

SETTLEMENT AND RELEASE

This Settlement and Release (hereinafter “Settlement” or “Agreement”) is made and entered into by and between Plaintiff JUAN FERNANDEZ (hereinafter “Plaintiff Fernandez” or “Plaintiff”), individually and on behalf of all aggrieved employees, on the one hand, and Defendant ABSTRAX TECH, INC., a California Corporation and Defendant KEVIN KOBY (hereinafter “Defendant Abstrax,” “Defendant Koby,” and, collectively, “Defendants”) on the other hand. Plaintiff and Defendants are collectively referred to herein as “the Parties.”

This Settlement shall be binding on Plaintiff, on the Aggrieved Employees (as defined below), on California’s state labor law enforcement agencies, and on Defendants and their present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be jointly liable with Defendants, subject to the terms and conditions hereof and the approval of the Court.

I. NATURE OF ACTION

1. On February 14, 2020, Plaintiff Fernandez sent the Labor and Workforce Development Agency (“LWDA”) notice of his intent to pursue a representative action against Abstrax Tech, Inc. dba Abstrax Labs, a California Corporation, pursuant to the Private Attorneys General Act of 2004 (“PAGA”), as codified in California Labor Code § 2698 *et seq.*, on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees.

2. After a minimum of 65 days passed without a response from the LWDA to any of Plaintiff Fernandez’s written notice to the LWDA listed *supra*, Plaintiff Fernandez commenced a representative action under the PAGA for alleged Labor Code violations (as further explained herein) on behalf of himself and other allegedly aggrieved employees.

II. REPRESENTATIONS AND DEFINITIONS

3. “Lawsuit” refers to the civil action filed by Plaintiff Fernandez on July 7, 2020 entitled *JUAN FERNANDEZ, an individual, on behalf of himself and all other aggrieved*

employees, v. ABSTRAX TECH, INC., a California Corporation; KEVIN KOBY, an individual, and DOES 1 through 100, inclusive, Superior Court of the State of California for The County of Orange, Case No. 30-2020-01150230-CU-OE-CJC.

4. “PAGA Counsel” shall refer to Haig B. Kazandjian and Cathy Gonzalez of HAIG B. KAZANDJIAN LAWYERS, APC.

5. “Counsel for Defendants” and “Defense Counsel” shall refer to Kyle D. Kring and Kerri N. Polizzi, of the law firm, KRING & CHUNG, LLP.

6. “Covered Period” shall mean the period from February 14, 2019 through May 15, 2021.

7. “PAGA Representative” or “Plaintiff” shall refer to Named Plaintiff JUAN FERNANDEZ

8. “Court” refers to the Superior Court of the State of California for The County of Orange.

9. “Covered Claims” means claims that were brought in the Lawsuit pursuant to Labor Code section 2699 et seq. for PAGA penalties only based on alleged violations of California Labor Code and applicable wage laws, including but not limited to: California Labor Code sections 201, 202, 203, 204, 206, 226(a), 226.7, 246, 510, 512(a), 1174(d), 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5, based on the facts and theories set forth in the Lawsuit and/or Plaintiff’s notice to the LWDA.

10. “Aggrieved Employees” shall mean all current and former non-exempt hourly paid individuals who were employed by Defendants within the state of California who worked one or more pay periods during the Covered Period. As of the date of this Agreement, there are approximately 62 Aggrieved Employees. Should the number of Aggrieved Employees increase by more than 10% when the Claims Administrator receives the Employee list, then Defendants agreed to increase the Amount of PAGA Settlement on a proportional basis for every percentage

increase past 15% (i.e. if the number of Aggrieved Employees increases by 17% to 69, then the Settlement Amount will increase by 2% to \$102,000).

11. “Eligible Pay Periods” shall mean the total number of pay periods that Aggrieved Employees worked during the Covered Period.

12. “Settlement” shall mean this Settlement and Release Agreement.

13. “Effective Date” means the date the Court enters the order approving the settlement of the PAGA penalties as described in this Agreement.

14. After the case was at issue, the Parties engaged in discovery and began to engage in informal arms’ length settlement discussions. Through the exchange of information and attendant discussions between the Parties, Plaintiff learned that the number of Aggrieved Employees is approximately 62 (including Plaintiff Fernandez).

15. PAGA Counsel considered the following facts and arguments in determining that the Settlement was fair and reasonable:

a. Defendants’ Legal Defenses: The following is a brief, non-exhaustive summary of the legal defenses raised by Defendants:

(a) Defendants have cited case law for the proposition that PAGA is not applicable to the nature of violations alleged here.

(b) Defendants also argued that Plaintiff is not an “aggrieved employee” with standing to sue.

(c) Defendants also argued that Plaintiff’s PAGA claims are unmanageable and would be dismissed on that basis.

b. Defendants’ Factual Defenses.

(a) The following is a brief, non-exhaustive summary of the factual defenses raised by Defendants: Defendants argued that there were no violations. Defendants argued that they had compliant wage and hour policies. Defendants also argued they had no knowledge of any off the

clock work. Defendants further argued that legally-compliant meal and rest periods were provided to employees and that to the extent any meal or rest breaks were taken short or late or not at all, it was based on the employee's voluntary choice and there was no violation. Defendants further argued that employees were properly reimbursed for all business expenses, including, without limitation, personal cell phone, travel, and parking expenses.

(b) In accordance with the PAGA (Labor Code § 2699(e)(1) and (e)(2)), the court in a PAGA action has the same discretion “to assess a civil penalty” that the Labor Commissioner would have, as well as complete discretion to “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Defendants argued the PAGA penalties should be reduced based on Defendants' exhaustive, good faith efforts to comply with wage and hour laws. Defendants also argued that after receiving notice of Plaintiff's allegations, that they improved monitoring of rest breaks and meal periods, factors that could mitigate in favor of reducing PAGA penalties.

c. Defendants further produced copies of its timekeeping, overtime, reimbursement, meal and rest period policies as well as a sampling of time and payroll records for purposes of settlement. Defendants argued that the time and payroll records demonstrated that Defendants generally complied with meal period laws. Moreover, Defendants argued they need not police breaks to ensure they are taken under California law (See *Brinker*) and that any potential meal period violations would still be subject to the affirmative defense of waiver.

16. Consequently, while PAGA Counsel disagreed with Defendants' legal analysis above, PAGA Counsel anticipated that, at trial, Defendants could make a potentially persuasive argument that the Court could exercise its discretion under PAGA to significantly reduce or altogether waive any penalties under PAGA. In consideration of the foregoing facts and arguments and how they might impact any judgment ultimately awarded to Aggrieved Employees if the Court was persuaded by them, PAGA Counsel determined that the Settlement was fair and reasonable.

17. The Parties recognize that the issues presented in the Lawsuit are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. The Parties have considered the risk and uncertainty of the outcome inherent in any litigation.

18. Plaintiff Fernandez and PAGA Counsel contend that they have diligently pursued an investigation of the Aggrieved Employees' claims against Defendants through formal and informal discovery.

19. Based on their own independent investigations and evaluations, including a full day of mediation on May 14, 2021, with a respected wage and hour mediator, Steve Pearl, Plaintiff and his counsel are of the opinion that the settlement for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interests of the Plaintiff, the Aggrieved Employees, and Defendants in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. Further, PAGA Counsel believes that the settlement amount entered into is in the best interests of the Aggrieved Employees and that the settlement for each Aggrieved Employee is fair, reasonable, and adequate, given the inherent risk of litigation and the remedial steps Defendants allege.

20. The purpose of this Settlement is to settle and compromise the Lawsuit and all Covered Claims that Plaintiff Fernandez and the Aggrieved Employees have against Defendants and the Releasees (as defined below).

21. Neither the existence of this Settlement nor anything contained in this Settlement shall be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants. Nothing herein shall constitute an admission by Defendants that the Lawsuit was properly brought as a representative action other than for settlement purposes. Settlement of the Lawsuit, the negotiation and execution of this Settlement, and all acts performed or documents executed pursuant to or in furtherance of this Settlement or the settlement of the Lawsuit: (a) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of either Defendants or of the truth of any of the factual allegations raised in the Lawsuit; (b) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omissions on the part of Defendants, or any of them, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; (c) are not, shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of these or similar claims for representative treatment, class certification, or administration other than for purposes of administering this Settlement; and (d) shall not constitute or be deemed a waiver of any right to compel arbitration of any dispute with an Aggrieved Employee that is not the subject of the releases detailed in this Settlement.

22. The Parties agree that upon full execution of this Settlement, the matter is stayed in its entirety except for any filings and/or motion work necessary to attain Court approval of the Settlement. Should the Court not grant approval of the Motion For Approval of PAGA Representative Action Settlement, or of the Stipulation For Approval Of The PAGA Representative Action Settlement, the stay will be lifted five (5) days after the Court order denying approval of the same and the Parties will be restored to their positions prior to the Settlement and the Settlement shall be null and void.

III. TERMS OF SETTLEMENT

23. In consideration of the mutual covenants, promises and representations set forth in this Settlement, Plaintiff, on behalf of himself and the Aggrieved Employees, agrees to settle and compromise the Lawsuit and the Covered Claims, subject to the terms and conditions set forth in

this Settlement.

24. The Amount of PAGA Settlement. As consideration for the settlement described herein and the release contained in this Settlement, Defendants agree to pay a total settlement of \$100,000.00 ("Settlement Payment"), which is due, from Defendants, sixty (60) days after the Court's approval of the Settlement Agreement. The Settlement Payment will be allocated as follows:

- (a) \$18,500.00 to Plaintiff JUAN FERNANDEZ, allocated for resolution of his individual claims and his execution of a general release, and for his Enhancement Award (the "Release and Enhancement Payment");
- (b) PAGA Counsel's attorney fees in the amount of \$40,000 subject Court Approval;
- (c) PAGA Counsel's request for cost reimbursements in the amount of up to \$9,145.84;
- (d) Administrative costs, for an amount not exceeding \$4,500, to distribute monies to Aggrieved Employees;
- (e) the remainder of the Settlement Payment in the amount after deducting the items (a), (b), and (c) herein shall be designated as PAGA Penalties to be allocated 75% to the LWDA and the remaining 25% to the Aggrieved Employees pursuant to Labor Code section 2699(i) as outlined below.

25. Allocation and Calculation of the PAGA Penalties. Each Aggrieved Employee shall receive a portion of the PAGA Penalties on a pro-rata basis. The anticipated total PAGA Penalty Fund will be \$27,854.16. Seventy-Five percent (75%) of the PAGA Penalty Fund (\$20,890.62) will be paid to the LWDA as required by Labor Code section 2699(i). The remaining Twenty-Five percent (25%) of the PAGA Penalty Fund (\$6,963.54) will be distributed to Aggrieved Employees on a pro-rata basis based on the formula set forth below. Each Aggrieved Employee's pro-rata share of the PAGA Penalty Fund represents their Individual Settlement Payment.

- (a) **Individual Settlement Calculation.** The Aggrieved Employees shall receive a pro rata share of the PAGA Penalty Fund allocated to Aggrieved Employees (\$6,963.54). Each Aggrieved Employee shall receive a pro rata value equal to the ratio of (a) the number of Eligible Pay Periods worked by that employee to (b) the total number of Eligible Pay Periods worked by all employees included in the Aggrieved Employee group. All Individual Settlement Payments made to Aggrieved Employees will be reported on an IRS Form 1099.
- (b) **Fair Formula.** The Parties recognize and agree that the precise value of each Aggrieved Employee's Individual Settlement Payment is subject to a variety of differing calculations and formulas. The Parties hereby agree that the formula for allocating payments as provided herein is reasonable and designed to provide a fair settlement to the Aggrieved Employees.

26. **PAGA Counsel's Fees and Costs.** As part of the request for approval of this Settlement, PAGA Counsel will request Court approval of forty-percent (40%) of the Settlement Payment, which is \$40,000.00 in attorneys' fees. PAGA Counsel will request cost reimbursement in the amount of up to \$9,145.84 for costs incurred by PAGA Counsel. If the Court approves a lesser amount for attorneys' fees and/or costs, the difference shall be allocated to the PAGA Penalty Fund and distributed pro rata accordingly. Any attorneys' fees and costs awarded to PAGA Counsel, hereinafter referred to as "PAGA Counsel Fees & Costs," shall fully compensate and reimburse PAGA Counsel for any and all of the work already performed in connection with the litigation of Covered Claims and all work remaining to be performed in fully and finally resolving the litigation of Covered Claims, including but not limited to securing Court approval of the settlement, appearing at hearings, making sure that the settlement is fairly and properly administered, appearing at any post-approval matter, all other work that PAGA Counsel has performed or will perform, and all costs that PAGA Counsel has incurred or will incur. Defendants agree not to oppose the PAGA Counsel Fees & Costs in the amounts listed herein, or

in lesser amounts.

27. Tax Treatment of Settlement Amounts. With regard to settlement payments to Aggrieved Employees and Plaintiff, IRS Form 1099s will be issued. Nothing in this Settlement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Plaintiff acknowledges that he has obtained no tax advice from Defendants or Defense Counsel and that neither Defendants nor their attorneys have made any representation concerning the tax consequences, if any, of the Settlement Amount in this Agreement or any payment to be made pursuant to this Agreement. To the extent that this Settlement or any of its attachments is interpreted to contain or constitute advice regarding any state or federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Defendants are not responsible for any employee tax obligations regarding the allocation of the settlement payments. Payment of PAGA Counsel Fees & Costs will be reflected in a Form 1099 to PAGA Counsel who shall assume full responsibility and liability for the payment of taxes due on such payments.

28. Payments Do Not Trigger Additional Benefits. None of the payments called for by this Settlement are to be treated as earnings, wages, pay, or compensation for the purpose of any applicable benefit or retirement plan, unless required by such plans.

IV. RELEASE

29. Release of All Claims:

(a) Release of All Claims for PAGA Penalties By All Aggrieved Employees.

Upon the approval by the Court and non-objection by the LWDA of this Settlement, each Aggrieved Employee (including Plaintiff Fernandez), shall, for the Covered Period, fully release and forever discharge Defendants and their present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be jointly liable with Defendants ("Releasees") from any and all Covered Claims for the time period of February 14, 2019 through the Effective Date as defined herein.

(b) Release of All Claims By Plaintiff Fernandez. Except as otherwise provided herein, in exchange for the consideration described herein, Plaintiff, on his own behalf and on behalf of his descendants, dependents, heirs, executors, administrators, agents, assigns, and successors (collectively, "Plaintiff's Releasors"), hereby covenants not to sue and fully and unconditionally forever releases and discharges Defendants and Defendants' Releasees including their past, present, and future representatives, directors, officers, employees, agents, attorneys, affiliates, members, and shareholders, as well as all parent companies, affiliated companies, subsidiary companies, affiliates, clients, clients facilities, consultants, agents, attorneys, predecessors, assignors, and/or assigns from and against any and all claims, causes of action, judgments, liens, demands, damages, obligations, suits, contracts, liabilities, losses, costs, and expenses, including, but not limited to, attorneys' fees and disbursements, or offsets of any nature whatsoever (collectively, "Claims") that Plaintiff's Releasors now have, have had, or may hereafter have against Defendants and/or Defendants' Releasees arising out of the Parties' relationship, the cessation of this relationship, including but not limited to those claims arising out of or relating to (i) Plaintiff's performance and reputation, (ii) harassment, (iii) discrimination, (iv) retaliation, (v) rights arising out of alleged violations of any contracts, express or implied; (vi) any covenant of good faith and fair dealing, express or implied; (vii) any tort; (viii) any legal restrictions on Defendants' right to terminate employees; and (ix) any Claims arising under any federal, state or other governmental statute, regulation or ordinance, including, without limitation: Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Federal Rehabilitation Act, the Employee Retirement Income Security Act, the Family and Medical Leave Act, the Fair Labor Standards Act, the California Fair Employment and Housing Act, the California Family Rights Act, the California Labor Code, and any other applicable state or federal law which took place prior to the Effective Date. Except for any rights created by this Agreement, this General Release is intended to be interpreted as broadly as possible and to apply to any and all claims known and unknown available to Plaintiff Fernandez in any forum, including, but not limited to, any claims

for unpaid wages, expense reimbursement, unpaid penalties or premiums, liquidated damages, class or representative actions governing employment (to the fullest extent allowed by applicable law), constructive termination, negligent or intentional infliction of emotional distress, harassment, discrimination, wrongful termination, negligent or intentional infliction of emotional distress, harassment, discrimination, wrongful termination, negligence, breach of contract, breach of the covenant of good faith and fair dealing, promissory estoppel, fraud, negligent or intentional misrepresentation, negligent or intentional interference with contract or prospective economic advantage, unfair business practices, defamation, libel, slander, personal injury; assault, battery, invasion of privacy, false imprisonment, conversion, disability benefits, claims under Labor Code section 132(a), violation of any provision of federal, state, or local law governing employment, and any claim for interest, attorneys' fees and/or costs. All such claims are forever barred by this Agreement and Plaintiff Fernandez acknowledges his familiarity with California Civil Code § 1542, which is expressly waived by Plaintiff Fernandez. California Civil Code § 1542 reads as follows:

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

However, this release shall not apply to claims for workers' compensation benefits or unemployment insurance benefits or any other claims that Plaintiff cannot, by statute, lawfully waive by this agreement.

(c) Defendants' Release of Claims Against Plaintiff. Defendants also agree to release any and all claims they may have against Plaintiff, of any kind, whether known or unknown, which arose prior to the execution of this Settlement Agreement. Defendants agree

that do not intend to and will not retaliate in any way against Plaintiff as a result of Plaintiff's filing of this Lawsuit.

(d) If Defendants receive an inquiry from a potential employer, Defendants will only reveal the dates of employment and the position held. Plaintiff and Defendants both further agree not to engage in or participate in any disparagement of any party to this agreement, including refraining from sharing in and making disparaging remarks, comments, opinions and conduct on social media platforms or otherwise. Nothing herein limits the parties' responsibility to respond truthfully under subpoena or as otherwise required by law.

V. APPROVAL STIPULATION

30. The Parties recognize that in accordance with Labor Code Section 2699(I) Court approval is required in the event of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Court* (2009) 46 Cal.4th 969, the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. Instead, in order to comply with the requirements of Labor Code Section 2699(I), the Parties shall submit a joint stipulation, or if the Court rejects the joint stipulation then a motion to the Court, identifying the key terms of this Settlement and Release agreement and requesting that the Court approve the amount of PAGA penalties provided for in the Settlement ("Approval Stipulation"). The Settlement is contingent upon the approval by the Court. If the Court should fail to approve this Settlement in the form agreed to by the Parties, the Parties agree to coordinate efforts to address the Court's questions or concerns and resubmit the Approval Stipulation or motion. If, after the Parties are unable to obtain approval of the terms of the Settlement, or the Court's approval of this Settlement is reversed, modified, or declared or rendered void, then (i) this Settlement shall be considered null and void; (ii) neither this Settlement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Settlement, except for the amount of

attorneys' fees and costs, , or administrative costs, shall invalidate this Settlement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

VI. ADMINISTERING THE SETTLEMENT

31. Subject to the Court approval of this Settlement, the Settlement Payment shall be paid as follows:

32. Defendants will fund the settlement administrator a total of \$100,000 ("Settlement Payment"), sixty (60) days after the Court approves the Stipulation for Settlement of this PAGA action.

33. No later than ten (10) calendar days of the Effective Date, Defendants shall provide the settlement administrator a list of Aggrieved Employees ("Aggrieved Employee List") containing the (1) name; (2) last known home address and telephone number; (3) the Aggrieved Employee's social security number; and (4) the number of pay periods for each Aggrieved Employee during the Covered Period. Neither the Aggrieved Employee List nor any information contained therein shall be distributed to PAGA Counsel at any time. The settlement administrator will distribute the checks to the Aggrieved Employees, at a cost not exceeding \$4,500.00, which shall come exclusively from the Settlement Payment which reduces the available PAGA Penalty Fund.

34. Defendants expressly reserve the right to object to payment to any Aggrieved Employee who has separately settled or waived any Covered Claims.

35. Provided there is no objection by the LWDA as to any material term of the Settlement Agreement prior to Court Approval of this Settlement, the settlement administrator will cause payment of checks for: (a) \$18,500 to Plaintiff as an incentive award and in exchange for a general release; (b) PAGA Counsel for the total amount of PAGA Counsel Fees & Costs, as defined herein as follows: (1) \$40,000.00 paid to PAGA Counsel for attorneys' fees within twenty-one (21) calendar days from the Effective Date and (2) \$9,145.84 paid to PAGA Counsel for costs within twenty-one (21) calendar days from the Effective Date.

36. Within ten (10) calendar days after the Settlement has been fully funded as described in the paragraphs above, provided there is no objection by the LWDA as to any material term of the Settlement Agreement prior to Court Approval, the settlement administrator will cause payment of checks to the LWDA for penalties, and for all Aggrieved Employees in the Aggrieved Employee List as set forth above. Concurrently with sending each Aggrieved Employee their share of the Settlement Amount, the Claims Administrator will include a "Notice of PAGA Action Settlement" (attached hereto as Exhibit A) along with each Aggrieved Employee's check. The settlement administrator shall send each Aggrieved Employee their check via U.S. First Class mail to each Aggrieved Employee's address with directions to the Postmaster to return all undeliverable mail to the settlement administrator. For each returned check/notice that is returned as undeliverable, the settlement administrator shall promptly attempt to locate the Aggrieved Employee's by using an address refresher database.

37. Settlement checks shall remain valid and negotiable for one hundred eighty (180) calendar days from the date of their issuance. If there are uncashed checks following this period, the settlement administrator will send the uncashed funds to the State of California Department of Industrial Relations Unclaimed Wages Fund in the name of the Aggrieved Employee who did not cash his or her check. Defendants shall be deemed to fully discharge their obligations to Aggrieved Employees to whom a check is mailed, regardless of whether such checks are actually received and/or negotiated by the recipient.

38. Neither Plaintiff nor Defendants, nor their respective counsel, shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the settlement administrator.

VII. DUTIES OF THE PARTIES PRIOR TO APPROVAL

39. Promptly upon execution of this Settlement, the Parties shall jointly apply to the Court for an Order seeking Approval of the PAGA Representative Action Settlement via

Stipulation. If the Court requires a motion, then Plaintiff shall file an unopposed Motion for Approval of PAGA Representative Action Settlement consistent with the terms of this Settlement. In addition, Counsel for Plaintiff shall be responsible for providing timely notice of the settlement to the LWDA in accordance Labor Code section 2699(1)(2).

40. The motion for approval, and/or the stipulation for an order will request Court approval of the following:

- a. Approving the amount of PAGA Penalties;
- b. Dismissing the entire Lawsuit with prejudice; and
- c. Waiving all rights to appeal; and
- d. Approving the Enhancement Payment; and
- e. Approving the PAGA Counsel Attorney fees and costs; and
- f. Approving the Claim Administration costs.

41. In conjunction with the motion for approval, and/or the stipulation for an order, the Parties will submit a proposed order requesting approval of the PAGA penalties provided for in the Settlement.

VIII. PARTIES' AUTHORITY

42. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement and bind the Parties hereto to the terms and conditions hereof.

IX. MUTUAL FULL COOPERATION

43. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein. As soon as practicable after execution of this Settlement, PAGA Counsel shall, with the assistance and cooperation of Defendants and their counsel, take all necessary steps to secure the approval of this Settlement from the Court.

X. NO PRIOR ASSIGNMENTS

44. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein. None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, PAGA Counsel (which includes Plaintiff's Counsel), or Defense Counsel without the express written consent of each other Party and their respective counsel. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person.

XI. NO ADMISSION

45. Nothing contained herein nor is the consummation of this Settlement to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants or any of the Releasees. Each of the Parties hereto has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expense. Defendants deny that they have engaged in any unlawful activity, that they have failed to comply with the law in any material respect, or that they have any liability to anyone under the claims asserted in the Lawsuit or that could have been asserted in the Lawsuit. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or shall be construed as an admission of liability or wrongdoing by Defendants.

XII. NON-EVIDENTIARY USE

46. Whether or not the Effective Date occurs, neither this Agreement nor any of its terms nor the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendants or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication,

or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further proceeding in the Lawsuit, or any other civil, criminal, or administrative action or proceeding except for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendants to establish that Plaintiff and/or an Aggrieved Employee has resolved any of his/her claims released through this Agreement.

47. Plaintiff and PAGA Counsel agree not to disclose or publicize the Settlement completed herein, its terms or contents, or the negotiations underlying the same, in any manner or form, directly or indirectly, to any person or entity, except as otherwise required by law, ordered by the Court, or contractually necessary to effectuate the terms of the Settlement as set forth herein.

XIII. NULLIFICATION

48. If (a) the LWDA objects or (b) the Court should for any reason fail to approve this Settlement in the form agreed to by the Parties (except for the amount of attorneys' fees or costs), or (c) the Court's approval of this Settlement is reversed, modified, or declared or rendered void, then (i) this Agreement shall be considered null and void; (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Agreement, except for the amount of attorneys' fees and costs, or the administrator cost award, shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

XIV. ATTORNEYS' FEES, COSTS AND EXPENSES

49. Except as specifically set forth herein, each Party shall bear its/his/her own attorneys' fees, costs, and expenses, taxable or otherwise, incurred by him/her/it arising out of the Lawsuit, and shall not seek reimbursement thereof from any other party to this Agreement.

XV. CONSTRUCTION

50. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive, arms-length negotiations between the Parties and that this Agreement

constitutes the entire agreement between Plaintiff (on behalf of himself and all other Aggrieved Employees) and Defendants regarding actual or potential claims asserted or that could have been asserted by Plaintiff against Releasees. Excluding any Arbitration or Confidentiality Agreement executed by Plaintiff with Defendants, both of which will remain in full force and effect, this Agreement supersedes all prior agreements, written or oral, between or among the Parties regarding those claims or potential claims and the resolution of those claims. Consequently, no other agreement, statement, or promise made by one Party to another as to any matter addressed in this Agreement shall be binding or valid.

XVI. CAPTIONS AND INTERPRETATIONS

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

XVII. MODIFICATION

52. This Settlement may not be amended, changed, altered, or modified, except in writing and signed by the Parties (or their successors-in-interest) hereto. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

XVIII. MISCELLANEOUS

53. This Settlement contains the entire Agreement between the Parties relating to the Settlement of the Covered Claims and Plaintiff's Released Claims, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing. The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other parties, or any of their agents, employees, attorneys, or

representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement, or with respect to any such matters that would alter or change the terms of this Agreement. No representations, warranties, or inducements have been made to any party concerning this Agreement other than those expressly set forth or referred to herein.

54. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns. This Settlement shall be binding on all aggrieved employees and the State of California who will be barred from relitigating the claims released in this Settlement.

55. This Settlement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties. The counterparts may be transmitted electronically (PDF) or by facsimile.

56. This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

57. The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement shall not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Agreement.

58. The Orange County Superior Court shall retain jurisdiction to enforce this Agreement pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Lawsuit and over all Parties and Aggrieved Employees, to the fullest extent to enforce and effectuate the terms and intent of this Agreement.

59. This Agreement shall not be subject to collateral attack by any Aggrieved Employee. Such prohibited collateral attack shall include, but not be limited to, claims that the Aggrieved Employee failed, for any reason, to timely receive his or her Individual Settlement

Payment.

THE PARTIES HAVE READ THE FOREGOING AGREEMENT. THEY HAVE CONSULTED WITH LEGAL COUNSEL OF THEIR CHOICE REGARDING THE FOREGOING AGREEMENT AND KNOW THE CONTENTS THEREOF AND SIGN THE SAME AS THEIR FREE, KNOWING, AND VOLUNTARY ACT AND DEED, BEING FULLY AWARE OF ITS CONSEQUENCES AND ITS FINAL AND BINDING EFFECT.

[SIGNATURE PAGE FOLLOWS]

DATED: _____

JUAN FERNANDEZ, for Himself and
as a Representative of other Aggrieved Employees

DATED: _____

ABSTRAX TECH, INC., a California Corporation

By: _____

DATED: _____

KEVIN KOBY

By: _____

APPROVED AS TO FORM:

DATED: _____

HAIG B. KAZANDJIAN LAWYERS, APC

By: _____

Haig B. Kazandjian, Esq.
Attorneys for Plaintiff JUAN FERNANDEZ
and Aggrieved Employees

DATED: _____

KRING & CHUNG, LLP

By:  _____

Kyle D. Kring, Esq.
Kerri N. Polizzi, Esq.
Attorneys for Defendants ABSTRAX TECH,
INC. and KEVIN KOBY



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DATED: 01 / 03 / 2022

Juan Fernandez

JUAN FERNANDEZ, for Himself and
as a Representative of other Aggrieved Employees

DATED: 1/13/2022 | 12:07 AM PST

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Max Koby

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Max Koby

By: _____

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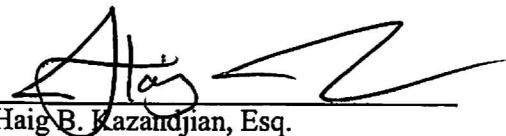
KEVIN KOBY
Kevin Koby

By: _____

APPROVED AS TO FORM:

DATED: 1/3/22

HAIG B. KAZANDJIAN LAWYERS, APC

By: 
Haig B. Kazandjian, Esq.
Attorneys for Plaintiff JUAN FERNANDEZ
and Aggrieved Employees

DATED: _____

KRING & CHUNG, LLP

By: _____
Kyle D. Kring, Esq.
Kerri N. Polizzi, Esq.
Attorneys for Defendants ABSTRAX TECH,
INC. and KEVIN KOBY