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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF LOS ANGELES – SPRING STREET

17
18 JOSE JESUS MARTINEZ, individually, and
on behalf of others similarly situated,

19 Plaintiff,

20 v.

21 DESERT CONCEPTS CONSTRUCTION,
22 INC., a California Corporation; and DOES 1
through 10, inclusive,

23 Defendants.
24
25
26
27
28

Case No.: 20STCV08933

CLASS ACTION

*[Assigned for All Purposes to Honorable William
F. Highberger, Department 10]*

**CLASS ACTION AND PAGA SETTLEMENT
AGREEMENT AND CLASS NOTICE**

Complaint filed: March 5, 2020
Trial date: Not set

1 **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE**

2 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between
3 plaintiff Jose Jesus Martinez (“Plaintiff”) and defendant Desert Concepts Construction, Inc. (“Defendant”).
4 The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as
5 “Party.”
6

7 **1. DEFINITIONS.**

8 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant
9 captioned *Martinez v. Desert Concepts Construction, Inc.* initiated on March 5, 2020 and
10 pending in Superior Court of the State of California, County of Los Angeles.

11 1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to
12 appoint to administer the Settlement.

13 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid
14 from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
15 accordance with the Administrator’s “not to exceed” bid submitted to the Court in
16 connection with Preliminary Approval of the Settlement.

17 1.4. “Aggrieved Employee” means a person employed by Defendant in California and
18 classified as a non-exempt hourly paid employee who worked for Defendant during the
19 PAGA Period from March 5, 2016 through the date of the Court’s approval of this
20 settlement. Excluded from this definition are any of Defendant’s employees who worked
21 exclusively on prevailing wage projects and time spent by Defendant’s employees working
22 on prevailing wage projects.

23 1.5. “Class” means all persons employed by Defendant in California and classified as non-
24 exempt hourly paid employee who worked for Defendant during the Class Period.
25 Excluded from this definition are any employees who worked exclusively on prevailing
26 wage projects.

27 1.6. “Class Counsel” means Moon Law Group, PC.

28 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean

the amounts allocated to Class Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

- 1.8. "Class Data" means Class Member identifying information in Defendant's possession including the Class Member's name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods. Excluded from the Class Period Workweeks and PAGA Pay Period counts are any such workweeks or portions thereof or pay other periods where Class Members worked exclusively on prevailing wage projects.
- 1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English [with a Spanish translation, if applicable] in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. "Class Period" means the period from March 5, 2016 to March 14, 2023.
- 1.13. "Class Representative" means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. "Class Representative Service Payment" means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. "Court" means the Superior Court of California, County of Los Angeles.
- 1.16. "Defendant" means named Defendant Desert Concepts Construction, Inc.
- 1.17. "Defense Counsel" means Coleman Frost LLP.

- 1.18. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19. "Final Approval" means the Court's order granting final approval of the Settlement.
- 1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.
- 1.21. "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.22. "Gross Settlement Amount" means \$300,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator's Expenses.
- 1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.25. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.26. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code § 2699(i).
- 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA

under Labor Code § 2699(i).

- 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.31. "PAGA Period" means the period from March 5, 2019 to March 14, 2023 .
- 1.32. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).
- 1.33. "PAGA Notice" means Plaintiff's March 3, 2020 letter to Defendant and the LWDA providing notice pursuant to Labor Code § 2699.3(a).
- 1.34. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$7,500.00) and the 75% to LWDA (\$22,500.00) in settlement of PAGA claims.
- 1.35. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36. "Plaintiff" means Jose Jesus Martinez, the named plaintiff in the Action.
- 1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39. "Released Class Claims" means the claims being released as described in Paragraph 5.2 below.
- 1.40. "Released PAGA Claims" means the claims being released as described in Paragraph 5.2 below.

- 1.41. "Released Parties" means: Defendant and each of its former and present directors, officers, shareholders, owners, [members], attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.
- 1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43. "Response Deadline" means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.44. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45. "Workweek" means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. RECITALS.

- 2.1. On March 5, 2020, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for (1) Failure to Pay Minimum and Regular Rate Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]; (5) Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code § 2802]; (6) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; (7) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; and (8) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.][On November 12, 2020, Plaintiff filed a First Amended Complaint alleging an additional cause of action against Defendant for Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.]. The First Amended Complaint is the

operative complaint in the Action (the "Operative Complaint.")] Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code § 2699.3(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.

2.3. On April 12, 2022, the Parties participated in an all-day mediation presided over by Hon. Carl West (Ret.) , and while the Action was not resolved during the mediation, the mediator's continued efforts ultimately led to this Agreement to settle the Action.

2.4. Prior to mediation, Plaintiff obtained, through informal discovery, a sample of time and payroll records, policy documents, and information regarding the class statistics. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*, 48 Cal. App. 4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129-130 (2008) ("*Dunk/Kullar*").

2.5. The Court has not granted class certification.

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

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay \$300,000.00 and no more as the Gross Settlement Amount, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments up to a maximum aggregate total of \$2,818.70, which represents the estimated amount of employer's side payroll taxes for all Wage Portions owed on Individual Class Payments. Any amount due in excess of \$2,818.70, shall be paid from the Gross Settlement Amount.. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 6.1 of

1 this Agreement. The Administrator will disburse the entire Gross Settlement Amount
2 without asking or requiring Participating Class Members or Aggrieved Employees to
3 submit any claim as a condition of payment. None of the Gross Settlement Amount will
4 revert to Defendant.

5 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the
6 following payments from the Gross Settlement Amount, in the amounts specified by the
7 Court in the Final Approval:

8 3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of
9 not more than \$10,000.00 (in addition to any Individual Class Payment and any
10 Individual PAGA Payment the Class Representative is entitled to receive as a
11 Participating Class Member). Defendant will not oppose Plaintiff's request for a
12 Class Representative Service Payment that does not exceed this amount. As part of
13 the motion for Class Counsel Fees Payment and Class Litigation Expenses
14 Payment, Plaintiff will seek Court approval for any Class Representative Service
15 Payments no later than 16 court days prior to the Final Approval Hearing. If the
16 Court approves a Class Representative Service Payment less than the amount
17 requested, the Administrator will retain the remainder in the Net Settlement
18 Amount. The Administrator will pay the Class Representative Service Payment
19 using IRS Form 1099. Plaintiff assumes full responsibility and liability for
20 employee taxes owed on the Class Representative Service Payment.

21 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33 1/3%,
22 which is currently estimated to be \$100,000.00 and a Class Counsel Litigation
23 Expenses Payment of not more than \$20,000.00. Defendant will not oppose
24 requests for these payments provided that do not exceed these amounts. Plaintiff
25 and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class
26 Litigation Expenses Payment no later than 16 court days prior to the Final
27 Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a
28 Class Counsel Litigation Expenses Payment less than the amounts requested, the

1 Administrator will allocate the remainder to the Net Settlement Amount. Released
2 Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel
3 arising from any claim to any portion any Class Counsel Fee Payment and/or Class
4 Counsel Litigation Expenses Payment. The Administrator will pay the Class
5 Counsel Fees Payment and Class Counsel Expenses Payment using one or more
6 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes
7 owed on the Class Counsel Fees Payment and the Class Counsel Litigation
8 Expenses Payment and holds Defendant harmless, and indemnifies Defendant,
9 from any dispute or controversy regarding any division or sharing of any of these
10 Payments.

11 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$15,000
12 except for a showing of good cause and as approved by the Court. To the extent
13 the Administration Expenses are less or the Court approves payment less than
14 \$15,000.00, the Administrator will retain the remainder in the Net Settlement
15 Amount.

16 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by
17 (a) dividing the Net Settlement Amount by the total number of Workweeks worked
18 by all Participating Class Members during the Class Period and (b) multiplying the
19 result by each Participating Class Member's Workweeks.

20 3.2.4.1. Tax Allocation of Individual Class Payments. 10% of each Participating
21 Class Member's Individual Class Payment will be allocated to settlement
22 of wage claims (the "Wage Portion"). The Wage Portions are subject to tax
23 withholding and will be reported on an IRS W-2 Form. The 90% of each
24 Participating Class Member's Individual Class Payment will be allocated
25 to settlement of claims for interest and penalties (the "Non-Wage
26 Portion").^{vi} The Non-Wage Portions are not subject to wage withholdings
27 and will be reported on IRS 1099 Forms. Participating Class Members
28 assume full responsibility and liability for any employee taxes owed on

1 their Individual Class Payment.

2 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual

3 Class Payments. Non-Participating Class Members will not receive any
4 Individual Class Payments. The Administrator will retain amounts equal to
5 their Individual Class Payments in the Net Settlement Amount for
6 distribution to Participating Class Members on a pro rata basis.

7 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
8 \$\$30,000.00 to be paid from the Gross Settlement Amount, with 75% (\$22,500.00)
9 allocated to the LWDA PAGA Payment and 25% (\$7,500.00) allocated to the
10 Individual PAGA Payments.

11 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a)
12 dividing the amount of the Aggrieved Employees' 25% share of PAGA
13 Penalties \$7,500.00 by the total number of PAGA Period Pay Periods
14 worked by all Aggrieved Employees during the PAGA Period and (b)
15 multiplying the result by each Aggrieved Employee's PAGA Period Pay
16 Periods. Aggrieved Employees assume full responsibility and liability for
17 any taxes owed on their Individual PAGA Payment.

18 3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested,
19 the Administrator will allocate the remainder to the Net Settlement
20 Amount. The Administrator will report the Individual PAGA Payments on
21 IRS 1099 Forms.

22
23 4. SETTLEMENT FUNDING AND PAYMENTS.

24 4.1. Class Data. Not later than 30 days after the Court grants Preliminary Approval of the
25 Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in
26 the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
27 Administrator must maintain the Class Data in confidence, use the Class Data only for
28

1 purposes of this Settlement and for no other purpose, and restrict access to the Class Data
2 to Administrator employees who need access to the Class Data to effect and perform under
3 this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it
4 discovers that the Class Data omitted class member identifying information and to provide
5 corrected or updated Class Data as soon as reasonably feasible. Without any extension of
6 the deadline by which Defendant must send the Class Data to the Administrator, the
7 Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or
8 otherwise resolve any issues related to missing or omitted Class Data.

9 4.2. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement
10 Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll
11 taxes by transmitting the funds to the Administrator based on the following schedule:

- 12 a. An initial payment of \$100,000.00 within 5 business days of the Court's order
13 granting final approval of the settlement; and
14 b. Six equal monthly payments starting 30 calendar days after the initial payment
15 due date.

16 4.3. Payments from the Gross Settlement Amount. Within 14 days after Defendant fully funds
17 the Gross Settlement Amount, the Administrator will mail checks for all Individual Class
18 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the
19 Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel
20 Litigation Expenses Payment, and the Class Representative Service Payment.
21 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
22 Payment and the Class Representative Service Payment shall not precede disbursement of
23 Individual Class Payments and Individual PAGA Payments.

24 4.3.1. The Administrator will issue checks for the Individual Class Payments and/or
25 Individual PAGA Payments and send them to the Class Members via First Class
26 U.S. Mail, postage prepaid. The face of each check shall prominently state the
27 date (not less than 180 days after the date of mailing) when the check will be
28 voided. The Administrator will cancel all checks not cashed by the void date. The

1 Administrator will send checks for Individual Settlement Payments to all
2 Participating Class Members (including those for whom Class Notice was returned
3 undelivered). The Administrator will send checks for Individual PAGA Payments
4 to all Aggrieved Employees including Non-Participating Class Members who
5 qualify as Aggrieved Employees (including those for whom Class Notice was
6 returned undelivered). The Administrator may send Participating Class Members a
7 single check combining the Individual Class Payment and the Individual PAGA
8 Payment. Before mailing any checks, the Settlement Administrator must update
9 the recipients' mailing addresses using the National Change of Address Database.

10 4.3.2. The Administrator must conduct a Class Member Address Search for all other
11 Class Members whose checks are returned undelivered without USPS forwarding
12 address. Within 7 days of receiving a returned check the Administrator must re-
13 mail checks to the USPS forwarding address provided or to an address ascertained
14 through the Class Member Address Search. The Administrator need not take
15 further steps to deliver checks to Class Members whose re-mailed checks are
16 returned as undelivered. The Administrator shall promptly send a replacement
17 check to any Class Member whose original check was lost or misplaced, requested
18 by the Class Member prior to the void date.

19 4.3.3. For any Class Member whose Individual Class Payment check or Individual
20 PAGA Payment check is uncashed and cancelled after the void date, the
21 Administrator shall transmit the funds represented by such checks [to the
22 California Controller's Unclaimed Property Fund in the name of the Class Member
23 thereby leaving no "unpaid residue" subject to the requirements of California Code
24 of Civil Procedure § 384(b).]

25 4.3.4. The payment of Individual Class Payments and Individual PAGA Payments shall
26 not obligate Defendant to confer any additional benefits or make any additional
27 payments to Class Members (such as 401(k) contributions or bonuses) beyond
28 those specified in this Agreement.

1
2 **5. RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire**
3 **Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of**
4 **the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release**
5 **claims against all Released Parties as follows:**

6 5.1. Plaintiff's Release. Plaintiff and his or her respective former and present spouses,
7 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally,
8 release and discharge Released Parties from all claims, transactions, or occurrences,
9 including, but not limited to: (a) all claims that were, or reasonably could have been,
10 alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims
11 that were, or reasonably could have been, alleged based on facts contained in the Operative
12 Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under
13 6.2, below. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or
14 actions to enforce this Agreement, or to any claims for vested benefits, unemployment
15 benefits, disability benefits, social security benefits, workers' compensation benefits that
16 arose at any time, or based on occurrences outside the Class Period. Plaintiff
17 acknowledges that Plaintiff may discover facts or law different from, or in addition to, the
18 facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that
19 Plaintiff's Release shall be and remain effective in all respects, notwithstanding such
20 different or additional facts or Plaintiff's discovery of them.

21 5.1.1. Plaintiff's Waiver of Rights Under California Civil Code § 1542. For purposes of
22 Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions,
23 rights, and benefits, if any, of Section 1542 of the California Civil Code, which
24 reads:

25 **A general release does not extend to claims that the creditor or**
26 **releasing party does not know or suspect to exist in his or her favor**
27 **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.

28 5.2. Release by Participating Class Members Who Are Not Aggrieved Employees: All

1 Participating Class Members, on behalf of themselves and their respective former and
2 present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
3 release Released Parties from (i) all claims that were alleged, or reasonably could have
4 been alleged, based on the Class Period facts stated in the Operative Complaint and
5 ascertained in the course of the Action including, all statutes/ordinances referenced in the
6 Operative Complaint and corresponding provisions of the California Industrial Welfare
7 Commission Wage Orders and the California Code of Regulations, including but not
8 limited to (1) the California Code of Regulations, Title 8, §11050, (2) Labor Code Sections
9 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2,
10 1198, 2802, and 2698 *et seq.*, as related to the above claims; (3) the Fair Labor Standards
11 Act, 29 U.S.C. § 201 *et seq.*, Participating Class Members who negotiate or otherwise
12 deposit their Settlement Payment Check will be deemed to have opted into the Action for
13 purposes of the Fair Labor Standards Act ("FLSA") and as to those Class Members, they
14 expressly waive and release any FLSA claims arising during the Class Period and
15 reasonably related to the claims and allegations in the Operative Complaint. This release
16 excludes the release of claims not permitted by law. The following language will be
17 printed on the reverse of each Settlement Payment Check, or words to this effect: "By
18 endorsing or otherwise negotiating this check, I acknowledge that I read, understood, and
19 agree to the terms set forth in the Notice of Class Action Settlement and I consent to join in
20 the FLSA portion of the Action, elect to participate in the settlement of the FLSA claims,
21 and agree to release all of my FLSA claims that are covered by the Settlement," and (4) all
22 related federal, state or local statutes, common law, ordinances, regulations, or provisions
23 relating to the facts and claims in the Action, including claims for continuing wages, failure
24 to pay wages, failure to pay wages in a timely manner, failure to pay minimum wages,
25 failure to pay overtime, failure to provide allegedly required wage statements, failure to
26 provide meal or rest breaks, liquidated damages, civil penalties, premium wages, claims for
27 injunctive relief and restitution under California Business & Professions Code § 17200,
28 interest, costs and attorneys' fees, including Labor Code Sections 218.5 and 218.6, Code of

1 Civil Procedure Section 1021.5 and Civil Code Section 3287. Except as set forth in
2 Section 5.3 of this Agreement, Participating Class Members do not release any other
3 claims, including claims for vested benefits, wrongful termination, violation of the Fair
4 Employment and Housing Act, unemployment insurance, disability, social security,
5 workers' compensation, or claims based on facts occurring outside the Class Period.

6 5.3. Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-
7 Participating Class Members who are Aggrieved Employees are deemed to release, on
8 behalf of themselves and their respective former and present representatives, agents,
9 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all
10 claims for PAGA penalties that were alleged, or reasonably could have been alleged, based
11 on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice and
12 ascertained in the course of the Action including, all statutes/ordinances referenced in the
13 Operative Complaint and corresponding provisions of the California Industrial Welfare
14 Commission Wage Orders and the California Code of Regulations, including but not
15 limited to (1) the California Code of Regulations, Title 8, §11050, and (2) Labor Code
16 Sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194,
17 1194.2, 1198, 2802, and 2698 *et seq.*, as related to the above claims.

18
19 **6. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare**
20 **and file a motion for preliminary approval ("Motion for Preliminary Approval") that**
21 **complies with the Court's current checklist for Preliminary Approvals.**

22 6.1. Defendant's Declaration in Support of Preliminary Approval. Within 30 days of the full
23 execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed
24 Declaration from Defendant and Defense Counsel disclosing all facts relevant to any actual
25 or potential conflicts of interest with the Administrator and Cy Pres Recipient. In their
26 Declarations, Defense Counsel and Defendant shall aver that they are not aware of any
27 other pending matter or action asserting claims that will be extinguished or adversely
28 affected by the Settlement.

1 6.2. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all
2 documents necessary for obtaining Preliminary Approval, including: (i) a draft of the
3 notice, and memorandum in support, of the Motion for Preliminary Approval that includes
4 an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA
5 Settlement under Labor Code § 2699(f)(2)); (ii) a draft proposed Order Granting
6 Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class
7 Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid
8 for administering the Settlement and attesting to its willingness to serve; competency;
9 operative procedures for protecting the security of Class Data; amounts of insurance,
10 coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant
11 to any actual or potential conflicts of interest with Class Members [and/or the proposed Cy
12 Pres]; and the nature and extent of any financial relationship with Plaintiff, Class Counsel
13 or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and
14 competency to serve and disclosing all facts relevant to any actual or potential conflicts of
15 interest with Class Members, [and/or] the Administrator [and/or the proposed *Cy Pres*]; (v)
16 a signed declaration from each Class Counsel firm attesting to its competency to represent
17 the Class Members; its timely transmission to the LWDA of all necessary PAGA
18 documents (initial notice of violations (Labor Code § 2699.3(a)), Operative Complaint
19 (Labor Code § 2699(l)(1)), this Agreement (Labor Code § 2699(l)(2)); (vi) a redlined
20 version of the parties' Agreement showing all modifications made to the Model Agreement
21 ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict
22 of interest with Class Members, the Administrator and/or the Cy Pres Recipient. In their
23 Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of
24 any other pending matter or action asserting claims that will be extinguished or adversely
25 affected by the Settlement.

26 6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible
27 for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30
28 days after the full execution of this Agreement; obtaining a prompt hearing date for the