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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
CENTRAL DISTRICT

DEMETRIE COOLEY, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

NURULIZE INC., a Delaware Corporation,
and DOE ONE through and including DOE
TEN,

Defendant.

CASE NO. 21STCV10754

Judge: Hon. Daniel J. Buckley
Dep't: SSC-1

**FIRST AMENDED CLASS
SETTLEMENT AGREEMENT**

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1. RECITALS

1.2 The Settlement Class Representative believes that the Settled Claims have merit

1.3 Defendant has denied and continues to deny all liability with respect to any and all Settled Claims or the facts alleged in support thereof and has denied and continues to deny charges of wrongdoing or liability against it arising out of or relating to any conduct, acts, or omissions alleged or that could have been alleged in the Action. Defendant's willingness to resolve the Settled Claims on the terms and conditions embodied in this Agreement is based on, among other things: (i) the time and expense associated with litigating the Settled Claims through trial and any appeals; (ii) the benefits of resolving the Settled Claims, including limiting further

1 expense, inconvenience and distraction, disposing of burdensome and protracted litigation, and
2 permitting Defendant to conduct its business unhampered by the distractions of continued
3 litigation; and (iii) the uncertainty and risks inherent in any litigation.

4 **1.4** The Parties to this Agreement recognize that the claims against Defendant are
5 strongly disputed, and the Parties wish to resolve completely and totally all Settled Claims against
6 Defendant and the other Released Parties.

7 **1.5** **NOW THEREFORE**, subject to Court approval, as hereinafter provided, it is
8 hereby agreed by the Parties that, in consideration of the promises and covenants set forth in this
9 Agreement, and upon the entry by the Court of a final order approving the Settlement and
10 directing the implementation of the terms and conditions of the Settlement as set forth in this
11 Agreement, this Action shall be settled and compromised upon the terms and conditions contained
12 herein.

13 **2. DEFINITIONS**

14 As used in this Agreement, in addition to any definitions elsewhere in this Agreement, the
15 following terms shall have the meanings set forth below:

16 **2.1** **“Action”** means and refers to *Demetrie Cooley v. Nurulize, Inc.*, Los Angeles
17 County Superior Court Case No. to be determined.

18 **2.2** **“Agreement”** means and refers to this Settlement Agreement.

19 **2.3** **“Claims Administrator”** means and refers to a mutually-agreeable claims
20 administrator with adequate security protocols, subject to Court approval, which will administer
21 the Settlement Fund as described in this Agreement.

22 **2.4** **“Class Notice”** means and refers to a mutually-agreeable class notice approved by
23 the Court.

24 **2.5** **“Complaint”** means and refers to the operative complaint in the Action.

25 **2.6** **“Court”** means and refers to the Superior Court of California, County of Los
26 Angeles.

27 **2.7** **“Defendant”** means and refers to Nurulize Inc.

28 **2.8** **“Final Approval Order”** means and refers to the Court’s judgment and order

granting final approval of the class settlement following the motion as set forth in Section 5.3. This Final Approval Order shall constitute approval pursuant to California Rules of Court 3.769(a) and a judgment pursuant to California Rules of Court 3.769(h).

2.9 “Final Effective Date” means and refers to: (a) if no appeal, writ, or other request for appellate review is filed, the expiration date of the time for the filing for any such appeal, writ, or request for appellate review (which expiration date will be sixty-five (65) calendar days after service of notice of entry of the Final Approval Order); and (b) if any appeal, writ, or other request for appellate review is filed, the date when that appeal, writ, or request for appellate review is finally ruled upon, denied, or dismissed, and no other appeal, writ or appellate review is possible.

2.10 “LWDA” means and refers to the Labor & Workforce Development Agency.

2.11 “Notice Program” means and refers to the notice procedures set forth in Section 6.

2.12 “Opt Out Period” means and refers to the period of time between the commencement of the Notice Program and an agreed date certain approximately forty-five (45) calendar days later during which members of the Settlement Class may exercise the right to opt out of the Settlement Class pursuant to the provisions of Section 7.

2.13 “PAGA Letter” means and refers to the letter sent by or on behalf of the Settlement Class Members to the LWDA regarding the allegations in the Complaint, specifically including the September 30, 2020 letter from Settlement Class Counsel to the LWDA regarding the Settlement Class Representative.

2.14 “Parties” means and refers to the Settlement Class Representative, for himself and on behalf of the Settlement Class, and Defendant.

2.15 “Person” means and refers to any individual, proprietorship, corporation, personal loan-out corporation, partnership, association, trustee, unincorporated association, or any other type of legal entity, except a governmental entity.

2.16 “Preliminary Approval Order” means and refers to the Court’s order granting preliminary approval of this Agreement and approval of the Notice Program following the motion as set forth in Section 5.1. This Preliminary Approval Order shall constitute an order for and setting a final approval hearing pursuant to California Rules of Court 3.769(d) and 3.769(e).

1 **2.17 “Project”** means and refers to a June 2019 “VR Experience” production shoot
2 identified as “MVP” undertaken between the dates of May 1, 2019 to September 1, 2019.

3 **2.18 “Release Period”** means and refers to the period between May 1, 2019, and
4 September 1, 2019. The **“Release Effective Date”** is the date upon which Defendant fully funds
5 the Settlement.

6 **2.19 “Released Party” or “Released Parties”** means and refers to: (a) Defendant
7 Nurulize Inc., QBVR, LLC, Citylights VR, LLC, Sony Pictures Entertainment Inc., Joel Newton,
8 David Ganek, Travis Cloyd, and David Karlak, and each and all of their past or present partners,
9 parents, subsidiaries, or related entities (regardless of whether such partners, parents, subsidiaries,
10 or related entities are individuals, corporations, partnerships, limited partnerships, limited liability
11 companies, or other forms of entity); (b) each and all of the predecessor or successor entities of
12 any of those entities identified in subparagraph (a); (c) any other individuals or entities of any
13 kind, including but not limited to any payroll companies, which have been or could be alleged to
14 be in any manner responsible (whether on an alter ego, joint employer, statutory employer,
15 integrated enterprise, or any other theory) for any actual or alleged violations described in Section
16 2.20; and (d) all past and present directors, officers, representatives, insurers, agents, shareholders,
17 partners, members, lawyers, and employees of any of the individuals or entities identified in
18 subparagraphs (a), (b), or (c).

19 **2.20 “Releasing Party” or “Releasing Parties”** means and refers to the Settlement
20 Class and its members, agents, partners, joint venturers, affiliates, predecessors, successors,
21 spouses, heirs, assigns, insurers, personal loan-out corporations, and any other Persons or entities
22 claiming by or through the Settlement Class, in their capacities as such.

23 **2.21 “Settled Claims”** means and refers, in connection with the work or services
24 performed by the Settlement Class Members on the Project during the Release Period, to any and
25 all claims, liabilities, rights, demands, suits, matters, obligations, liens, damages, losses, costs,
26 expenses, debts, actions, and causes of action, which in any way arises out of, is based on, or
27 relates in any way to the facts alleged in the Complaint, which specifically include: (a)
28 minimum, regular, and/or overtime wages allegedly due; (b) meal or rest periods allegedly missed,

not provided, and/or denied; (c) check stubs, wage statements, documentation, information, or records provided, delivered, or maintained, or not provided, delivered, or maintained; (d) the payment, non-payment, or timeliness of payment of wages or premiums due or allegedly due; (e) record-keeping obligations; (f) the payment or non-payment of reimbursements required under California Labor Code Section 2802; (g) violation or alleged violation of California Labor Code Sections 201, 201.5, 202, 204, 226, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197.1, 1198, 1198.5, or 2802, the federal Fair Labor Standards Act, any California Industrial Commission Wage Order, and/or any other statute or regulation regarding the payment of minimum, regular, and/or overtime wages, meal or rest period premiums, timing of payments, record-keeping obligations, and/or reimbursement of expenses; (h) attorneys' fees due or allegedly due under California Labor Code Section 218.5 or any other statute, regulation, or contractual provision; (i) any other claims that any Releasing Party has arising out of, based upon, or relating to the allegations contained in the Complaint or in the PAGA Letter; and (j) penalties or other payments which in any way arise out of, are based on, or relate in any way to any of the foregoing, including but not limited to penalties, premiums, or payments under California Labor Code Sections 203, 210, 226(e), 226(f), 226.3, 226.7, 226.8, 558, 1174.5, 1198.5(k), or 1199, the Federal Fair Labor Standards Act, any California Industrial Commission Wage Order, and/or any other statute or regulation regarding the payment of minimum, regular, and/or overtime wages, meal or rest period premiums, timing of payments, check stubs or wage statements, record-keeping obligations, and/or reimbursement of expenses. Without in any way limiting the foregoing, Settled Claims shall include all claims, liabilities, rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses, debts, actions, and causes of action under statutes and regulations set forth in this Section, whether enforced directly or pursuant to California Labor Code Section 2699, California Business and Professions Code Section 17200, *et seq.*, or any other mechanism.

2.22 "Settlement" means and refers to the settlement set forth in and to be effectuated through this Agreement.

2.23 "Settlement Class" or "Settlement Class Member" means and refers to all

persons who provided services on the Project at any time during the Release Period and were paid by QBVR, LLC. There are 11 estimated Settlement Class Members. Excluded from the Settlement Class are any Persons who properly and timely elect to opt out pursuant to Section 7. “**Aggrieved Employees**” means and refers to all persons who provided services on the June 2019 “VR Experience” production shoot identified as “MVP” (the “Project”) undertaken between the dates of May 1, 2019 to September 1, 2019 (the “PAGA Release Period”) at any time during the PAGA Release Period and were paid by QBVR, LLC. There are 11 estimated Aggrieved Employees.

2.24 “Settlement Class Counsel” means and refers to Alan Harris and David Garrett of Harris & Ruble.

2.25 “Settlement Class Counsel’s Fees, Costs, and Expenses” means and refers to the amount awarded by the Court to Settlement Class Counsel for reasonable attorneys’ fees, costs, and expenses associated with this Action and the resolution thereof, and no other settlement, as described in Section 11.1.

2.26 “Settlement Class Representative” means and refers to Demetrie Cooley.

2.27 “Settlement Fund” means and refers to the financial institution account established to hold all proceeds from whatever source necessary to provide the benefits under this Agreement.

2.28 “Settlement Termination Date” means and refers to the date, if any, that Defendant exercises its right to terminate this Agreement.

3. SETTLEMENT PURPOSES ONLY

3.1 General. This Agreement is for settlement purposes only.

3.2 Settlement Class Only. Any certification of a preliminary or final Settlement Class pursuant to the terms of this Agreement shall not constitute nor be construed as an admission, and shall not be admissible in any proceeding as an admission, on the part of Defendant or any other Person that this Action or any other action is appropriate for class or representative treatment at trial pursuant to Rule 23 of the Federal Rules of Civil Procedure, California Code of Civil Procedure Section 382, California Labor Code Section 2698, *et seq.*,

1 California Business and Professions Code Section 17200, *et seq.*, or any similar class and/or
2 representative action statute or rule. This Agreement shall not prejudice Defendant's rights or any
3 other Person's rights to oppose certification of a litigated class or other representative treatment in
4 this Action or in any other action or proceeding. Settlement Class Counsel shall not refer to this
5 Agreement or make any argument concerning this Agreement in any contested proceeding to
6 certify a litigated class or obtain other representative treatment.

7 **3.3 Admissibility.** This Agreement, any negotiations or proceedings related hereto, the
8 implementation hereof, and any papers submitted in support of the motions for approval hereof
9 (collectively, the "Settlement Proceedings") shall not be construed as, nor deemed to be evidence
10 of, any admission or concession by any of the Parties or any other Person regarding liability or the
11 appropriateness of class treatment, and shall not be offered or received in evidence in any action or
12 proceeding for any purpose whatsoever; provided, however, that this Agreement and the
13 Settlement Proceedings may be presented to the Court in connection with the implementation or
14 enforcement of this Agreement, or as may be necessary or appropriate to further the purposes
15 sought to be achieved by this Agreement.

16 **3.4 Denial of Liability.** By entering into this Agreement, it is understood that
17 Defendant does not admit and, in fact, expressly denies that: (i) it has breached any duty,
18 obligation, or agreement; (ii) it has engaged in any illegal, tortious, or wrongful activity; (iii) it is
19 liable to members of the Settlement Class; or (iv) any damages have been sustained by any
20 Settlement Class Member or by any other Person.

21 **3.5 Filing of Complaint.** Settlement Class Counsel shall file and serve a Complaint
22 with the Court, substantially in the form attached hereto as Exhibit 1, prior to the lodging of a
23 fully-executed copy of this Agreement with the Court. The Parties agree that Defendant's time to
24 respond to the Complaint shall be stayed pending the settlement approval process.

25 **4. JURISDICTION**

26 **4.1 Continuing Jurisdiction.** The Court has, and shall continue to have, jurisdiction
27 to make any orders as may be appropriate to effectuate, consummate, and enforce the terms of this
28 Agreement, to approve award of attorneys' fees and costs pursuant hereto, and to supervise the

1 administration and distribution of money from the Settlement Fund pursuant to California Code of
2 Civil Procedure Section 664.6. Any dispute or question relating to or concerning the
3 interpretation, enforcement, or application of this Agreement shall be presented to the Court for
4 resolution.

5 **5. COURT APPROVAL OF THE SETTLEMENT**

6 **5.1 Preliminary Approval and Notice Approval.** After the execution of this
7 Agreement, Settlement Class Counsel shall move the Court for an order granting preliminary
8 approval of this Agreement and approval of the proposed Notice Program and, in connection
9 therewith, submit to the Court a mutually-acceptable proposed Preliminary Approval Order.

10 **5.2 Objections.** The Preliminary Approval Order shall specify that Settlement Class
11 Members shall have forty-five (45) calendar days from the commencement of the Notice Program
12 to mail any objections to the Claims Administrator.

13 **5.3 Final Approval.** Within thirty (30) calendar days following the expiration of the
14 Opt Out Period, if the Agreement has not been terminated in accordance with Section 8,
15 Settlement Class Counsel shall file a motion for final approval and, in connection therewith,
16 submit to the Court a mutually-acceptable proposed Final Approval Order.

17 **6. CLASS NOTICE**

18 **6.1 Mailed Notice.** Within ten (10) calendar days after entry of the Preliminary
19 Approval Order, Defendant shall submit to the Claims Administrator, in electronic form, a list of
20 all Settlement Class Members. The list shall include each Person's name, last known address, and
21 social security number. Within fifteen (15) calendar days after receipt of the foregoing list, the
22 Claims Administrator and/or its designee shall run a national change of address update and send
23 by first class postage prepaid U.S. Mail a copy of the Class Notice approved by the Court to each
24 Person on the final list. If a Notice is returned from the initial notice mailing, the Claims
25 Administrator will use the applicable and available information, including name, Social Security
26 number, and original mailing address, for skip tracing in an attempt to locate a more current
27 address. If the Claims Administrator is successful in locating a new address, it will re-mail the
28 Notice to the Settlement Class member. Further, any Notices returned with a forwarding address

1 to the Claims Administrator, as non-deliverable before the deadline date, shall be sent to the
2 forwarding address affixed thereto. Any Settlement Class Member who is re-mailed a Notice shall
3 have an additional ten (10) days past the end the of the notice period to submit a dispute, objection
4 or request for exclusion.

5 **6.2 Cost of Notice and Administration.** The notice administration fees and costs for
6 this Settlement shall be paid from the Settlement Fund. Settlement Class Counsel preliminarily
7 estimates that such fees and costs will be approximately \$4,000. If the actual fees and costs
8 exceed \$4,000, the amounts payable to Settlement Class Members under Section 10 shall be
9 reduced *pro rata* to cover any excess notice and administration costs. Any amounts not utilized
10 for administration costs shall be included in the distributions to Settlement Class Members.

11 **6.3 Records of Notice.** The Claims Administrator shall keep records of all notices,
12 and the cost thereof. Promptly upon request, the Claims Administrator shall provide a sworn
13 proof of mailing.

14 **7. RIGHT OF EXCLUSION**

15 **7.1 Procedure.** Settlement Class Members may elect to opt out of the Settlement Class
16 and thus exclude themselves from the Action and the Settlement Class at any time during the Opt
17 Out Period. To exercise the opt out right set forth in this Section 7.1, a Settlement Class Member
18 must submit a written request to exclude himself or herself from this Agreement, which request
19 shall contain the Settlement Class Member's name, address, telephone number, and last four digits
20 of his or her social security number. Such requests for exclusion must be sent to the Claims
21 Administrator and must be postmarked on or before the end of the Opt Out Period. All Settlement
22 Class Members who do not opt out in accordance with this Agreement during the Opt Out Period
23 will be deemed to have forever waived their right to opt out of the Settlement Class and will be
24 deemed Settlement Class Members for all purposes under this Agreement and will be irrevocably
25 bound by this Agreement. Any individual who timely and properly opts out shall not be entitled to
26 any individual relief under this Agreement. The Claims Administrator shall provide regular updates
27 to Settlement Class Counsel and counsel for Defendant as to any and all individuals who opt out of
28 the Settlement Class.

1 **7.2 Withdrawal of Election to Opt Out.** Prior to the entry of the Final Approval
2 Order, any Person who has elected to opt out may withdraw that election by notifying the Claims
3 Administrator in writing that he or she wishes to be a Settlement Class Member. The Claims
4 Administrator shall maintain records of all withdrawn opt outs, and shall provide such information
5 to Settlement Class Counsel and counsel for Defendant. At any time after the entry of the Final
6 Approval Order, any Person who has elected to opt out of this Agreement may withdraw that
7 election only upon receiving the written consent of Defendant and Court approval.

8 **8. SETTLEMENT TERMINATION**

9 **8.1 Termination if Court Approval is not Obtained.** This Agreement is expressly
10 conditioned upon: (i) Court approval of this Agreement; (ii) entry of the Preliminary Approval
11 Order in a mutually-agreeable form; and (iii) entry of the Final Approval Order in a mutually-
12 agreeable form. If the Court declines to enter either of these Orders, or modifies (in what
13 Defendant reasonably determines to be a material way) any aspect of this Agreement or of such
14 Orders, Defendant shall have the independent right to terminate this Agreement as set forth in
15 Section 8.4. For purposes of this Section 8, a “material” modification shall include, but is not
16 limited to, any modification in the releases to be provided, or any modification that would increase
17 the Total Maximum Settlement Payment (defined below).

18 **8.2 Termination if Opt Out Limit is Exceeded.** If more than three (3) Settlement
19 Class Members opt out of the Settlement Class, Defendant shall have the right to terminate this
20 Agreement as set forth in Section 8.4.

21 **8.3 Termination after Appeal.** If a Court of Appeal on review of this Agreement
22 and/or the Final Approval Order declares unenforceable, reverses, vacates, or modifies (in what
23 Defendant reasonably determines to be a material way) any aspect of this Agreement or the Final
24 Approval Order, Defendant shall have the independent right to terminate this Agreement as set
25 forth in Section 8.4.

26 **8.4 Termination Procedure and Effect.** If Defendant elects to terminate this
27 Agreement pursuant to Sections 8.1, 8.2, and/or 8.3, Defendant may do so by giving written notice
28 to Settlement Class Counsel. Notice of termination pursuant to Section 8.1 must be given within

thirty (30) calendar days of the act or order declining to enter the subject order or modifying this Agreement, unless subject to further appeal, in which case the notice must be given prior to the Final Effective Date. Notice of termination pursuant to Section 8.2 must be given prior to Final Approval. Notice of termination pursuant to Section 8.3 must be given prior to the Final Effective Date. If Defendant terminates this Agreement pursuant to Section 8, the termination shall void all of the rights, obligations, and releases under this Agreement, except for those provisions that are necessary to effectuate the termination. Within fifteen (15) calendar days after notice of termination, the Claims Administrator shall return all settlement payments made by Defendant prior to such termination (inclusive of interest and exclusive of notice and administration costs already expended). The Claims Administrator shall then allocate such previously expended notice and administration costs equally between Plaintiff and Defendant and invoice Plaintiff and Defendant for half of such costs (with a credit to Defendant for previously paid costs). All payments to the Claims Administrator shall be due thirty (30) calendar days after receipt of the Claims Administrator's invoice.

9. SETTLEMENT PAYMENTS

9.1 Funding Commitment. Defendant shall fund the obligations of this Agreement in accordance with the procedures set forth herein in the cash amount certain of \$150,000 ("Total Maximum Settlement Payment" or "TMSP"). The TMSP shall be used to pay all of Settlement Class Counsel's Fees, Costs, and Expenses, all costs of claims administration, all incentive payments to the Settlement Class Representative, the payment to the LWDA, and all settlement payments to Settlement Class Members. No Released Party shall be required to pay anything above or beyond the TMSP, under any circumstance, as a result of this Agreement.

9.2 Funding Upon Preliminary Approval. Within ten (10) calendar days after the entry of the Preliminary Approval Order, Defendant shall mail or wire to the Claims Administrator the sum of \$4,000 to pay for the notice program and initial administrative expenses. The time to make such payment may be extended by mutual consent of the Parties.

9.3 Funding Upon Final Effective Date. Within ten (10) calendar days after the Final Effective Date, Defendant shall mail or wire to the Claims Administrator the remaining amount of

the TMSP, i.e., \$146,000, in order to fund the Settlement pursuant to the terms of this Agreement. The time to make such payment may be extended by mutual consent of all the Parties.

9.4 Payment of Settlement Class Counsel's Fees, Costs, and Expenses. Within ten (10) calendar days after receipt of the funds described in Section 9.3 above, the Claims Administrator shall wire the amount of Settlement Class Counsel's Fees, Costs, And Expenses to Settlement Class Counsel from the Settlement Fund, unless the Agreement is terminated.

9.5 Funding for Final Administrative Expenses. Within fifteen (15) calendar days after all of the checks distributed by the Claims Administrator to Settlement Class Members are cashed, deposited, and/or expired (based on a 180-day stale date), the Claims Administrator shall notify the Parties in writing as to the total additional amount, if any, needed to pay the Claims Administrator's final invoice for fees and expenses. Within twenty (20) calendar days after receipt of any notice under this Section 9.5, Defendant shall deposit such additional amount into the Settlement Fund. In no circumstances will Defendant be responsible for more than the TMSP, however.

9.6 Interest on the Settlement Fund. All interest generated by the monies in the Settlement Fund shall accumulate and become part of the Settlement Fund.

10. PROTOCOL FOR PAYMENTS TO SETTLEMENT CLASS MEMBERS

10.1 Claims Administrator. Subject to Court approval, a reputable, experienced entity shall be the Claims Administrator. The Claims Administrator shall have the sole authority to administer the Settlement Fund, and to disburse sums from the Settlement Fund. The Claims Administrator shall carry out its duties in strict accordance with the procedures set forth in this Agreement, and any Party may move the Court to compel such compliance. The Claims Administrator shall submit monthly invoices to the Parties. With or without good cause, the Parties may jointly move the Court to replace the Claims Administrator. With good cause, any Party may, of its own accord, move the Court to replace the Claims Administrator. The Court may on its own motion replace the Claims Administrator at any time with or without cause. Except for the specific funding obligations set forth in Section 9, the Parties shall have no responsibility to members of the Settlement Class for the administration of claims or the

1 distribution of the cash benefits under this Agreement.

2 **10.2 Determination of Benefits.** After the Settlement Class Counsel's Fees, Costs, and
3 Expenses, all costs of claims administration (including a reasonable reserve for reasonably
4 anticipated future expenses), the incentive payment to the Settlement Class Representative, and the
5 payment to the LWDA has been satisfied from the Settlement Fund (or reserved for such purpose
6 if not yet paid), the remainder (the "Remainder") shall be available to pay Settlement Class
7 Members. Each Settlement Class Member shall receive his or her *pro rata* share of the
8 Remainder. The *pro rata* share of the Remainder payable to each Settlement Class Member shall
9 increase if any Settlement Class Member opts out of the Settlement. In other words, the
10 Remainder shall not be reduced if any Settlement Class Member excludes himself or herself from
11 the Settlement, but rather the entire Remainder shall be paid to Settlement Class Members.

12 **10.3 Notification of Proposed Benefits.** Within ten (10) calendar days after the
13 determination of the benefits pursuant to Section 10.2, the Claims Administrator shall send a
14 report to Settlement Class Counsel and defense counsel showing the proposed benefits to be paid
15 to the Settlement Class Members. Neither this report nor any other document provided to
16 Settlement Class Counsel shall include any identifying information for members of the Settlement
17 Class.

18 **10.4 Objections to the Proposed Benefits.** Settlement Class Counsel and Defendant
19 shall have ten (10) calendar days from the mailing of the report of proposed benefits referenced in
20 Section 10.3 to notify the Claims Administrator in writing of any errors in the calculation of the
21 proposed benefits.

22 **10.5 Resolutions of Objections.** If the Claims Administrator receives timely objections
23 from a Party to any proposed benefit, the Claims Administrator shall consider the objections and:
24 (i) attempt to resolve the objections between the Parties; or (ii) if the objections cannot be
25 resolved, the Parties shall submit the objections to the Court for resolution.

26 **10.6 Taxes.** Based upon an analysis of the facts of this Action, the Parties determined
27 and hereby agree that 0% of the settlement proceeds payable to the Settlement Class Members are
28 properly classified as wages. The payments will be classified as penalties and interest. The

1 Claims Administrator shall issue an IRS Form 1099 to each Settlement Class Member for his or
2 her cash benefit.

3 **10.7 Notice and Payment to Settlement Class Members.** Within twenty (20) calendar
4 days after receipt of the funds described in Section 9.3 above, the Claims Administrator shall
5 distribute to each Settlement Class Member a check in the amount equal to the total cash
6 payment(s) such member is entitled to receive under Section 10.2.

7 **10.7.1** All settlement checks sent to Settlement Class Members and not cashed
8 within one hundred eighty (180) calendar days of issuance shall be canceled. The Claims
9 Administrator will remit the entire amount of each Class Member's uncashed Net
10 Settlement Payment to the California State Controller's Office in the name of the Class
11 Member to whom the uncashed Net Settlement Payment check was addressed.

12 **10.8 Payment to LWDA.** Demetrie Cooley, as an allegedly aggrieved employee,
13 filed this lawsuit on behalf of other current or former employees under the Private Attorneys
14 General Act, California Labor Code Section 2699, *et seq.* ("PAGA"). From the TMSP, \$5,000 is
15 allocated to and designated as penalties pursuant to PAGA, seventy-five percent (75%) of which
16 shall be paid to the LWDA. Within twenty (20) calendar days after receipt of the funds described
17 in Section 9.3 above, the Claims Administrator shall pay \$3,750 to the LWDA from the
18 Settlement Fund. This payment shall constitute full satisfaction of the obligation, if any, to pay
19 civil penalties to the LWDA pursuant to California Labor Code Section 2699(i).

20 **10.9 Maintenance of Records.** The Claims Administrator shall maintain complete,
21 accurate, and detailed records regarding the administration of the Settlement Fund, including but
22 not limited to, any objection to proposed benefits and the resolution thereof and any and all
23 receipts by and disbursements from the Settlement Fund. The Claims Administrator shall make
24 such records available to counsel for the Parties or to their designee upon reasonable request and at
25 reasonable times. Upon request, the Claims Administrator shall provide such records to
26 Defendant in an electronic format designated by Defendant. The Claims Administrator shall
27 maintain all records for a period of not less than four (4) years following the expiration of the
28 Final Effective Date.

1 **11. SETTLEMENT CLASS COUNSEL’S FEES, COSTS, AND EXPENSES AND**
2 **SETTLEMENT CLASS REPRESENTATIVE’S INCENTIVE PAYMENT**

3 **11.1 Settlement Class Counsel’s Fees, Costs, and Expenses.** In connection with
4 the motion for final approval, Settlement Class Counsel shall file a motion with the Court seeking
5 approval of an award of attorneys’ fees in an aggregate amount that does not exceed the sum of
6 \$50,000 (33 1/3% of the common fund) and an award of actual costs and expenses incurred.
7 Defendant agrees not to oppose such motion for attorneys’ fees, costs, and expenses. In the event
8 that any court approves an award in excess of \$50,000 for attorneys’ fees or in excess the actual
9 costs and expenses incurred, Settlement Class Counsel shall take only the amounts listed in this
10 Section and the difference shall be treated as otherwise provided herein. The amounts so awarded
11 shall be for and in complete satisfaction of all attorneys’ fees and costs incurred to date by the
12 Settlement Class Representative, Settlement Class Counsel on behalf of the Settlement Class
13 Representative and the Settlement Class, and of all such future fees and costs, including fees and
14 costs incurred in documenting this Settlement, securing Court approval of this Settlement,
15 monitoring this Settlement, reviewing and participating in the claims administration process, and
16 obtaining the Final Approval Order. The Claims Administrator will give Settlement Class
17 Counsel an IRS Form 1099 for the awarded Settlement Class Counsel’s Fees, Costs, and
18 Expenses. Not later than the Final Effective Date, Settlement Class Counsel shall provide a fully
19 and properly executed IRS Form W-9 for purposes of the payments which the Claims
20 Administrator will make to Settlement Class Counsel.

21 **11.2 Incentive Payment.** In connection with the motion for final approval,
22 Settlement Class Counsel shall submit a request to the Court seeking approval for an award of an
23 incentive payment to the Settlement Class Representative that does not exceed the sum of \$5,000.
24 Such payment shall be in addition to the Settlement Class Representative’s cash benefit under
25 Section 10. In the event that any court awards an incentive payment in excess of \$5,000, the
26 Settlement Class Representative shall take only \$5,000, and the difference shall be treated as
27 otherwise specified herein. The Claims Administrator shall mail the incentive payment check to
28 the Settlement Class Representative (care of Settlement Class Counsel) within ten (10) calendar

1 days after receipt of the funds described in Section 9.3 above. The Settlement Class Representative
2 agrees that the incentive payment is not a wage payment. The Claims Administrator shall issue an
3 IRS Form 1099 to the Settlement Class Representative for his incentive payment.

4 **11.3 No Additional Fees, Costs, or Expenses.** Except as provided herein, each
5 member of the Settlement Class shall bear his/her/its own attorneys' fees, costs, and expenses
6 incurred in connection with any claim against Defendant.

7 **12. FINAL ACCOUNTING AND DISPOSITION OF SETTLEMENT MONIES**

8 **12.1 Final Accounting.** By no later than ninety (90) calendar days after the earlier of
9 (a) the Settlement Termination Date or (b) the occurrence of both the Final Effective Date and the
10 distribution of all checks referenced in Section 10.7, the Claims Administrator shall submit to the
11 Parties a final accounting of all monies paid into and out of the Settlement Fund.

12 **12.2 No Further Obligations.** Upon receipt of the final accounting referenced in
13 Section 12.1 and the satisfaction of the final invoice referenced in Section 9.5, Defendant shall
14 have no obligation to provide further funding pursuant to this Agreement.

15 **13. RELEASES**

16 **13.1 Final Approval Order.** The Final Approval Order shall include a release by the
17 Releasing Parties of and from any and all Settled Claims.

18 **13.2 Release.** Except for the obligations and rights created by this Agreement, the
19 Releasing Parties hereby fully release and absolutely and forever discharge Defendant and all
20 other Released Parties of and from any and all Settled Claims.

21 **13.3** California Civil Code Section 1542.

22 **13.3.1 Settlement Class Representative.** To the fullest extent permitted by law,
23 the Settlement Class Representative waives and relinquishes any and all rights or benefits
24 he has or may have under California Civil Code Section 1542, or any comparable
25 provision of state or federal law. California Civil Code Section 1542 provides:

26 "A general release does not extend to claims that the creditor or
27 releasing party does not know or suspect to exist in his or her favor
28 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."

1 The Settlement Class Representative acknowledges that he is aware that he or his
2 attorneys may hereafter discover claims or facts in addition to or different from those now
3 known or believed to be true with respect to the subject matter of this Agreement and/or
4 the Settled Claims. The Settlement Class Representative acknowledges that he intends to
5 and will fully, finally, and forever settle and release any and all claims, including but not
6 limited to the Settled Claims described in Section 2.21, whether known or unknown,
7 suspected or unsuspected, which now exist, hereinafter may exist, or heretofore may have
8 existed. In furtherance of this intention, the releases contained in this Agreement shall be
9 and remain in effect as full and complete releases by the Settlement Class Representative
10 without regard to the subsequent discovery or existence of such different or additional
11 claims or facts.

12 **13.4 Release of FLSA Claims.** Without conceding that any release of claims under
13 the Fair Labor Standards Act (“FLSA”) requires any affirmative conduct or opt-in by the
14 Releasing Parties, the Parties agree that the cashing of checks by the Releasing Parties shall be
15 deemed an opt-in to an FLSA collective action, the settlement of which includes the FLSA
16 releases specified in Section 2.21. However, nothing in this Section or elsewhere in this
17 Agreement shall preclude the Releasing Parties from being bound by the releases in this
18 Agreement whether or not they receive or cash their checks. Each Releasing Party’s check will
19 include the following language, or words to that effect, immediately above the endorsement
20 signature line: “I understand and acknowledge that, by cashing or depositing this check, I reiterate
21 my agreement to each of the releases set forth in the Settlement, including release of wage and
22 hour claims, and to opt into the Settlement for purposes of the Fair Labor Standards Act (FLSA),
23 and forever release any FLSA claims related to the claims asserted in the Action.”

24 **14. NOTICES**

25 **14.1 Designated Recipients.** Unless otherwise specified in this Agreement or agreed
26 to in writing by the Party receiving such communication, all notices, requests, or other required
27 communications hereunder shall be in writing and shall be sent by one of the following methods:
28 (a) by electronic mail; (b) by facsimile, with the original by first class mail, postage prepaid; or (c)

1 by personal or overnight delivery (including by Federal Express or other courier service). All such
2 communications shall be sent to the undersigned persons at their respective addresses as set forth
3 herein.

4 Settlement Class Counsel:

5 Alan Harris
6 David Garrett
7 Harris & Ruble
8 655 North Central Avenue, 17th Floor
9 Glendale, California 91203
10 Fax: (323) 962-3004

11 Defendant:

12 Jeffrey W. Shields
13 Shields Law Offices
14 1920 Main Street, Suite 1160
15 Irvine, CA 92614 USA
16 Tel. (949) 724-7900
17 Fax (949) 724-7905
18 e-mail jeff@shieldslawoffices.com

19 Notice shall be deemed effective: (1) if given by electronic means, at the time of
20 transmission if the sender does not receive an error message; (2) if given by personal or overnight
21 delivery, when signed for or when delivery is refused; and (3) if given by facsimile, when received
22 as evidenced by a confirmation or evidence of delivery.

23 **14.2 Changes in Designated Recipients.** Any Party may re-designate the Person to
24 receive notices, requests, demands, or other communications required or permitted by this
25 Agreement by providing written notice to the other Party and the Claims Administrator.

26 **15. MISCELLANEOUS**

27 **15.1 Entire Agreement.** This Agreement supersedes and replaces any and all other
28 prior agreements and all negotiations leading up to the execution of this Agreement, whether oral
or in writing, between the Parties with respect to the subject matter hereof. The Parties
acknowledge that no representations, inducements, promises, or statements, oral or otherwise,
have been made or relied upon by any of the Parties or by anyone acting on behalf of the Parties
which are not embodied or incorporated by reference herein, and further agree that no other
covenant, representation, inducement, promise or statement not set forth in writing in this
Agreement shall be valid or binding.

15.2 Modification or Amendment. This Agreement may not be modified or

1 amended, except in writing with the unanimous consent of the Parties and with the approval of the
2 Court.

3 **15.3 Execution in Counterparts.** This Agreement may be executed by signature of
4 the Parties hereto, or their authorized representatives, on multiple copies of this Agreement,
5 including copies transmitted by facsimile or e-mail in electronic portable document format (PDF),
6 and, upon being so executed by all Parties hereto, shall be effective as if all signatures appeared on
7 the original of this Agreement.

8 **15.4 Authority of Counsel.** Settlement Class Counsel are authorized by the
9 members of the Settlement Class, and by the Court, to take all appropriate action required and
10 permitted to be taken by the Settlement Class pursuant to this Agreement to effectuate its terms,
11 and, subject to Court approval, are authorized to enter into any modification or amendments to this
12 Agreement on behalf of the Settlement Class which they deem appropriate.

13 **15.5 Headings.** The headings of the sections, paragraphs, subparagraphs, and
14 exhibits of this Agreement are included for convenience only and shall not be deemed to constitute
15 part of this Agreement or to affect its construction.

16 **15.6 Liens.** The Parties released under this Agreement shall have no obligation to
17 pay or otherwise resolve any liens that are or may be asserted against settlement payments to
18 members of the Settlement Class pursuant to the terms of this Agreement. In the event any such
19 lien is asserted, it is the responsibility of the Settlement Class Member to pay, compromise, or
20 otherwise resolve the lien at no cost to Defendant, the Released Parties, or the Settlement Fund.

21 **15.7 Inapplicability of California Code of Civil Procedure Section 384.** The
22 Parties agree that California Code of Civil Procedure Section 384 does not apply to this
23 Settlement, as Defendant will not pay any portion of the TMSP to Settlement Class Members who
24 opt out of the Settlement. Thus, there will be no “unpaid residue” within the meaning of
25 California Code of Civil Procedure Section 384. Neither the Settlement Class Representative nor
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1 Settlement Class Counsel shall take, or cause any other person to take, a position before the Court
2 that California Code of Civil Procedure Section 384 applies to this Settlement.

3 **15.8 No Encouragement to Opt Out.** The Parties agree that neither they nor their
4 counsel will solicit or otherwise directly or indirectly encourage Settlement Class Members to
5 request exclusion from the Settlement Class, to object to this Settlement, or to appeal from the
6 Final Approval Order. The Settlement Class Representative will not request exclusion from the
7 Settlement Class. The Settlement Class Representative and Settlement Class Counsel will not
8 object to this Settlement and will not appeal from the Final Approval Order, or any portion of it.

9 **15.9 No Publicity.** The Parties agree not to contact the press, which includes issuing a
10 press release, or to hold a press conference announcing the terms of the Settlement. If the Parties
11 are contacted by the press or receive other third party inquiries regarding the Settlement or the
12 case, the Parties shall be limited in their response to inform the initiating contactor that the Parties
13 have reached agreement to their mutual satisfaction and that the initiating contactor should refer to
14 the public records filed with the Court for more information. Each Party shall use all reasonable
15 efforts to ensure that any public statements or press communication about the Settlement with
16 Settlement Class Members prior to the Court-approved Class Notice being mailed by the Claims
17 Administrator will be limited to a general statement that a settlement has been reached and the
18 details will be communicated to them by U.S. Mail in a forthcoming Court-approved Class Notice.

19 **15.10 Gender.** Whenever in this Agreement the context so requires, the neuter gender
20 shall refer to and include the masculine or feminine or non-binary, and the singular shall refer to
21 and include the plural.

22 **15.11 Further Acts.** The Parties shall perform such further acts and execute such
23 further documents as may be reasonably necessary or appropriate to effectuate the terms and
24 purposes of this Agreement.

25 **15.12 Beneficiaries.** This Agreement shall be binding upon the Parties and each of
26 them, and each of their respective heirs, successors, and assignees, and shall inure to the benefit of
27 the Parties, as well as to each of the Released Parties, each of whom shall be deemed a third party
28 beneficiary of this Agreement.

1 **15.13 Choice of Law and Jurisdiction.** This Agreement in all respects shall be
2 interpreted, enforced, and governed by and under the laws of the State of California applicable to
3 instruments, Persons, and transactions which have legal contacts and relationships solely within
4 the State of California. Any action pertaining to the terms of this Agreement that is not covered
5 by Section 4.1 shall be brought in a court of competent jurisdiction located in the State of
6 California.

7 **15.14 Warranty Regarding Advice.** Settlement Class Counsel warrants that the
8 Settlement Class Representative has been fully advised of and agrees to the terms of this
9 Agreement. The Settlement Class Representative hereby acknowledges that he has been
10 represented by legal counsel throughout all negotiations which preceded the execution of this
11 Agreement, and that this Agreement has been executed with the consent and on the advice of said
12 counsel.

13 **15.15 No Tax Advice.** None of the Released Parties has any responsibility or liability
14 for any tax matters relating to any payments made under this Agreement including, but not limited
15 to, tax advice and/or the withholding of or reporting of taxes.

16 **15.16 Notice of Entry of Judgment:** Notice of Entry of Judgment Following Final
17 Approval of Class Settlement shall state that “[o]n [date of entry of Judgment], 202_, the Court
18 entered Judgment in this Class Action Settlement. The Judgment shall be attached to the Notice of
19 Entry of Judgment. The Notice of Entry of the Court’s Judgment shall be effectuated by: (a)
20 serving it on the Settlement Class through service upon Defendant’s counsel by Class Counsel,
21 and (b) posting it on the Claims Administrator’s website. Cal. Rules of Court, rule 3.771(b)).

22 AGREED TO AND ACCEPTED.
23

24 DEMETRIE COOLEY

25
26 Dated: _____

26 By: _____
27 Demetrie Cooley
28 Settlement Class Representative

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Dated: _____

NURULIZE INC.
By: _____
Its: _____

APPROVED AS TO FORM.

Dated: _____

HARRIS & RUBLE
By: _____
Alan Harris
Settlement Class Counsel

Dated: _____

SHIELDS LAW OFFICES
By: _____
Jeffrey W. Shields
Attorneys for Defendant