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SUPERIOR COURT OF THE STATE OF CALIFORNIA

THE COUNTY OF SANTA CLARA

DAVID HERNANDEZ,

Plaintiff,

v.

BURDICK PAINTING; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 20CV363833

[Consolidated with Case 20CV366446]

**CLASS ACTION AND PAGA SETTLEMENT
AGREEMENT**

1 This Class Action and PAGA Settlement Agreement is entered into between Defendant
2 BURDICK PAINTING and Plaintiff DAVID VILLAGRAN HERNANDEZ, individually, and on
3 behalf of all other similarly situated and as a representative of the State of California.

4 DEFINITIONS

5 1. Actions. The "Initial Class Action" means the class action lawsuit
6 entitled *Hernandez v. Burdick Painting*, Case No. 20CV363833, filed in the Superior Court of
7 California, County of Santa Clara (Lead Case; Consolidated with Case No. 20CV366446). The
8 "Subsequent Class Action" means the class action lawsuit entitled *Hernandez v. Burdick Painting*,
9 Case No. 20CV366446, filed in the Superior Court of California, County of Santa Clara
10 (Consolidated into Lead Case No. 20CV363833). The "PAGA Action" means the lawsuit entitled
11 *Hernandez v. Burdick Painting*, Case No. 20CV367255, filed in the Superior Court of California,
12 County of Santa Clara. Collectively, the Initial Class Action, Subsequent Class Action and PAGA
13 Action shall be referred to herein as the Actions.

14 2. Agreement. "Agreement" or "Settlement Agreement" shall refer to the
15 instant Class Action and PAGA Settlement Agreement.

16 3. Attorneys' Fees. "Attorneys' Fees" refers to the amount to be awarded to
17 Class Counsel for the work it has performed in furtherance of the Actions, which, pending Court
18 approval, shall not exceed One Hundred and Forty Thousand and Fifty Dollars and Zero Cents
19 (\$140,050.00) and which represents approximately one-third (1/3) of the Gross Settlement Amount.

20 4. Attorneys' Costs. "Attorneys' Costs" refers to the amount to be reimbursed
21 for Class Counsel's litigation costs and expenses, which, pending Court approval, shall not exceed
22 Forty-Five Thousand Dollars and Zero Cents (\$45,000.00).

23 5. Class Counsel. "Class Counsel" shall mean Kevin Mahoney and Laura
24 Theriault of Mahoney Law Group, APC and/or any successor(s) thereof.

25 6. Class Members and the Class. "Class Members" (individually, "Class
26 Member") are all current and former non-exempt employees of Burdick Painting employed in
27 California during the Class Period.

1 7. Class Notice. “Class Notice” means the Notice of Class Action and PAGA
2 Settlement mutually agreed upon by the Parties and approved by the Court to be sent to the Class
3 Members and PAGA Members following preliminary approval that includes the scope of release
4 language for Settled Claims and Settled PAGA Claims, notifies Class Members and PAGA
5 Members of the Settlement, explains the Class Members’ options, including how Class Members
6 may opt out or object to the Settlement, and explains the facts and methods based on which the
7 Class Members’ and PAGA Members’ estimated settlement payments are calculated, substantially
8 in the form attached hereto as Exhibit A.

9 8. Class Period. “Class Period” means February 21, 2016 to the date of the
10 Preliminary Approval Order.

11 9. Class Settlement. “Class Settlement” refers to the settlement and resolution
12 of the Settled Claims.

13 10. Complaint. “Complaint” refers to the operative complaint in the Initial Class
14 Action, which in compliance with this Agreement, will be the Second Amended Complaint.

15 11. Court. “Court” refers to the Superior Court of California, Santa Clara
16 County, or other court, that will approve the Agreement.

17 12. Day. “Day” or “days” refers to a calendar day(s) unless otherwise stated. If
18 any designated date or deadline falls on a weekend or holiday, the designated date or deadline will
19 occur on the next business day.

20 13. Defendant. “Defendant” means Burdick Painting.

21 14. Effective Date. “Effective Date” of this Agreement means the first business
22 day following the last of the following occurrences: (i) sixty (60) calendar days following the date
23 the Court enters the Final Approval Order and Judgment; and (ii) if an appeal is taken from the
24 Final Approval Order and Judgment, then the date of final resolution of that appeal (including any
25 requests for rehearing and/or petitions for *certiorari*), resulting in final and complete judicial
26 approval of the Settlement in its entirety, with no further challenge to the Settlement being possible.

27 15. Final Approval Order and Judgment. “Final Approval Order and Judgment”
28 means the order and judgment entered and filed by the Court, that: (1) ultimately approves this

1 Agreement; (2) awards and orders the payment of all required amounts pursuant to the terms of this
2 Agreement, and (3) enters judgment in connection with the Actions pursuant to California Rules of
3 Court, 3.769, et seq. The Final Approval Order and Judgment will constitute a binding and final
4 resolution, have full *res judicata* effect, and discharge Defendant and Released Parties from liability
5 for any and all claims by Plaintiff, all Settlement Class Members as to all Settled Claims, and the
6 State of California and PAGA Members as to all Settled PAGA Claims as set forth in this
7 Agreement.

8 16. Final Approval Hearing. “Final Approval Hearing” means the hearing at
9 which the Court shall consider the motion for final approval of this Settlement and determine
10 whether to fully and finally approve the fairness and reasonableness of this Settlement and
11 Agreement, and enter the Final Approval Order and Judgment.

12 17. Last Known Address. “Last Known Address” means the most recently
13 recorded mailing address for a Class Member and/or PAGA Member contained in Defendant’s
14 payroll records.

15 18. Gross Settlement Amount. “Gross Settlement Amount” means a total
16 payment of Four Hundred and Twenty Thousand One Hundred and Fifty Dollars and Zero Cents
17 (\$420,150.00), payable by Defendant under this Agreement. The Gross Settlement Amount
18 includes all Attorneys’ Fees, Attorney’s Costs, Settlement Administration Costs, Service Payment
19 to Plaintiff, the PAGA Allocation, all employee taxes for the wage portion of any individual
20 settlement payments, and the Net Distribution to Class Members. In no event shall Defendant be
21 required to pay any amounts above the Gross Settlement Amount to effectuate this Agreement. The
22 Settlement Administrator will withhold the employees’ share of taxes on settlement payments, as
23 provided below, and Class Members and PAGA Members shall remain responsible for paying any
24 additional taxes due on any payments they are issued under the settlement. Defendant shall pay
25 any and all employer side taxes outside of the settlement.

26 19. Net Distribution Fund. “Net Distribution Fund” means the amount available
27 for distribution to Settlement Class Members, which is the Gross Settlement Amount, less all
28 Attorneys’ Fees, Attorney’s Costs, Settlement Administration Costs, Service Payment to Plaintiff,

1 and the PAGA Allocation. Each Settlement Class Member will be entitled to a *pro rata* share of
2 the Net Distribution Fund (referred to as “Individual Settlement Payment”) based on the number of
3 Workweeks credited to each Settlement Class Member during the Class Period.

4 20. Objection. “Objection” means an objection to the Class Settlement that a
5 Settlement Class Member submits in writing to the Settlement Administrator. Each “Objection”
6 must (1) contain the full name, address, and telephone number of the Settlement Class Member
7 objecting; (2) be signed by the Settlement Class Member; (3) be postmarked or fax stamped on or
8 before the Response Deadline (as defined below) and returned to the Settlement Administrator at
9 the specified address or fax number; and (4) give the factual basis for objection to the Class
10 Settlement. If a Class Member submits both an Objection and an Opt Out Request, he or she will
11 be excluded from the Class Settlement and the Objection will not be considered.

12 21. Opt Out Request. “Opt Out Request” means a request by a Class Member
13 to be excluded from the Class Settlement. Each “Opt Out Request” must (1) contain the full name,
14 address, and telephone number of the Class Member requesting exclusion from the Class Settlement
15 and the case name and number of the Initial Class Action; (2) be signed by the Class Member; (3)
16 be postmarked or fax stamped on or before the Response Deadline and returned to the Settlement
17 Administrator at the specified address or fax number; and (4) contain a statement substantially
18 similar to:

19 “I WISH TO BE EXCLUDED FROM THE SETTLEMENT OF CLASS CLAIMS
20 IN THE HERNANDEZ V. BURDICK PAINTING LAWSUIT, AND
21 UNDERSTAND THAT IF I ASK TO BE EXCLUDED, I WILL NOT RECEIVE
22 AN INDIVIDUAL SETTLEMENT PAYMENT. I UNDERSTAND THAT,
23 NEVERTHELESS, SETTLED PAGA CLAIMS WILL BE RELEASED AND
24 SETTLED.”

25 22. Parties. “Parties” shall mean Plaintiff and Defendant.

26 23. PAGA Allocation. “PAGA Allocation” refers to the amount of Twenty-Five
27 Thousand Dollars and Zero Cents (\$25,000.00) which is allocated to the settlement of the Settled
28 PAGA Claims, which will be distributed 75% to the Labor and Workforce Development Agency

1 (“LWDA Payment”) and 25% to PAGA Members (“Net PAGA Distribution Amount”), on a *pro*
2 *rata* basis (“Individual PAGA Payment(s)” refer to PAGA Members’ *pro rata* share of 25% of the
3 PAGA Allocation).

4 24. PAGA Members. “PAGA Members” means all current and former non-
5 exempt employees of Burdick Painting employed in the State of California during the PAGA
6 Period.

7 25. PAGA Period. “PAGA Period” means the period from February 21, 2019
8 through the date of the Preliminary Approval Order.

9 26. PAGA Settlement. “PAGA Settlement” refers to the settlement and
10 resolution of the Settled PAGA Claims.

11 27. Plaintiff. “Plaintiff” means David Villagran Hernandez.

12 28. Preliminary Approval Order. “Preliminary Approval Order” is the Order
13 entered and filed by the Court that preliminarily approves the terms and conditions of this
14 Agreement, including approval of the Parties’ Agreement that specifies the content of notice and
15 manner in which notice will be provided to the Class and responded to by the Class.

16 29. Released Parties. “Released Parties” means Defendant Burdick Painting and
17 each of its officers, directors, members, partners, owners, shareholders, employees, former
18 employees, agents, servants, attorneys, assigns, affiliates, independent contractors, volunteers,
19 predecessors, successors, parent companies and organizations, insurers, and any and all other
20 persons, firms and corporations in which Defendant may have an interest.

21 30. Response Deadline. The “Response Deadline” means the day that is forty-
22 five (45) days after the date the Class Notice is mailed to Class Members via First-Class U.S. Mail
23 and is the deadline to submit an Opt Out Request (as defined herein), Objection (as defined herein),
24 and/or Workweeks Dispute (as defined below). Any Class Members that have their notices remailed
25 shall have an additional fourteen (14) days to respond.

26 31. Service Payment. “Service Payment” refers to an individual payment to
27 Plaintiff approved by the Court, not to exceed Five Thousand Dollars and Zero Cents (\$5,000.00),
28 in exchange for Plaintiff’s service in furtherance of the Actions.

1 32. Settlement. “Settlement” shall refer to the agreement of the Parties to settle
2 the claims as set forth and embodied in this Agreement.

3 33. Settlement Administrator. “Settlement Administrator” shall mean Phoenix
4 Class Action Administration Solutions, a neutral third-party administrator as mutually chosen by
5 the Parties and approved by the Court.

6 34. Settlement Administration Costs. “Settlement Administration Costs” refers
7 to the amount to be paid to the Settlement Administrator for the costs of administering this
8 Settlement, not to exceed Nine Thousand Dollars and Zero Cents (\$9,000.00).

9 35. Settled Class Claims. “Settled Class Claims” means all claims, charges,
10 complaints, liens, demands, causes of action, obligations, damages and liabilities, whether known
11 or unknown, that arise during the Class Period that each Settlement Class Member had, now has,
12 or may hereafter claim to have against the Released Parties and that were asserted in the Complaint,
13 or that could have been asserted in the Complaint based on any of the facts or allegations in the
14 Complaint, regardless of whether such claims arise under federal, state and/or local law, statute,
15 ordinance, regulation, common law, or other source of law. The Settled Class Claims specifically
16 include, but are not limited to claims for unpaid wages, claims for unpaid reporting time pay, claims
17 for unpaid sick pay, the alleged failure to provide meal periods or compensation in lieu thereof, the
18 alleged failure to provide paid rest periods, failure to timely furnish accurate itemized wage
19 statements, record keeping violations, failure to timely pay wages, failure to reimburse business
20 expenses, unfair business practices, and violations of the California Labor Code and Industrial
21 Welfare Commission Wage Orders, including and not limited to, for violations of California Labor
22 Code §§ 201, 202, 203, 226(a), 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1194, 1197, 1197.1,
23 1198, 2802, and Industrial Welfare Commission Wage Orders.

24 36. Settled PAGA Claims. “Settled PAGA Claims” means all claims for civil
25 penalties that were asserted, or could have been asserted, or that arise, whether known or unknown,
26 during the PAGA Period, based for any of the alleged violations of the California Labor Code
27 and/or Industrial Welfare Commission Wage Orders that were asserted, or could have been
28 asserted, within the Complaint and PAGA Notice based on any facts or allegations therein,

including, but not limited to, violations of California Labor Code §§ 201, 202, 203, 226(a), 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802 and Industrial Welfare Commission Wage Orders.

37. Settlement Class/Settlement Class Member(s). “Settlement Class” or “Settlement Class Member(s)” means all Class Members who have not submitted a timely and valid Opt Out Request.

38. Settlement Proceeds Distribution Deadline. “Settlement Proceeds Distribution Deadline” means a date that is fourteen (14) days after the Gross Settlement Amount has been deposited by Defendant.

39. Updated Address. “Updated Address” means a mailing address that was updated by a reasonable address verification measure of the Settlement Administrator or by an updated mailing address provided by the United States Postal Service for a Class Member or PAGA Member.

40. Workweek. “Workweek” shall mean any calendar week (*i.e.*, a week beginning on Sunday and ending on Saturday) in which a Class Member or PAGA Member was employed by Defendant for at least one day. The Parties agree that, for purposes of determining a Class Member’s and/or PAGA Member’s Workweeks under this Agreement, Workweeks may be calculated as the number of days between a Class Member’s hire date(s) or the start of the applicable Class Period or PAGA Period, whichever is later, and termination date(s), or the date of preliminary approval of the Settlement Agreement in the absence of a subsequent termination date, based on a 360-day year (using Microsoft Excel’s DAYS360 or similar function which returns the number of days between two dates) and dividing the result by 7 and then rounding that number up to the nearest whole number.

RECITALS

41. Plaintiff’s Class Action Complaint for Damages was filed on February 21, 2020 in the Superior Court of California, County of Santa Clara, commencing the Initial Class Action. The Initial Class Action was filed by the law firms of Bradley/Grombacher, LLP and Law Offices of Sahag Majarian II. On May 8, 2020, Class Counsel filed the Subsequent Class Action

1 on behalf of Plaintiff and other similarly situated individuals. Class Counsel substituted into the
2 Initial Class Action on July 10, 2020 (for Bradley/Grombacher, LLP) and on August 7, 2020 (for
3 Law Offices of Sahag Majarian II). On March 9, 2022, the Hon. Patricia M. Lucas of the Superior
4 Court of California, Santa Clara County, ordered that the Initial Class Action and Subsequent Class
5 Action were consolidated, with the Initial Class Action serving as the Lead Case. Following the
6 consolidation order on March 9, 2022, Plaintiff filed a First Amended Complaint in the Initial Class
7 Action alleging the following causes of action: (1) failure to pay all wages; (2) failure to pay
8 reporting time pay; (3) meal period violations; (4) rest period violation; (5) failure to pay all wages
9 due upon separation; (6) failure to provide accurate, itemized wage statement; (7) failure to
10 indemnify for expenditures or losses in discharge of duties; and (8) violation of section 17200 *et*
11 *seq.* of California's Business and Professions Code. Defendant responded to the First Amended
12 Complaint on July 6, 2022.

13 42. Plaintiff contends that on April 6, 2020, he provided the Labor and
14 Workforce Development Agency notice of intent to pursue civil penalties against Defendant under
15 the Private Attorneys General Act for alleged violations of the California Labor Code and
16 applicable Industrial Welfare Commission Wage Orders (the "PAGA Notice"). Plaintiff filed a
17 separate action, on June 11, 2020, seeking penalties under the Private Attorneys General Act, Cal.
18 Lab. Code § 2698, *et seq.*, for the following underlying violations: (1) failure to pay all wages; (2)
19 meal period violations; (3) rest period violation; (4) failure to provide accurate, itemized wage
20 statement; (5) failure to pay all wages due upon separation; and (6) failure to indemnify for
21 expenditures or losses in discharge of duties. Plaintiff dismissed this PAGA Action without
22 prejudice on May 18, 2023.

23 43. Plaintiff's Second Amended Complaint in the Initial Class Action, filed on
24 May 17, 2023, alleges the following causes of action: (1) failure to pay all wages; (2) failure to pay
25 reporting time pay; (3) meal period violations; (4) rest period violation; (5) failure to pay all wages
26 due upon separation; (6) failure to provide accurate, itemized wage statement; (7) failure to
27 indemnify for expenditures or losses in discharge of duties; (8) violation of section 17200 *et seq.*
28 of California's Business and Professions Code; and (9) penalties pursuant to Labor Code § 2698,

1 *et seq* (in connection with the alleged underlying claims noted under (1), (3), (4), (5), (6) and (7)
2 above).

3 44. Plaintiff, on behalf of himself and Class Members, and Defendant attended
4 mediation with Mark LeHocky of ADR Services, Inc. on November 9, 2022. The Parties did not
5 resolve their claims on November 9, but continued negotiations, which resulted in the instant
6 Agreement. The Parties agree that the terms and conditions of this Agreement are the result of
7 lengthy, intensive arms-length negotiations between the Parties supervised by an experienced
8 employment law mediator. The Parties agree that the Agreement is entered into in good faith as to
9 each Class Member and PAGA Member, and that the Settlement is fair, reasonable and adequate
10 as to each Class Member and PAGA Member.

11 **TERMS AND CONDITIONS OF SETTLEMENT**

12 NOW THEREFORE, in consideration of the recitals listed above and the promises and
13 warranties set forth below, and intending to be legally bound and acknowledging the sufficiency of
14 the consideration and undertakings set forth herein, Plaintiff, individually on behalf of himself and
15 on behalf of the Class Members and the State of California pursuant to the Private Attorneys
16 General Act, on the one hand, and Defendant, on the other hand, agree that the Actions shall be,
17 and are finally and fully compromised and settled on the following terms and conditions.

18 45. Second Amended Complaint; Dismissal of PAGA Action. To facilitate this
19 Settlement: (1) Plaintiff filed a Second Amended Complaint in the Initial Class Action on May 17,
20 2023, alleging class claims as well as claims under the Private Attorneys General Act, as is set forth
21 under Paragraph 43, above; and (2) Plaintiff dismissed the PAGA Action without prejudice on or
22 about May 18, 2023.

23 46. Non-Admission of Liability. The Parties enter into this Agreement to
24 resolve the Actions and to avoid the burden, expense, and risk of continued litigation. In entering
25 into this Agreement, Defendant does not admit, and specifically denies, that Defendant has: violated
26 any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any
27 statute or any other applicable laws, regulations, or legal requirements; breached any contract; or
28 engaged in any other culpable, wrongful or unlawful conduct with respect to its employees or any

1 other person or entity. Neither this Agreement, nor any of its terms or provisions, nor any of the
2 negotiations connected with it or proceedings, payouts, or other events associated with it, shall be
3 construed as an admission or concession by Defendant of any such violation(s) or failure(s) to
4 comply with any applicable law by Defendant or any Released Parties. The Parties intend this
5 Settlement to be contingent upon the Court's granting preliminary and final approval of this
6 Agreement; and in the event final approval of this Agreement is not obtained, the Parties do not
7 waive, and instead expressly reserve, their respective rights to prosecute and defend the Actions as
8 if this Agreement never existed. In the event that final approval of this Agreement is denied by the
9 Court, fails to become effective, or is reversed, withdrawn, or modified by the Court or any other
10 court with jurisdiction over the Actions, the Agreement shall become null and void *ab initio* and
11 shall have no bearing on, and shall not be admissible in connection with, further proceedings in the
12 Actions.

13 47. Stipulation for Class Certification. The Parties stipulate to the certification
14 of the Class for purposes of this Settlement only. If, however, the Settlement does not become final
15 for any reason, the Parties' Agreement shall become null and void *ab initio* and shall have no
16 bearing on, and shall not be admissible in connection with, whether class certification would be
17 appropriate in any other context in the Actions, or any other action.

18 48. Release of Settled Class Claims. As of the Effective Date and full funding
19 of the Gross Settlement Amount, Plaintiff and all Settlement Class Members shall be deemed to
20 have fully, finally, and forever released, settled, compromised, relinquished, and discharged any
21 and all Settled Class Claims against any and all Released Parties. The Settlement includes a release
22 of all Settled Class Claims during the Class Period by Settlement Class Members.

23 a. The Parties agree for settlement purposes only that, because the Class
24 Members are so numerous, it is impossible or impracticable to have each Class Member execute
25 this Agreement. Accordingly, the Class Notice will advise all Class Members of the binding nature
26 of the Class Settlement as to Settlement Class Members and the binding nature of the PAGA
27 Settlement as to the State of California and all PAGA Members, and such notice shall have the
28 same force and effect as if the Agreement were executed by each Class Member.

b. The Parties agree that this is a settlement of disputed claims not involving undisputed wages, and that Labor Code Section 206.5 is therefore inapplicable.

49. Release of Settled PAGA Claims. As of the Effective Date and full funding of the Gross Settlement Amount, the State of California, with respect to Plaintiff and all PAGA Members, shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all of the Released Parties of and from any and all Settled PAGA Claims. The Parties agree that it is their intent that the terms set forth in this Agreement will release any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and every PAGA Member to obtain any recovery based on the Settled PAGA Claims.

50. Calculation of Settlement Payments. The Gross Settlement Amount shall be apportioned as follows:

a. Attorneys' Fees. Class Counsel will apply to the Court for an award of attorneys' fees of one-third (1/3) of the Gross Settlement Amount, which is no more than One Hundred and Forty Thousand and Fifty Dollars and Zero Cents (\$140,050.00) (*i.e.*, Attorneys' Fees). The Attorneys' Fees shall be paid from and be deducted from the Gross Settlement Amount subject to Court approval, and Defendant will not oppose such application. In the event the Court approves an amount of attorneys' fees that is less than the amount provided herein, the unawarded amount shall become part of the Net Distribution Fund for distribution to Settlement Class Members. Any reduction by the Court shall not constitute grounds for revocation or cancellation of this Agreement by Plaintiff, or grounds for an appeal of the Court's Order approving Attorneys' Fees.

b. Attorneys' Costs. Class Counsel shall request approval of an amount not to exceed Forty-Five Thousand Dollars and Zero Cents (\$45,000) for reimbursement of litigation costs and expenses incurred in the Actions (*i.e.*, Attorneys' Costs), which will be paid and deducted from the Gross Settlement Amount subject to Court approval. Defendant will not oppose such application. Any unawarded Attorneys' Costs shall become part of the Net Distribution Fund for distribution to Settlement Class Members. Any reduction by the Court shall not constitute

1 grounds for revocation or cancellation of this Agreement by Plaintiff, or grounds for an appeal of
2 the Court's Order approving attorneys' costs. Attorneys' Fees as specified in the preceding
3 paragraph and Attorneys' Costs as specified in this paragraph shall cover all claimed and unclaimed
4 Attorneys' Fees, Attorneys' Costs, and other amounts payable or awardable against Defendant for
5 Class Counsel's work, effort, or involvement in the Actions and in carrying out the Agreement and
6 includes any and all work, effort, or involvement to carry out the terms of the Agreement and as
7 may be potentially or actually necessary or advisable to defend the Agreement and/or Settlement
8 through appeal, or collateral attack or in any other forum or proceeding. These specified Attorneys'
9 Fees and Attorneys' Costs shall be the sole payment for attorneys' fees and costs and, otherwise,
10 the Parties and Class Members and their counsel shall bear their own fees and costs in connection
11 with the Actions.

12 c. Settlement Administration Costs. Class Counsel will also apply to
13 the Court for approval of costs of settlement administration in an amount estimated to be up to Nine
14 Thousand Dollars and Zero Cents (\$9,000.00), which the Parties agree will be paid and deducted
15 from the Gross Settlement Amount (*i.e.*, Settlement Administration Costs) subject to Court
16 approval. Any unawarded amount shall become part of the Net Distribution Fund for distribution
17 to Settlement Class Members. Class Counsel will specify the amount sought for such costs, up to
18 the foregoing maximum, in Plaintiff's motion for final approval of the Settlement.

19 d. Plaintiff's Service Payment. Class Counsel will apply to the Court
20 for approval of an enhancement award for Plaintiff in an amount not to exceed Five Thousand
21 Dollars and Zero Cents (\$5,000.00) to be paid and deducted from the Gross Settlement Amount,
22 subject to Court approval. Defendant will not oppose such application. Any unawarded amount
23 shall become part of the Net Distribution Fund for distribution to Settlement Class Members. Any
24 reduction by the Court shall not constitute grounds for revocation or cancellation of this Agreement
25 by Plaintiff, or grounds for an appeal of the Court's Order approving Plaintiff's Service Payment.

26 e. PAGA Allocation and Payments. Pursuant to California Labor Code
27 Section 2698, *et seq.*, the Parties designate Twenty-Five Thousand Dollars and Zero Cents
28 (\$25,000.00) of the Gross Settlement Amount to resolve the Settled PAGA Claims (*i.e.*, the PAGA

Allocation). Pursuant to the California Labor Code, seventy-five percent (75%) of the PAGA Allocation, which is Eighteen Thousand Seven Hundred Fifty Dollars and Zero Cents (18,750.00), will be paid to the LWDA (*i.e.*, the LWDA Payment). The remaining twenty-five percent (25%) of the PAGA Allocation, which is Six Thousand Two Hundred Fifty Dollars and Zero Cents (\$6,250.00) ("Net PAGA Distribution Amount"), shall be paid to PAGA Members on a *pro rata* basis based on the number of Workweeks worked by the PAGA Member during the PAGA Period as follows:

i. The Settlement Administrator will use the number of Workweeks worked by PAGA Members during the PAGA Period ("Qualifying PAGA Workweek(s)") as reflected in the Class List to be provided by Defendant to the Settlement Administrator;

ii. Each of the PAGA Members is eligible to receive a *pro rata* share of the Net PAGA Distribution Amount based on his or her share of the total number of Qualifying PAGA Workweeks worked.

iii. The value of a single Qualifying PAGA Workweek shall be determined by dividing the Net PAGA Distribution Amount by the total number of Qualifying PAGA Workweeks by all PAGA Members. Each PAGA Member shall receive an Individual PAGA Payment equal to his or her individual Qualifying PAGA Workweeks multiplied by the value of a single Qualifying PAGA Workweek. PAGA Members shall receive their respective PAGA Payments regardless of whether they opt out with respect to their class claims.

f. Net Distribution Fund and Individual Settlement Payments to Settlement Class Members. Individual Settlement Payments to the Settlement Class Members will be calculated as follows:

i. The Settlement Administrator will use the number of Workweeks worked by Class Members during the Class Period ("Qualifying Workweek(s)") as reflected in the Class List to be provided by Defendant to the Settlement Administrator;

1 ii. Each of the Class Members is eligible to receive a *pro rata*
2 share of the Net Distribution Fund based on his or her share of the total number of Qualifying
3 Workweeks worked.

4 iii. The value of a single Qualifying Workweek shall be
5 determined by dividing the Net Distribution Fund by the total number of Qualifying Workweeks
6 worked by all Settlement Class Members. Each Settlement Class Member shall receive a gross
7 Individual Settlement Payment equal to his or her Qualifying Workweeks multiplied by the value
8 of a single Qualifying Workweek.

9 g. The Parties agree that under no circumstances shall Defendant be
10 obligated to pay any amounts under this Agreement to any Class Member other than the Individual
11 Settlement Payment to Settlement Class Members and Individual PAGA Payment to PAGA
12 Members that is provided for under this Agreement.

13 h. The Parties acknowledge and agree that the formula used to calculate
14 Individual Settlement Payments and Individual PAGA Payments does not imply that all of the
15 elements of damages covered by the release are not being taken into account.

16 51. No Credit Toward Benefit Plans. The Individual Settlement Payments made
17 to Settlement Class Members and Individual PAGA Payments made to PAGA Members under this
18 Agreement shall not be utilized to calculate any additional benefits under any benefit plans to which
19 any Settlement Class Members or PAGA Members may be eligible, including, but not limited to:
20 profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave
21 plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Agreement
22 will not affect any rights, contributions, or amounts to which any Settlement Class Members and/or
23 PAGA Members may be entitled under any benefit plans.

24 52. Taxation of Settlement Proceeds.

25 a. The Parties agree that the Individual Settlement Payments shall be
26 allocated as follows: twenty five percent (25%) of each participating Class Member's Individual
27 Class Payment will be allocated to settlement of wage claims (the "Wage Portions"), and seventy
28 five percent (75%) allocated to penalties and interest. The Wage Portions are subject to tax

1 withholding and will be reported on an IRS W-2 Form. The portion allocated to penalties and
2 interest (i.e., Non-Wage Portions) are not subject to wage withholdings and will be reported on IRS
3 1099 Forms (if required). Participating Class Members assume full responsibility and liability for
4 any employee taxes owed on their Individual Class Payment.

5 b. The Individual PAGA Payments to PAGA Members will be
6 designated one hundred percent (100%) as penalties and will be report on an IRS Form 1099 (if
7 required).

8 c. The Settlement Administrator shall calculate, withhold from the
9 Individual Settlement Payments, and remit to applicable governmental agencies sufficient amounts,
10 if any, as may be owed by Settlement Class Members for applicable employee taxes. The
11 Settlement Administrator will issue appropriate tax forms, as required, to each such Settlement
12 Class Member and PAGA Member consistent with the above allocations.

13 d. All Parties represent that they have not received, and shall not rely
14 on, advice or representations from other Parties or their agents regarding the tax treatment of
15 payments under federal, state, or local law. In this regard, Defendant makes no representations
16 regarding the taxability of the Individual Settlement Payments, Individual PAGA Payments, or any
17 other payments made under this Agreement.

18 e. Class Counsel will be issued an IRS Form 1099 for the Attorneys'
19 Fees and Attorneys' Costs awarded by the Court.

20 f. Plaintiff will be issued an IRS Form 1099 for any Service Payment
21 approved by the Court. The Service Payment payable to Plaintiff shall be in addition to the
22 Individual Settlement Payment and, if applicable, Individual PAGA Payment that he will receive.

23 53. Provisional Approval of Settlement. Within thirty (30) calendar days of all
24 Parties signing this Agreement, Plaintiff shall file a motion in the Initial Class Action and take all
25 other necessary steps to request that the Court enter the Preliminary Approval Order based on an
26 agreed-upon Settlement schedule, subject to Court approval, including:

27 a. Class certification on the terms set forth in this Agreement solely for
28 purposes of Settlement;

b. Preliminarily approving the proposed Settlement and this Agreement, including the payments to the Settlement Class Members, Class Counsel, Plaintiff, PAGA Members, the Settlement Administrator, and the LWDA;

c. Preliminarily approving the appointment of Plaintiff as a representative of the Class for settlement purposes;

d. Preliminarily approving the appointment of counsel for Plaintiff as Class Counsel;

e. Appointing and approving the Settlement Administrator, to comply with the duties and obligations as required by this Agreement;

f. Approving the form of the Class Notice mutually agreed upon by the Parties;

g. Scheduling the Final Approval Hearing for consideration of whether to grant final approval of this Agreement;

h. Approving the procedure to submit an Opt Out Request, Objection, or Workweeks Dispute;

Defendant shall not oppose Plaintiff's motion for preliminary approval and final approval of the Settlement so long as the motions and supporting papers are consistent with the terms of this Agreement. Class Counsel shall provide Defendant with at least two (2) business days to review and provide comments on the motions for preliminary and final approval of the Settlement before the motions and supporting papers are filed with the Court. Failure of the Court to grant preliminary approval will be grounds for the Parties to terminate the Settlement and the terms of the Agreement. A request by the Court for supplemental briefing, or a preliminary denial pending additional briefing, shall not be deemed a denial of preliminary approval or final approval. To the extent the Court requests further or supplemental briefing, the Parties will work in good faith to address the Court's concerns and questions.

54. Notice Procedure.

a. *Class and PAGA Member Data.* Within twenty-one (21) calendar days after notice of entry of the Preliminary Approval Order, Defendant shall provide to the

1 Settlement Administrator a data file that identifies for each individual, his/her full name, last-known
2 address, Social Security number, and the number of Qualifying Workweeks and, if applicable,
3 Qualifying PAGA Workweeks for each Class Member (collectively referred to as the "Class List").
4 The Settlement Administrator will keep the Class List confidential and shall not provide it to
5 anyone, including Class Counsel, absent express written approval from Defendant, and shall use it
6 only for the purposes described herein, take adequate safeguards to protect confidential or private
7 information, and return or certify the destruction of the information upon completion of the
8 Settlement Administration process.

9 b. *Settlement Administrator Duties.* Prior to mailing the Class Notice,
10 the Settlement Administrator will update the addresses for the Class Members and PAGA Members
11 using skip trace. To the extent this process yields a different address from the one supplied by
12 Defendant, that Updated Address shall replace the address supplied by Defendant (*i.e.*, Last Known
13 Address) and be treated as the new Last Known Address for purposes of this Agreement and for
14 subsequent mailings in particular.

15 c. *Notice Process.* Within fourteen (14) calendar days following receipt
16 of the Class List, the Settlement Administrator shall prepare and mail the approved Class Notice.
17 The Settlement Administrator shall deliver the Class Notice by First-Class U.S. Mail to each Class
18 Member and PAGA Member's Last Known Address or Updated Address (if applicable).

19 d. *Opt Out Request.* Any Class Member may exclude himself or herself
20 from the Class Settlement. Any such Opt Out Request must be submitted to the Settlement
21 Administrator in writing on or before the Response Deadline. Opt Out Requests do not apply to
22 the PAGA Settlement; PAGA Members will be bound to the PAGA Settlement (*i.e.*, the settlement
23 and release of Settled PAGA Claims) irrespective of whether they exclude themselves from the
24 Class Settlement.

25 e. *Objections.* Any Settlement Class Member may object to the
26 Class Settlement by submitting an Objection to the Settlement Administrator. The Parties shall be
27 permitted to file responses to any Objections prior to the Final Approval Hearing and/or to respond
28 to or address the Objection at the Final Approval Hearing. At no time shall any of the Parties or

1 their counsel seek to solicit or otherwise encourage Settlement Class Members to submit any
2 Objections to the Settlement or appeal from the Final Approval Order and Judgment. Class Counsel
3 shall not represent any Settlement Class Members with respect to any such Objections. Within two
4 (2) business days after receipt of an Objection, the Settlement Administrator shall serve the
5 Objection on the Parties, and at least sixteen (16) court days before the Final Approval Hearing,
6 the Settlement Administrator shall submit all Objections received by the Settlement Administrator
7 to the Court. The Court may consider any Opt Outs, and/or Objections submitted at or before the
8 hearing on Final Approval.

9 55. *Workweeks Disputes.* Class Members will have the right to challenge the
10 number of Qualifying Workweeks and/or Qualifying PAGA Workweeks allocated to them. Class
11 Members shall have until the Response Deadline to submit to the Settlement Administrator their
12 dispute in writing (“Workweek Dispute”) at the address indicated on the Class Notice. Each
13 Workweeks Dispute must: (1) contain the full name, address, and telephone number of the Class
14 Member and reference this Settlement; (2) be signed by the Class Member; (3) be postmarked or
15 fax stamped on or before the Response Deadline and returned to the Settlement Administrator at
16 the specified address or fax number; (4) clearly state the number of Workweeks and/or PAGA
17 Workweeks he or she believes is correct; and (5) attach any documents the Class Member has to
18 support his or her position that they be credited with the contended number of Workweeks and/or
19 PAGA Workweeks. The Settlement Administrator will inform Class Counsel and Defendant’s
20 counsel in writing of any timely submitted Workweeks Disputes. Defendant shall have the right to
21 respond to any Workweek Dispute submitted by any Class Members within seven (7) calendar days
22 of being informed of a timely submitted Workweek Dispute, and shall cooperate in providing the
23 Settlement Administrator with information to determine all such Workweek Disputes. The
24 Settlement Administrator will determine all such Workweek Disputes following Defendant’s
25 opportunity to respond. Subject to Court approval, Workweek Disputes will be resolved without
26 hearing by the Settlement Administrator, who will make a decision based on Defendant’s records
27 and any documents or other information presented by the Class Member and/or PAGA Member
28 making the Workweek Dispute, Class Counsel, or Defendant.

- 1 f. *Settlement Administrator Follow-up efforts.*
- 2 i. If a Class Notice is returned by the Post Office as
- 3 undeliverable, but with a forwarding address, on or before the Response Deadline, then, the
- 4 Settlement Administrator shall re-mail it by First-Class U.S. mail. If a Class Member personally
- 5 provides an updated address to the Settlement Administrator on or before the Response Deadline,
- 6 then, the Settlement Administrator shall re-mail said Class Member's Class Notice by First-Class
- 7 U.S. mail to the updated address provided by the Class Member. If a Class Notice is returned by
- 8 the Post Office as undeliverable, without a forwarding address, on or before the Response Deadline,
- 9 then, the Settlement Administrator shall conduct a search of the National Change of Address
- 10 database and, if an alternate address that is likely to be more current is located, proceed to re-mail
- 11 the Class Notice by First-Class U.S. mail to the alternate address.
- 12 g. *Documenting Communications.* The Settlement Administrator shall
- 13 date stamp documents it receives, including Opt Out Requests, Objections, Workweek Disputes,
- 14 and any correspondences and documents from Class Members and PAGA Members.
- 15 h. *Settlement Administrator Declaration.* At least fifteen (15) court
- 16 days before the Final Approval Hearing, the Settlement Administrator shall prepare, subject to the
- 17 Parties' input and approval, a declaration setting forth the due diligence and proof of mailing of the
- 18 Class Notice, the results of the Settlement Administrator's mailings, including tracing and re-
- 19 mailing efforts, and the Class Members' and PAGA Members' responses to those mailing, and
- 20 provide additional information deemed necessary to approve the settlement.
- 21 i. *Settlement Administrator Written Reports.* Each week after initially
- 22 mailing the Class Notices and prior to the Response Deadline, the Settlement Administrator shall
- 23 provide the Parties with a report listing the number of Class Members that submitted Opt Out
- 24 Requests, Objections, and/or Workweek Disputes. Within seven (7) calendar days after the
- 25 Response Deadline, the Settlement Administrator will provide a final report listing the number of
- 26 Class Members who submitted Opt Out Requests, Objections, and/or Workweeks Disputes.
- 27 j. *Settlement Administrator Calculations of Individual Settlement*
- 28 *Payments.* Within seven (7) calendar days after resolving all Workweek Disputes made by

1 Settlement Class Members, and following entry of the Final Approval Order and Judgment, the
2 Settlement Administrator shall provide to the Parties a report showing its calculation of all amounts
3 that must be funded by Defendant under the Settlement, including and not limited to, calculations
4 of the Individual Settlement Payments to be made to Settlement Class Members and Individual
5 PAGA Payments to be made to PAGA Members. After receiving the Settlement Administrator's
6 report, Class Counsel and Defendant's counsel shall review the same to determine if the calculation
7 of payments is consistent with this Agreement and the Court's orders, and shall notify the
8 Settlement Administrator if either counsel does not believe the calculation is consistent with the
9 Agreement and/or the Court's orders. After receipt of comments from counsel, the Settlement
10 Administrator shall finalize its calculations of payments, at least five (5) calendar days prior to the
11 distribution of such payments, and shall provide Class Counsel and Defendant's counsel with a
12 final report listing the amount of all payments to be made to each Settlement Class Member from
13 the Net Distribution Fund and listing the amount of all payments to be made to each PAGA Member
14 from the Net PAGA Distribution Amount. The Settlement Administrator will also provide
15 information that is requested and approved by both Parties regarding its duties and other aspects of
16 the Settlement, and that is necessary to carry out the terms of the Settlement.

17 56. Requirements for Recovery of Individual Settlement Payments.

18 a. *Class Members.* No claim form is necessary to participate in the
19 Class Settlement. Unless a Class Member submits a valid and timely Opt Out Request, that Class
20 Member will be a Settlement Class Member, bound by the Final Approval Order and Judgment and
21 Class Settlement, and will receive a payment from the Net Distribution Fund (*i.e.*, an Individual
22 Settlement Payment).

23 b. *PAGA Members.* All PAGA Members shall be bound by the PAGA
24 Settlement, and will be issued payment from the Net PAGA Distribution Amount (*i.e.*, and
25 Individual PAGA payment).

26 c. *Late Submissions.* The Settlement Administrator shall not accept as
27 timely any Opt Out Request, Objection, or Workweek Dispute postmarked after the Response
28 Deadline. It shall be presumed that, if an Opt Out Request, Objection, or Workweek Dispute is not

1 postmarked or fax stamped on or before the Response Deadline, the Class Member did not return
2 the Opt Out Request, Objection, or Workweek Dispute in a timely manner. However, the Court
3 may consider any Opt Outs, and/or Objections submitted at or before the Final Approval Hearing.

4 d. *Opt-Out Procedure.* A Class Member will not be entitled to opt out
5 of the Class Settlement established by this Agreement unless he or she submits to the Settlement
6 Administrator a timely and valid Opt Out Request.

7 i. The Settlement Administrator shall not have the authority to
8 extend the deadline for Class Members to submit an Opt Out Request absent agreement by both
9 Parties.

10 ii. Class Members shall be permitted to rescind in writing their
11 Opt Out Request by submitting a written rescission statement to the Settlement Administrator no
12 later than the day before the Final Approval Hearing.

13 iii. If more than ten percent (10%) of the Class Members timely
14 opt out of the Class Settlement, Defendant shall have the sole and absolute discretion to withdraw
15 from this Agreement within seven (7) calendar days after the Response Deadline and written notice
16 from the Settlement Administrator of the final opt out rate. Defendant shall provide written notice
17 of such withdrawal to Class Counsel. In the event that Defendant elects to so withdraw, the
18 withdrawal shall have the same effect as a termination of this Agreement for failure to satisfy a
19 condition of Settlement, and the Agreement shall become null and void and have no further force
20 or effect, and Defendant will be responsible for any and all Settlement Administration Costs
21 incurred thus far.

22 57. Final Approval Hearing and Final Approval Order and Judgment.

23 a. *Entry of Final Judgment.* At the Final Approval Hearing, Plaintiff
24 will request, and Defendant will concur in said request, that the Court enter a jointly-agreed upon
25 Final Approval Order and Judgment.

26 b. *Motion.* Within thirty (30) calendar days of the Response Deadline,
27 Plaintiff will draft and file a motion for final approval in conformity with any requirements from
28 the Court and will take any other actions necessary to request the entry of a Final Approval Order

1 and Judgment in accordance with this Agreement. In conjunction with the motion for final approval
2 and requesting an award of Attorneys' Fees, Attorneys' Costs, and Service Payment, Class Counsel
3 shall file a declaration from the Settlement Administrator confirming that the Class Notice was
4 mailed to all Class Members as required by this Agreement, as well as any additional information
5 Class Counsel, with the input and approval of Defendant, deems appropriate to provide to the Court.

6 c. *Order.* The Parties shall take all reasonable efforts to secure entry of
7 the Final Approval Order and Judgment. If the Court denies final approval of the Settlement, this
8 Agreement shall be void *ab initio*, and Defendant shall have no obligation to make any payments
9 under the Agreement besides any Settlement Administration Costs incurred thus far. A request by
10 the Court for supplemental briefing, or a preliminary denial pending additional briefing, shall not
11 be deemed a denial of final approval of the Settlement. To the extent the Court requests further or
12 supplemental briefing, the Parties will work in good faith to address the Court's concerns and
13 questions. Said Final Approval Order and Judgment shall contain the following provisions:

14 i. Wherein the Court enters judgment, finding that this
15 Agreement and Settlement is fair, just, equitable, reasonable, adequate, and in the best interests of
16 the Class and was reached as a result of intensive, serious, and non-collusive arms-length
17 negotiations and was achieved with the aid of an experienced mediator and in good faith as to each
18 Class Member;

19 ii. Affirming that each side will bear its own costs and fees
20 (including attorneys' fees), except as provided by the Agreement, and that Defendant shall not be
21 required to pay any amounts other than as set forth in the Agreement;

22 iii. Confirming the certification of the Class for purposes of
23 Settlement only;

24 iv. Finding that the Settlement Administration process as carried
25 out afforded adequate protections to Class Members, provided the best notice practicable, and
26 satisfied the requirements of law and due process;

27 v. Ruling on any Objections to the Settlement;

vi. Approving the settlement of Settled PAGA Claims consistent with the Settlement;

vii. Retaining Court jurisdiction after entry of judgment to oversee administration and enforcement of the terms of the Agreement; and

viii. Requiring the Parties to carry out the provisions of this Agreement.

58. Notice to the Labor and Workforce Development Agency. Class Counsel is responsible for complying with all requirements of the PAGA governing notice to the LWDA of settlement and/or judgment. Specifically, Class Counsel will provide a copy of this Agreement to the LWDA at the same time that it is submitted to the Court and will further provide a copy of the Court's Preliminary Approval Order and Final Approval Order and Judgment to the LWDA within ten (10) calendar days after entry of said judgment or order as required by Labor Code sections 2699(1)(2)-(3).

59. Payment of Settlement. Defendant will deposit the Gross Settlement Amount into an account established by the Settlement Administrator within thirty (30) days of the Effective Date.

a. The Parties agree that the Gross Settlement Amount will qualify as a settlement fund pursuant to the requirements of Section 468(B)(g) of the Internal Revenue Code of 1986, as amended, and Section 1.468B-1 *et seq.* of the income tax regulations. Furthermore, the Settlement Administrator is hereby designated as the "administrator" of the qualified settlement funds for purposes of Section 1.468B-2(k) of the income tax regulations. As such, all employee taxes imposed on the gross income of that settlement fund and any tax-related expenses arising from any income tax returns or other reporting documents that may be required by the Internal Revenue Service or any state or local taxing body will be paid from the Net Distribution Fund by the Settlement Administrator.

b. The Settlement Administrator shall be deemed to have timely distributed Individual Settlement Payments and Individual PAGA Payments if it places said payments in the mail (First-Class U.S.) within fourteen (14) days of Defendant funding the Gross

1 Settlement Amount. If, within forty-five (45) days of the initial mailing of the payment(s), the
2 Settlement Administrator receives notice from Settlement Class Members or PAGA Members that
3 they have not received their settlement check due to changes of address or other circumstances, the
4 Settlement Administrator shall make reasonable efforts to ensure the initial payment is cancelled
5 and re-issue the payment to the Settlement Class Member or PAGA Member. The Settlement
6 Administrator shall only undertake one re-issuance of a payment upon request of a Settlement Class
7 Member.

8 c. The distribution of Attorneys' Fees, Attorneys' Costs, LWDA
9 Payment, and the Service Payment shall occur no later than the Settlement Proceeds Distribution
10 Deadline. Under no circumstances shall the foregoing payments be made prior to the distribution
11 of payments to Settlement Class Members and PAGA Members.

12 60. Individual Settlement Payment and Individual PAGA Payment checks will
13 be valid for one hundred eighty (180) days after mailing by the Settlement Administrator.

14 61. After the one hundred eighty (180) day check validity period, settlement
15 checks will become cancelled and funds associated with the cancelled checks will be transmitted
16 to Katherine and George Alexander Community Law Center, a jointly-selected non-profit
17 organization in compliance with California Code of Civil Procedure section 384. Settlement Class
18 Members and PAGA Members who fail to deposit or negotiate their check(s) in a timely fashion
19 shall, nevertheless, remain subject to the terms of the Agreement and the Final Approval Order and
20 Judgment.

21 62. Upon completion of administration of the Settlement, the Settlement
22 Administrator shall provide written certification of such completion to the Court, Class Counsel,
23 and Defendant's counsel.

24 63. Binding Effect of Agreement on Settlement Class Members and PAGA
25 Members. Subject to final Court approval, all Settlement Class Members, the State of California,
26 and PAGA Members shall be bound by this Agreement and Final Approval Order and Judgment
27 shall be entered in the Initial Action.

1 64. Automatic Voiding of Agreement if Settlement Not Finalized. If for any
2 reason the Effective Date does not occur, the Settlement shall be null and void and the orders and
3 judgment to be entered pursuant to this Agreement shall be vacated; and the Parties will be returned
4 to the status quo prior to entering this Agreement with respect to the Actions, as if the Parties had
5 never entered into this Agreement. In addition, in such event, the Agreement and all negotiations,
6 court orders and proceedings relating thereto shall be without prejudice to the rights of any and all
7 Parties hereto, and evidence relating to the Agreement and all negotiations shall not be admissible
8 or discoverable in the Actions or otherwise in any other proceeding.

9 65. Publicity, Confidentiality and Non-Disparagement.

10 a. No public comment, communications to media, or any form of
11 advertising or public announcement (including social media) regarding the Actions shall be made
12 by Plaintiff or Class Counsel at any time.

13 b. Class Counsel agrees not to solicit any Class Members to exclude
14 themselves from the terms of this Agreement, and further agrees not to initiate, contact, or have
15 any communications with Class Members during the settlement approval process. Nothing will
16 prevent Class Counsel from responding to inquiries from Class Members. Defendant agrees that it
17 shall not discourage any Class Members from participating in the settlement and shall refer any
18 questions to the Settlement Administrator.

19 c. Prior to the motion for preliminary approval and submission of this
20 Agreement to the Court, Class Counsel shall not discuss the terms of the Agreement with any person
21 other than Plaintiff, Defendant's counsel, and the Settlement Administrator, and that they will not
22 discuss the negotiations leading to Agreement with any person other than Plaintiff and Defendant's
23 counsel. Class Counsel will, however, undertake any and all submissions of information and/or
24 materials relating to the Actions and this Settlement to the LWDA to the extent required under the
25 PAGA statute (e.g., submitting this Agreement to the LWDA at the same time as submitting it to
26 the Court for preliminary approval).

27 d. Plaintiff acknowledges that he has not, and will not, discuss the terms
28 of the Settlement with any persons other than Class Counsel, his spouse(s), if any, his tax

1 preparer/accountant, and any other legal representative of Plaintiff, prior to filing the motion for
2 preliminary approval and submission of this Agreement to the Court. Plaintiff further
3 acknowledges that at no time will he disclose details of the negotiations leading to this Settlement,
4 including information learned during or after mediation.

5 e. To the extent permitted by applicable law and in order to implement
6 the Settlement, Plaintiff agrees that he will not make any defamatory or disparaging statements
7 about Defendant or any Released Party. However, Plaintiff is not precluded from submitting
8 declarations in support of certification of the Class for purposes of this Settlement and to support
9 his receipt of a Service Payment.

10 f. To the extent documents produced, formally or informally, by
11 Defendant during the course of the Actions are confidential or otherwise subject to confidentiality,
12 Plaintiff and Class Counsel agree to maintain the confidentiality of such materials.

13 g. Nothing in this provision will prohibit Class Counsel or Plaintiff
14 from seeking preliminary approval or final approval of the Settlement, or from making any
15 disclosures as required by law.

16 66. Modification in Writing. Prior to the Court granting preliminary approval
17 of this Agreement, this Agreement may be altered, amended, modified or waived, in whole or in
18 part, only in a writing signed by counsel for the Parties; after the Court has granted preliminary
19 approval of this Agreement, it may be altered, amended, modified or waived, in whole or in part,
20 only in a writing signed by counsel for the Parties, subject to approval by the Court. Any waiver
21 of any provision of this Agreement shall not constitute a waiver of any other provision of this
22 Agreement unless expressly so indicated.

23 67. Ongoing Cooperation. Plaintiff and Defendant, and each of their respective
24 counsel, shall cooperate in good faith to execute all documents and perform all acts necessary and
25 proper to effectuate and implement the terms of this Agreement, including but not limited to
26 drafting and submitting the motions for preliminary and final approval, and defending the
27 Agreement and final judgment against objections and appeals. The Parties to this Agreement shall
28 use their best efforts, including all efforts contemplated by this Agreement and any other efforts

1 that may become necessary by order of the Court or otherwise, to effectuate this Agreement and
2 the terms set forth herein.

3 68. Parties' Authority. The signatories hereby represent that they are fully
4 authorized to enter into this Agreement and bind the Parties hereto to the terms and conditions
5 hereof.

6 69. No Prior Assignments. The Parties and their counsel represent, covenant,
7 and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or
8 purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
9 demand, action, cause of action, or rights herein released and discharged or herein establish and/or
10 created, except as set forth herein.

11 70. Binding on Successors. This Agreement shall be binding and shall inure to
12 the benefit of the Parties and their respective successors, assigns, executors, administrators, heirs
13 and legal representatives, including the Released Parties.

14 71. Integration/Entire Agreement. The Parties warrant that no promise or
15 inducement has been offered or made to any of the Parties except as set forth herein. This
16 Agreement constitutes the full, complete and entire understanding, agreement and arrangement
17 between Plaintiff on behalf of himself, Class Members, PAGA Members, and the State of
18 California pursuant to the Private Attorneys General Act, on the one hand, and Defendant and
19 Released Parties on the other hand, with respect to the Settlement of the Actions and the Settled
20 Class Claims and Settled PAGA Claims against the Released Parties. This Agreement supersedes
21 any and all prior oral or written understandings, agreements and arrangements, express or implied,
22 between the Parties with respect to the Settlement of the Actions and the Settled Class Claims and
23 Settled PAGA Claims against the Released Parties. The Parties explicitly recognize California
24 Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a), which provide
25 that a written agreement is to be construed according to its terms, and may not be varied or
26 contradicted by extrinsic evidence, and agree that no such extrinsic oral or written representations
27 or terms shall modify, vary, or contradict the terms of this Agreement.

1 72. Execution in Counterparts. This Agreement may be signed in one or more
2 counterparts. A photographic, scanned, electronic, or facsimile copy of signatures shall be treated
3 as an original signature for all purposes. All executed copies of this Agreement, and photocopies
4 thereof (including facsimile or email copies of the signature pages), shall have the same force and
5 effect and shall be as legally binding and enforceable as the original.

6 73. Captions. The captions and section numbers in this Agreement are inserted
7 for the reader's convenience, and in no way define, limit, construe, or describe the scope or intent
8 of the provisions of this Agreement.

9 74. Governing Law. This Agreement shall be interpreted, construed, enforced,
10 and administered in accordance with the laws of the State of California, without regard to otherwise
11 applicable principles of conflicts of laws.

12 75. Mutual Preparation. The Parties have had a full opportunity to negotiate
13 the terms and conditions of this Agreement. Accordingly, this Agreement shall not be construed
14 more strictly against one Party than another merely by virtue of the fact that it may have been
15 prepared by counsel for one of the Parties, it being recognized that, because of the arms-length
16 negotiations between the Parties, all Parties have contributed to the preparation of this Agreement.

17 76. Resolution of Disputes. The Parties agree to refer any disputes related to
18 the drafting of the Agreement and attached documents to mediator Mark LeHocky of ADR
19 Services, Inc.

20 77. Representation by Counsel. The Parties acknowledge that they have been
21 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
22 and that this Agreement has been executed with the consent and advice of counsel.

23 **IT IS SO AGREED:**

24 Dated: 08 / 16 / 2023
25 _____, 2023



26 _____
27 David Hernandez
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Dated: 9/12/2023, 2023

John Cintas

John Cintas, on behalf of Burdick Painting

EXHIBIT A

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

David Hernandez v. Burdick Painting
Santa Clara County Superior Court, Case No. 20CV363833

PLEASE READ THIS NOTICE

It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

The Court has preliminarily approved the settlement in a class and representative action under the Private Attorneys General Act, California Labor Code sections 2699, *et seq.* ("PAGA"), against Defendant Burdick Painting ("Defendant"). In the lawsuit, plaintiff David Villagran Hernandez ("Plaintiff") alleged that Defendant failed to properly compensate Class Members for all hours worked, failed to provide reporting time pay, failed to provide Class Members with compliant meal periods and/or rest breaks or compensation in lieu thereof, failed to provide accurate wage statements, failed to timely pay all wages owed during employment and upon termination, failed to reimburse Class Members for necessary business expenses, and violated section 17200, *et seq.* of California's Business and Professions Code. Defendant denies Plaintiff's allegations and contends that it complies with applicable law.

Class Member(s) are defined as: all persons who are employed or have been employed by Defendant in the State of California as hourly-paid or non-exempt employees at any time during the period from February 21, 2016 to [insert preliminary approval date] ("Class Period") (collectively, the Class Members are referred to as the "Class").

You have been identified by Defendant's records as a Class Member in the above-entitled action, and as such, you are subject to the terms of the Class Action and PAGA Settlement Agreement ("Settlement," "Agreement," or "Settlement Agreement") preliminarily approved by the Court. Please read this notice carefully. It may affect your legal rights.

YOUR LEGAL RIGHTS AND OPTIONS WITH RESPECT TO SETTLEMENT	
PARTICIPATE IN THE SETTLEMENT – NO ACTION REQUIRED	If you want to remain in the Class, be bound by the Settlement and receive your Individual Settlement Payment, and if eligible, PAGA Payment , then you need not do anything.
OBJECT TO THE CLASS SETTLEMENT	If you want to object to the Settlement, you must follow the instructions in Section 7 If you object, you will still be bound by the terms of the Settlement, if approved by the Court.

EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT	If you do not want to be bound by the Class Settlement, you must follow the instructions in Section 6 to exclude yourself from the Class Settlement. If you exclude yourself from the Class Settlement, you will not be issued an Individual Settlement Payment, and you will not release the Settled Class Claims against Released Parties defined in Section 4. If the Settlement is approved by the Court, and you are a PAGA Member, you will release the Settled PAGA Claims and be issued an Individual PAGA Payment even if you exclude yourself from the Class Settlement.
PARTICIPATE IN THE PAGA SETTLEMENT	If you are a PAGA Member (defined below), you will automatically be bound to the PAGA Settlement and be issued an Individual PAGA Payment. PAGA members cannot opt-out or exclude themselves from the PAGA Settlement or the release of Settled PAGA Claims, and will be issued an Individual PAGA Payment even if they opt-out of the Class Settlement.

Defendant will not retaliate against you for any actions you take with respect to the proposed Settlement.

BASIC INFORMATION

1. WHY DID I GET THIS NOTICE?

You have received this Notice because Defendant's records reflect that you are a Class Member as defined above. This Notice provides you with information about (1) the terms of the Settlement, including the claims that are being released, (2) the total monetary amount of the Settlement, (3) your estimated Individual Settlement Payment provided you remain a Settlement Class Member, and (4) where to find additional information regarding the case and the Settlement.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT:

If you do nothing, then you will be automatically included in the Settlement and do not need to take any further action to receive a payment.

2. WHAT IS THIS LAWSUIT ABOUT?

In the operative complaint, Plaintiff alleges that Defendant: (1) failed to pay all wages; (2) failed to pay reporting time pay; (3) failed to provide meal periods; (4) failed to permit rest breaks; (5) failed to pay all wages due upon separation of employment; (6) failed to provide accurate itemized wage statements; (7) failed to reimburse necessary business expenses; (8) violated Business and Professions Code §§ 17200, *et seq.*; and (9) violated California's Private Attorneys General Act

(Labor Code § 2698, et. seq. (PAGA).)

The resolution of the PAGA claims (“PAGA Settlement”) includes any Class Members who are employed or have been employed by Defendant in the State of California during the time period from February 21, 2019 through [insert date of preliminary approval] (“PAGA Members”).

Defendant denies any liability or wrongdoing of any kind. Defendant contends, among other things, that it complied at all times with the California Labor Code and the Business and Professions Code, and that employees were correctly and timely paid all wages, and that meal periods and rest breaks are provided as required by applicable law.

The Court has not ruled on the merits of Plaintiff’s claims. By preliminarily approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case on the merits. Rather, the Court has determined only that there is sufficient evidence to determine on a preliminary basis that the proposed Settlement is fair, adequate, and reasonable and any final determination of those issues will be made at the final approval hearing. Defendant reserves the right, if for any reason the Settlement fails, to contest any factual or legal allegations and to contest whether the lawsuit should proceed as a class or representative action.

3. THE SETTLEMENT TERMS AND CALCULATION OF INDIVIDUAL SETTLEMENT PAYMENTS AND PAGA PAYMENTS

Without admitting any wrongdoing, and to avoid the business disruptions caused by litigating the lawsuit, Defendant has agreed to pay a **Gross Settlement Amount of Four Hundred and Twenty Thousand One Hundred and Fifty Dollars and Zero Cents (\$420,150.00)** to settle the lawsuit.

The following amounts will be paid from the Gross Settlement Amount, subject to Court approval:

- Service Payment to the Plaintiff for his service as Class Representatives in the amount of Five Thousand Dollars and Zero Cents (\$5,000.00);
- Attorneys’ fees not to exceed One Hundred and Forty Thousand and Fifty Dollars and Zero Cents (\$140,050.00) to Class Counsel (“Attorneys’ Fees”);
- Reimbursement of litigation costs and expenses in an amount up to Forty-Five Thousand Dollars and Zero Cents (\$45,000.00) to Class Counsel (“Attorneys’ Costs”);
- The amount of Twenty Five Thousand Dollars and Zero Cents (\$25,000.00) allocated to the payment of civil penalties under PAGA (the “PAGA Allocation”), of which seventy-five percent (75%) (i.e., Eighteen Thousand Seven Hundred Fifty Dollars and Zero Cents (18,750.00)) will be paid to the Labor and Workforce Development Agency (“LWDA Payment”) and the remaining twenty-five percent (25%) (i.e., Six Thousand Two Hundred Fifty Dollars and Zero Cents (\$6,250.00)) shall be paid to PAGA Members (“Net PAGA Distribution Amount”); and
- The costs associated with administration of the Settlement, estimated to be Nine Thousand Dollars and Zero Cents (\$9,000.00) (“Settlement Administration Costs”).

Defendant shall pay any and all employer side taxes outside of the settlement.

The amount remaining from the Gross Settlement Amount after deducting the PAGA Allocation; Attorneys' Fees; Attorneys' Costs; Settlement Administration Costs; Service Payment; is called the "Net Distribution Fund."

The **Net Distribution Fund** will be allocated to all Class Members who do not submit a timely and valid Opt Out Request ("Settlement Class Members") on a *pro rata* basis, based on their number of Qualifying Workweeks worked during the Class Period. The Settlement Administrator will determine the value of a single Qualifying Workweek by dividing the Net Settlement Amount by the total number Qualifying Workweeks worked by all Settlement Class Members. Each Settlement Class Member is eligible to receive a *pro rata* share of the Net Settlement Amount ("Individual Settlement Payment") equal to his or her Qualifying Workweeks multiplied by the value of a single Qualifying Workweek.

The **Net PAGA Distribution Amount** will be allocated to PAGA Members on a *pro rata* basis, based on their number of Workweeks worked by PAGA Members during the PAGA Period ("Qualifying PAGA Workweeks"). The Settlement Administrator will determine the value of a single Qualifying PAGA Workweek by dividing the Net PAGA Distribution Amount by the total number of Qualifying PAGA Workweeks worked by all PAGA Members. Each PAGA Member shall receive a PAGA Payment equal to his or her Qualifying PAGA Workweeks multiplied by the value of a single Qualifying PAGA Workweek.

You have been credited with [redacted] Qualifying Workweeks. Based on these Qualifying Workweeks, your gross Individual Settlement Payment, prior to any applicable withholdings, is estimated to be \$ [redacted].

You [are / are not] considered to be a PAGA Member, and have been credited with [redacted] Qualifying PAGA Workweeks. Based on these Qualifying PAGA Workweeks, the PAGA Payment you will receive under the Settlement is estimated to be \$ [redacted].

You may submit a written dispute to the number of Qualifying Workweeks and/or PAGA Workweeks allocated to you ("Workweeks Dispute") to the Settlement Administrator. Your Workweeks Dispute must: (1) contain your full name, address, and telephone number and the case name and number of the lawsuit (i.e., *David Hernandez v. Burdick Painting*, Santa Clara County Superior Court, Case No. 20CV363833); (2) be signed by you; (3) be postmarked or fax stamped on or before [Response Deadline] and returned to the Settlement Administrator at the address or fax number listed below; (4) clearly state the number of Qualifying Workweeks and/or Qualifying PAGA Workweeks you believe is correct; and (5) attach any documents you have to support your dispute.

Phoenix Class Action Administration Solutions

[mailing address]

[fax number]

25% of each Individual Settlement Payment will be allocated to wages ("wage portions") and subject to all applicable employee state and federal tax withholdings, and the remaining 75% will be allocated as non-wages (e.g. penalties, restitution and interest) ("non-wage portions"). The wage portions will be reported on an IRS form W-2, and the non-wage portions will be reported

on an IRS form 1099 (if required).

One hundred percent (100%) of each Individual PAGA Payment will be allocated as penalties and be reported on an IRS form 1099 (if required).

Class Members are responsible for accurate payment of taxes on any amounts received. This Notice is not tax advice and you should consult your tax advisor. Checks will be valid and negotiable for one hundred eighty (180) days; after that, checks will be cancelled and the funds associated with cancelled checks will be transmitted to the Katherine and George Alexander Community Law Center.

Settlement Class Members and PAGA Members who fail to deposit or negotiate their check(s) in a timely fashion shall, nevertheless, remain subject to the terms of the Agreement and the Final Approval Order and Judgment.

4. WHAT AM I RELEASING UNDER THE CLASS SETTLEMENT?

If and when the Court grants final approval of the Settlement, as of the Effective Date and full funding of the Gross Settlement Amount, all Class Members who do not submit a timely and valid Opt Out Request (i.e., Settlement Class Members) shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all Settled Class Claims against any and all Released Parties.

“Released Parties” means Defendant Burdick Painting and each of its officers, directors, members, partners, owners, shareholders, employees, former employees, agents, servants, attorneys, assigns, affiliates, independent contractors, volunteers, predecessors, successors, parent companies and organizations, insurers, and any and all other persons, firms and corporations in which Defendant may have an interest.

“Settled Class Claims” means all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, whether known or unknown, that arise during the Class Period that each Settlement Class Member had, now has, or may hereafter claim to have against the Released Parties and that were asserted in the Complaint, or that could have been asserted in the Complaint based on any of the facts or allegations in the Complaint or PAGA Notice, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law. The Settled Class Claims specifically include, but are not limited to claims for unpaid wages, claims for unpaid reporting time pay, claims for unpaid sick pay, the alleged failure to provide meal periods or compensation in lieu thereof, the alleged failure to provide paid rest periods, failure to timely furnish accurate itemized wage statements, record keeping violations, failure to timely pay wages, failure to reimburse business expenses, unfair business practices, and violations of the California Labor Code and Industrial Welfare Commission Wage Orders, including and not limited to, for violations of California Labor Code §§ 201, 202, 203, 226(a), 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802 and Industrial Welfare Commission Wage Orders.

5. WHAT AM I RELEASING UNDER THE PAGA SETTLEMENT?

As of the Effective Date and full funding of the Gross Settlement Amount, the State of California, with respect to employment of Plaintiffs and all PAGA Members, shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all of the Released Parties of and from any and all Settled PAGA Claims. The Settlement will release any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and every PAGA Member to obtain any recovery based on the Settled PAGA Claims.

“Settled PAGA Claims” means all claims for civil penalties that were asserted, or could have been asserted, or that arise, whether known or unknown, during the PAGA Period, based on any of the alleged violations of the California Labor Code and/or Industrial Welfare Commission Wage Orders that were asserted, or could have been asserted, within the Complaint and PAGA Notice based on any facts or allegations therein, including, but not limited to, violations of California Labor Code §§ 201, 202, 203, 226(a), 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802 and Industrial Welfare Commission Wage Orders. Released Parties is defined in Section 4 of this Notice, above.

PAGA MEMBERS CANNOT OPT-OUT OR EXCLUDE THEMSELVES FROM THE PAGA SETTLEMENT OR THE RELEASE OF SETTLED PAGA CLAIMS, AND WILL BE ISSUED AN INDIVIDUAL PAGA PAYMENT EVEN IF THEY OPT-OUT OF THE CLASS SETTLEMENT.

6. WHAT IF I DON'T WANT TO PARTICIPATE IN THE CLASS SETTLEMENT?

As a Class Member, you have the right to request exclusion from the settlement and resolution of the Settled Class Claims (the “Class Settlement”), but, if you are a PAGA Member, you are not able to exclude yourself from the settlement and resolution of the Settled PAGA Claims (the “PAGA Settlement”).

To exclude yourself from the Class Settlement, you must submit a written request for exclusion to the Settlement Administrator (“Opt Out Request”) at the address or fax number listed in Section 3 of this Notice, above.

A valid and complete Opt Out Request must: (1) contain the full name, address, and telephone number of the Class Member requesting exclusion from the Class Settlement and the case name and number of the Action (i.e., *David Hernandez v. Burdick Painting*, Santa Clara County Superior Court, Case No. 20CV363833); (2) be signed by the Class Member; (3) be postmarked or fax stamped on or before **[Response Deadline]** and returned to the Settlement Administrator at the specified address or fax number listed in Section 3 of this Notice, above; and (4) contain a statement substantially similar to:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT OF CLASS CLAIMS IN THE HERNANDEZ V. BURDICK PAINTING LAWSUIT, AND UNDERSTAND THAT IF I ASK TO BE EXCLUDED, I WILL NOT RECEIVE AN INDIVIDUAL SETTLEMENT PAYMENT. I UNDERSTAND THAT, NEVERTHELESS, SETTLED PAGA CLAIMS WILL BE RELEASED AND

SETTLED.”

It is your responsibility to ensure that the Settlement Administrator timely receives your Opt Out Request. Unless you timely request to be excluded from the Class Settlement, you will be bound by the judgment and Class Settlement upon final approval of the Settlement.

Class Members who request to be excluded from the Class Settlement will NOT be issued an Individual Settlement Payment, and will not release any of the Settled Class Claims. However, Class Members who are also PAGA Members will be issued their Individual PAGA Payment and bound to the PAGA Settlement regardless of whether they submit an Opt Out Request.

7. WHAT IF I WANT TO OBJECT TO THE CLASS SETTLEMENT?

Any Class Member who does not opt out of the Class Settlement may object to the Class Settlement. If the Court denies approval of the Settlement, no payments will be sent out and the Action will continue to be litigated in Court.

If you wish to object, you must submit your objection in writing to the Settlement Administrator (“Objection”). A valid and complete Objection must: (1) contain the full name, address, and telephone number of the objecting Settlement Class Member and the case name and number of the Action (i.e., *David Hernandez v. Burdick Painting*, Santa Clara County Superior Court, Case No. 20CV363833); (2) be signed by the Settlement Class Member; (3) be postmarked or fax stamped on or before [Response Deadline] and returned to the Settlement Administrator at the specified address or fax number listed in Section 3 of this Notice, above; and (4) give the legal and factual basis for objection to the Class Settlement.

Submitting an objection will **not** exclude you from the Class Settlement. If the Court grants final approval of the Settlement, you will still be issued an Individual Settlement Payment and will be barred from pursuing the Settled Class Claims. **Do not submit both an Objection and Opt Out Request.** If you submit both an Objection and an Opt Out Request, you will be excluded from the Class Settlement and the Objection will not be considered.

8. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Final Approval Hearing is scheduled to take place on _____, at _____ a.m. in Department _____ of the Superior Court of the State of California, County of Santa Clara, located at _____. The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to (please visit the Court’s website for more information regarding how you can appear).

9. WHO ARE THE ATTORNEYS?

Attorneys for Plaintiff and the Class are:

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Berkeh Alemzadeh, Esq.
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The Court has decided that the Attorneys for Plaintiff and the Class are qualified to represent the Class ("Class Counsel"). Other than the Attorneys' Fees and Attorneys' Costs approved by the Court, which will be paid out of the Gross Settlement Amount, you will not be charged for the services of Class Counsel.

10. SHOULD I GET MY OWN LAWYER?

You do not need to get your own lawyer. If you want your own lawyer to speak for you or appear in Court, you have the right to hire one. If you retain the services of your own attorney in connection with the lawsuit, you will be responsible for paying for those services and related expenses.

11. FURTHER INFORMATION

The foregoing is only a summary of the Settlement. For the precise terms and conditions of the Settlement, please see the settlement agreement available at www._____.com, by contacting Class Counsel at the address or telephone number provided in Section 9. WHO ARE THE ATTORNEYS? or by visiting the office of the Clerk of the Superior Court for the State of California County of Santa Clara, located at _____.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.