacating, reversing, or materially modifying the Judgment
7 becomes Final. A vacation, reversal, or modification of the Court's award of the Class
8 Representative Service Payment or the Class Counsel Fees Payment or Class Counsel Litigation
9 Expenses Payment will not constitute a vacation, reversal, or material modification of the
10 Judgment within the meaning of this paragraph, provided that Defendant's obligation to make
11 payments under this Settlement will remain limited by the Gross Settlement Amount.

12
13 **12. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil
14 Procedure section 384, the Parties will work together in good faith to jointly submit and a
15 proposed amended judgment.

16
17 **13. ADDITIONAL PROVISIONS.**

18 13.1. No Admission of Liability, Class Certification or Representative Manageability
19 for Other Purposes. Defendant and the Released Parties deny that they have engaged in any
20 unlawful activity, have failed to comply with the law in any respect, have any liability to anyone
21 under the claims asserted in the Action, or that but for the Settlement a class should be certified
22 in the Action. This Agreement is entered into solely for the purpose of compromising highly
23 disputed claims. Nothing in this Agreement is intended or should be construed as an admission
24 by Defendant that any of the allegations in the Actions have merit or that Defendant has any
25 liability for any claims asserted; nor should it be intended or construed as an admission by
26 Plaintiff that Defendant's defenses in the Action have merit. This Settlement and the fact that
27 Plaintiff and Defendant was willing to settle the Action will have no bearing on, and will not be
28 admissible in connection with, any litigation (other than solely in connection with effectuating

1 the Settlement pursuant to this Agreement). The Parties agree that class certification and
2 representative treatment is for purposes of this Settlement only. If, for any reason the Court does
3 grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to
4 contest certification of any class for any reasons, and Defendant reserves all available defenses
5 to the claims in the Action, and Plaintiff reserves the right to move for class certification on any
6 grounds available and to contest Defendant's defenses. Whether or not the Judgment becomes
7 Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct
8 related to the Settlement or the Agreement, nor any reports or accounting of those matters, will
9 be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for
10 any purpose adverse to Plaintiff or Defendant or any of the Released Parties, including, but not
11 limited to, evidence of a presumption, concession, indication or admission by any of the Released
12 Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed,
13 referred to or offered in evidence against any of the Released Parties, in any further proceeding
14 in the Action, or any other civil, criminal or administrative action or proceeding except for
15 purposes of effectuating the Settlement pursuant to this Agreement.

16 13.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel,
17 Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval
18 of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or
19 cause or permit another person to disclose, disseminate or publicize, any of the terms of the
20 Agreement directly or indirectly, specifically or generally, to any person, corporation,
21 association, government agency, or other entity except: (1) to the Parties' attorneys, accountants,
22 or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a
23 related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4)
24 in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by
25 a state or federal government agency. Each Party agrees to immediately notify each other Party
26 of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class
27 Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate
28 any conversation or other communication, before the filing of the Motion for Preliminary

1 Approval, any with third party regarding this Agreement or the matters giving rise to this
2 Agreement except to respond only that “the matter was resolved,” or words to that effect. This
3 paragraph does not restrict Class Counsel’s communications with Class Members in accordance
4 with Class Counsel’s ethical obligations owed to Class Members.

5 13.3. Limitation on Public Statements About Settlement. Neither Class Counsel nor
6 Defendant’s Counsel shall publicize the Settlement, other than filing documents with the Court.
7 Plaintiff, Class Counsel, Defendant and Defendant’s Counsel agree that they will not issue any
8 press releases or initiate any contact with the media about the fact, amount, or terms of the
9 Settlement. If Plaintiff, Class Counsel, Defendant or Defendant’s Counsel receives an inquiry
10 about the Settlement from the media, they may respond only after the Motion for Preliminary
11 Approval has been filed and only by confirming the accurate terms of the Settlement. Class
12 Counsel and Defendant’s Counsel agree to discuss the terms of this Settlement only in filings in
13 the Action as required to approve the Settlement and in discussions with Class Members or the
14 Settlement Administrator in the context of administering this settlement, except that they may
15 include the Action's title in a list of cases for which they were appointed Class Counsel for
16 settlement purposes and provide the percentage of Attorneys' Fees or the Service Award amount
17 awarded in declarations in support of future motions for settlement without providing any other
18 information about the settlements. Class Counsel and Defendant’s Counsel will not discuss the
19 settlement with any third parties or otherwise publicize the settlement in any manner except as
20 provided in this paragraph. Class Counsel and Defendant’s Counsel will not use any information
21 about the identities, contact information, or other data provided about the Class Members or
22 Aggrieved Employees in the Action other than for purposes of the Action. All parties agree that
23 this settlement is strictly confidential until the Preliminary Approval Motion is filed. This
24 provision also does not limit Settlement Class Counsel from complying with ethical obligations,
25 and does not limit the Settlement Administrator from posting court-filed documents on its
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1 website for viewing by Class Members after preliminary approval. Nothing in this provision shall
2 prevent Defendant or Plaintiff from making any required disclosures.

3 13.4. Integrated Agreement. Upon execution by all Parties and their counsel, this
4 Agreement together with its attached exhibits shall constitute the entire agreement between the
5 Parties relating to the Settlement, superseding any and all oral representations, warranties,
6 covenants, or inducements made to or by any Party.

7 13.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant
8 and represent that they are authorized by Plaintiff and Defendant respectively, to take all
9 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
10 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
11 terms of this Agreement including any amendments to this Agreement.

12 13.6. Cooperation. The Parties and their counsel will cooperate with each other and
13 use their best efforts, in good faith, to implement the Settlement by, among other things,
14 modifying the Settlement Agreement, submitting supplemental evidence and supplementing
15 points and authorities as requested by the Court. In the event the Parties are unable to agree upon
16 the form or content of any document necessary to implement the Settlement, or on any
17 modification of the Agreement that may become necessary to implement the Settlement, the
18 Parties will seek the assistance of a mediator and/or the Court for resolution.

19 13.7. No Prior Assignments. The Parties separately represent and warrant that they
20 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
21 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
22 action, or right released and discharged by the Party in this Settlement.

23 13.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant or any Released
24 Party, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall
25 anything in this Settlement be relied upon as such within the meaning of United States Treasury
26 Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

27 13.9. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
28 PURPOSES OF THIS PARAGRAPH, THE “ACKNOWLEDGING PARTY” AND EACH

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

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1 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
2 AGREEMENT.

3 13.10. Modification of Agreement. This Agreement, and all parts of it, may be
4 amended, modified, changed, or waived only by an express written instrument signed by all
5 Parties or their representatives, and approved by the Court.

6 13.11. Agreement Binding on Successors. This Agreement will be binding upon, and
7 inure to the benefit of, the successors of each of the Parties.

8 13.12. Applicable Law. All terms and conditions of this Agreement and its exhibits will
9 be governed by and interpreted according to the internal laws of the State of California, without
10 regard to conflict of law principles.

11 13.13. Cooperation in Drafting. The Parties have cooperated in the drafting and
12 preparation of this Agreement. This Agreement will not be construed against any Party on the
13 basis that the Party was the drafter or participated in the drafting.

14 13.14. Confidentiality. To the extent permitted by law, all agreements made, and orders
15 entered during Action and in this Agreement relating to the confidentiality of information shall
16 survive the execution of this Agreement.

17 13.15. Use and Return of Class Data. Information provided to Class Counsel pursuant
18 to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class
19 Counsel by Defendant or the Administrator in connection with the mediation, other settlement
20 negotiations, or in connection with the Settlement, may be used only with respect to this
21 Settlement, and no other purpose, and may not be used in any way that violates any existing
22 contractual agreement, statute, or rule of court. Not later than 30 days after the date when the
23 Court discharges the Administrator's obligation to provide a Declaration confirming the final pay
24 out of all Settlement funds, Plaintiff and Class Counsel shall destroy, all paper and electronic
25 versions of any information provided to Class Counsel pursuant to Cal. Evid. Code §1152 and
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1 Class Data received from Defendant and/or the Administrator and, if requested in writing,
2 confirm in writing to Defendant the destruction of all such documents and data.

3 13.16. Headings. The descriptive heading of any section or paragraph of this
4 Agreement is inserted for convenience of reference only and does not constitute a part of this
5 Agreement.

6 13.17. Calendar Days. Unless otherwise noted, all reference to “days” in this
7 Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement
8 falls on a weekend or federal legal holiday, such date or deadline shall be on the first business
9 day thereafter.

10 13.18. Notice. All notices, demands or other communications between the Parties in
11 connection with this Agreement will be in writing and deemed to have been duly given as of the
12 third business day after mailing by United States mail, or the day sent by email or messenger,
13 addressed as follows:

14
15 To Plaintiff OSMAN MORALES:
16 Matthew A. Kaufman (SBN 166986)
17 **THE KAUFMAN LAW FIRM**
18 matt@kaufmanfirm.law
19 4590 E. Thousand Oaks Blvd., Suite 100
20 Westlake Village, CA 91362
21 (818) 990-1999 Tel

To Defendant H&T INTERNATIONL, INC.
Anet Drapalski, Esq.
(adrapalski@fisherphillips.com)
Drew Tate, Esq.
(dtate@fisherphillips.com)
Fisher & Phillips LLP
444 South Flower Street, Suite 1500
Los Angeles, California 90071
Telephone: (213) 330-4500

22 13.19. Execution in Counterparts. This Agreement may be executed in one or more
23 counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this
24 Agreement shall be accepted as an original. All executed counterparts and each of them will be
25 deemed to be one and the same instrument if counsel for the Parties will exchange between
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1 themselves signed counterparts. Any executed counterpart will be admissible in evidence to
2 prove the existence and contents of this Agreement.

3 13.20. Stay of Litigation. The Parties agree that upon the execution of this Agreement
4 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
5 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
6 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
7 process.

8 13.21. Continuing Jurisdiction. The Court shall retain continuing jurisdiction over the
9 Action under CCP section 664.6 to ensure the continuing implementation of this Agreement and
10 enforcement of the Settlement until performance in full of the terms of this Settlement.

11 13.22. Enforcement. Except with regard to the motions for preliminary approval, final
12 approval, and attorneys' fees and costs as contemplated herein, should either party be required
13 to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable
14 attorneys' fees and costs.

15 13.23. Binding Agreement. The Parties warrant they understand and have full authority
16 to enter this Settlement and further intend that this Settlement will be fully enforceable and
17 binding on all Parties. The Parties also agree that this Settlement will be admissible and subject
18 to disclosure in any proceeding to enforce its terms, notwithstanding any mediation
19 confidentiality provisions that otherwise might apply under federal or state law.

20 13.24. Invalidity of Any Provision. Before declaring any provision of this Agreement
21 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible
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1 consistent with applicable precedents so as to define all provisions of this Agreement valid and
2 enforceable.

3 13.25. Binding on Successors and Assigns. This Agreement shall be binding upon, and
4 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

5 13.26. Voluntary. This Agreement is executed voluntarily and without any duress or
6 undue influence on the part or behalf of the Parties hereto. The Parties acknowledge that they
7 have had ample opportunity to have this Agreement reviewed by counsel of their choice.

8 WHEREFORE, Plaintiff, on behalf of himself and the Class Members and Aggrieved
9 Employees, and Defendant have executed this Agreement as of the dates set forth below

10 **IT IS SO AGREED:**

11
12 DATED 5/27/2023

Osman Morales
ID Vwb3awFCr9CRHsrFVvwmTGQ9

13 Osman Morales, Plaintiff

14
15 DATED: _____

16 Teddy Hidetoshi Seike
17 For H&T International, Inc.

18 APPROVED AS TO FORM:

19
20 DATE: May 30, 2023

THE KAUFMAN LAW FIRM

21 By: *Matthew A. Kaufman 5/30/23*
22 ID CVjwKASLrYHQqHD-Tee7zL
Matthew A. Kaufman

23 Attorneys for Plaintiff
24 OSMAN MORALES

1 consistent with applicable precedents so as to define all provisions of this Agreement valid and
2 enforceable.

3 13.25. Binding on Successors and Assigns. This Agreement shall be binding upon, and
4 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

5 13.26. Voluntary. This Agreement is executed voluntarily and without any duress or
6 undue influence on the part or behalf of the Parties hereto. The Parties acknowledge that they
7 have had ample opportunity to have this Agreement reviewed by counsel of their choice.

8 WHEREFORE, Plaintiff, on behalf of himself and the Class Members and Aggrieved
9 Employees, and Defendant have executed this Agreement as of the dates set forth below

10 **IT IS SO AGREED:**

11
12 DATED: _____

Osman Morales, Plaintiff

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14
15 DATED: 5/27/2023 _____

DocuSigned by:
Hidetoshi Seike
AEEB0440B2BD476...

Teddy Hidetoshi Seike
For H&T International, Inc.

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18 APPROVED AS TO FORM:

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20 DATE: April __, 2023

THE KAUFMAN LAW FIRM

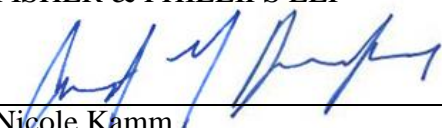
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22 By: _____
Matthew A. Kaufman

23 Attorneys for Plaintiff
24 OSMAN MORALES

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DATE: May 30, 2023

FISHER & PHILLIPS LLP

By: 

Nicole Kamm
Anet Drapalski
Drew M. Tate

Attorneys for Defendant
H&T INTERNATIONAL, INC.