

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

Subject to final approval by the Court, it hereby stipulated by and between plaintiff Koji Sakai, on behalf of himself, all others similarly situated and aggrieved ("Plaintiff") and defendant International Technological University ("Defendant" or "ITU") that the Action, defined below, is hereby compromised and settled pursuant to the terms and conditions set forth in this Joint Stipulation of Class Action and PAGA Settlement ("Settlement" or "Agreement"), and that the Court shall make and enter judgment, subject to the continuing jurisdiction of the Court as set forth below, and subject to the definitions, recitals, and terms set forth herein which by this reference become an integral part of this Agreement. Plaintiff and Defendant collectively are referred to in this Agreement as the "Parties."

I. DEFINITIONS

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

1. "Action": The lawsuit to be filed by Plaintiff in Santa Clara County Superior Court titled *Koji Sakai v. International Technological University*, pursuant to and in furtherance of this Agreement.

2. "Administration Costs": The costs incurred by the Settlement Administrator to administer this Settlement, which shall not exceed \$5,000. All Administration Costs shall be paid from the Gross Settlement Amount.

3. "Application for Fees and Expenses": Plaintiff's request for attorneys' fees and expenses contained within Plaintiff's Motion for Order Granting Final Approval.

4. "Attorney Fee Award": The amount, not to exceed 33.33% of the Gross Settlement Amount or \$39,996, finally approved by the Court and awarded to Class Counsel to compensate them for their fees and all related litigation activities, this Settlement, and all post-Settlement compliance procedures. The Attorney Fee Award shall be paid from the Gross Settlement Amount. If a lesser amount is awarded by the Court, the remainder will become part of the Net Settlement Amount.

5. "Class": Plaintiff and all other individuals who worked for Defendant as adjunct professors or part-time lecturers in California at any time on or between October 19, 2019, through

1 October 15, 2021.

2 a. Defendant represents that the Class consists of 44 Class Members. As part of
3 this Agreement, Defendant will stipulate to certification of the Class for settlement purposes only.

4 b. In the event that the Class size increases by 10% or more (i.e., 48 or more Class
5 Members), then the Gross Settlement Amount shall be increased by the same number of percentage
6 points by which the number of Class Members exceeds 48.

7 6. "Class Counsel": Craig Ackermann of Ackermann & Tilajef, P.C. and India Lin Bodien
8 of India Lin Bodien, Attorney at Law, who shall apply for *pro hac vice* admission.

9 7. "Class List": The list of Class Members that Defendant will diligently and in good faith
10 compile from its records and provide to the Settlement Administrator only. The Class List will be
11 provided in Excel format and will include the following information for each Class Member: (1) first
12 and last name; (2) last known mailing address; (3) social security number; (4) hire and termination
13 dates; and (5) the total number of weeks during which the Class Member performed any actual work
14 during the Class Period as a member of the Class. The Settlement Administrator will keep Class
15 information confidential and use Class information only for the purposes described herein.

16 8. "Class Member": Each person eligible to participate in this Settlement who is a member
17 of the Class as defined above.

18 9. "Class Notice": The Notice of Class Action Settlement, substantially similar to the form
19 attached hereto as **Exhibit A**, subject to Court approval, which will be sent to Class Members.

20 10. "Class Period": The period from October 19, 2017, through October 15, 2021.

21 11. "Class Representative Payment": The amount the Court awards to Plaintiff for
22 execution of a broader general release of claims against Released Parties than Participating Class
23 Members, including a California Civil Code Section 1542 Waiver, which will not exceed \$7,500 and
24 is subject to Court approval. This payment shall be paid from the Gross Settlement Amount, at no
25 additional cost to Defendant, and will not be opposed by Defendant and is being offered in
26 consideration for Plaintiff executing a general release of claims against Defendant, a release that is
27 broader than any Participating Class Member, which will compensate him for initiating the Action,
28 performing work in support of the Action, and undertaking the risk of liability for attorneys' fees and

1 expenses in the event he was unsuccessful in the prosecution of the Action.

2 12. "Complaint": The operative Complaint to be filed by Plaintiff in the Superior Court of
3 Santa Clara County in furtherance of and in connection with this Settlement, which is attached to this
4 Agreement as **Exhibit B**.

5 13. "Cost Award": The amount requested by Class Counsel as part of this Settlement for
6 actual incurred costs, which shall not exceed \$10,000. The Cost Award will be paid from the Gross
7 Settlement Amount and will not be opposed by Defendant. The Cost Award is subject to Court
8 approval. If the Court awards less than the amount requested, any amount not awarded will become
9 part of the Net Settlement Amount for distribution to Participating Class Members.

10 14. "Counsel for Defendant": Lisa Hird Chung, Esq. and Kim L. Carter, Esq. of Schor
11 Vogelzang & Chung LLP.

12 15. "Court": California Superior Court for the County of Santa Clara.

13 16. "Effective Date": the later of the following: (a) if no timely objections are filed or if
14 all objections are withdrawn, the date upon which the Court enters Final Approval; (b) if an objection
15 is filed and not withdrawn, the date for filing an appeal and no such appeal being filed; (c) if any timely
16 appeals are filed, the date of the resolution (or withdrawal) of any such appeal in a way that does not
17 alter the terms of the Settlement.

18 17. "Employer Payroll Taxes": ITU's share of any employer payroll taxes to be paid in
19 connection with the Settlement (i.e., FICA, FUTA, payroll taxes, and/or any similar tax or charge) and
20 which shall be paid in addition to the GSA.

21 18. "Final Approval Hearing": The hearing by the Court to determine whether to give final
22 approval to and implement the terms of this Agreement.

23 19. "Final Judgment or Final Approval": The final order entered by the Court finally
24 approving this Agreement.

25 20. "Gross Settlement Amount" or "GSA": The total value of the Settlement is a non-
26 reversionary maximum amount of one hundred twenty-two thousand dollars and Zero Cents
27 (\$122,000.00). This is the gross amount Defendant can be required to pay under this Settlement
28 Agreement, which includes without limitation: (1) the Net Settlement Amount to be paid to

1 Participating Class Members; (2) the Attorney Fee Award and Cost Award to Class Counsel for
2 attorneys' fees and costs, as approved by the Court; (3) the Class Representative Payment paid to
3 Plaintiff, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5)
4 the PAGA Payment, as approved by the Court. No portion of the Gross Settlement Amount will revert
5 to Defendant for any reason. Under no circumstances will Defendant's Settlement payment exceed the
6 GSA except for Defendant's portion of payroll taxes which shall be paid in addition to the GSA.

7 21. "LWDA": California Labor and Workforce Development Agency.

8 22. "Net Settlement Amount" or "NSA": The total amount of money available for payout
9 to Participating Class Members, which is the GSA less the Attorney Fee Award, Cost Award, Class
10 Representative Payment, the PAGA Payment, and Administration Costs. In other words, the NSA is
11 the portion of the GSA that will be distributed to Class Members who do not request exclusion from
12 the Settlement. The payment of employee-side taxes on the portion of the Individual Settlement Shares
13 earmarked as wages shall be paid out of the Net Settlement Amount. Thus, the Individual Settlement
14 Shares that are paid out of the Net Settlement Amount shall be reduced by the employee's tax liability
15 for the share.

16 23. "PAGA": The California Labor Code Private Attorneys General Act of 2004 (Cal.
17 Labor Code §§ 2698 *et seq.*).

18 24. "PAGA Aggrieved Employees": Plaintiff and all other individuals who worked for
19 Defendant as adjunct professors or part-time lecturers in California at any time on or between October
20 19, 2019, through October 15, 2021

21 25. "PAGA Period" is from October 19, 2019, through October 15, 2021.

22 26. "PAGA Payment": The PAGA Payment consists of twenty thousand dollars (\$20,000)
23 of the Gross Settlement Amount allocated to satisfy the PAGA penalties claim as alleged in the
24 Complaint. Seventy-five percent (75%) of the PAGA Payment, or fifteen thousand dollars and Zero
25 Cents (\$15,000.00), shall be paid to the LWDA, and twenty-five percent (25%), or five thousand
26 dollars and Zero Cents (\$5,000.00), of the PAGA Payment shall be part of the Net Settlement Amount
27 distributed to the PAGA Aggrieved Employees.

28 27. "Opt Out Procedure": The process by which Class Members must undertake to not

1 participate in, and to not be bound by, the Settlement. Specifically, the Class Notice shall provide that
2 Class Members who wish to exclude themselves from, or opt out of, the Class must submit to the
3 Settlement Administrator a written statement (as directed by the Class Notice) requesting exclusion
4 from the Settlement (also referred to herein as “opt out”) which must: (a) contain the name, address,
5 telephone number, and the last four (4) digits of the social security number of the person requesting
6 exclusion; (b) state that “I understand that I am requesting to be excluded from the Settlement and that
7 I will receive no money from the Settlement. I understand that, if I opt- out of the Settlement, I may
8 bring a separate action, but I might lose my separate action or win and recover nothing or less than
9 what I would have recovered under the Settlement provisions in this case”; (c) be addressed to the
10 Settlement Administrator at the stated address in the Class Notice; and (d) be signed by the Class
11 Member. The statement must be postmarked no later than the Response Deadline described herein.
12 Any Class Member who properly opts out of the Class using this procedure will no longer be a member
13 of the Class, will be barred from participating in this Settlement, will be barred from objecting to this
14 Settlement, and will receive no benefit from this Settlement. Class Members who do not timely opt
15 out in accordance with the Opt-Out Procedure shall automatically receive a Settlement Share and shall
16 be bound by the Settlement of the Class Claims.

17 28. An opt out request shall not be effective as to the release of claims under PAGA and
18 shall not preclude the Class Member who worked during the PAGA Period from receiving their share
19 of the PAGA Payment.

20 29. “Participating Class Members”: All Class Members who do not submit a valid and
21 timely request to opt out of this Settlement.

22 30. “Preliminary Approval Hearing”: The hearing by the Court to determine whether to
23 give preliminary approval to and implement the terms of this Agreement.

24 31. “Preliminary Approval or Preliminary Approval Order”: The Court’s order
25 preliminarily approving the proposed Settlement.

26 32. “Projected Workweek Value”: The estimated Net Settlement Amount divided by the
27 sum of all Workweeks worked by all Class Members. This will be the value the Settlement
28 Administrator will use to estimate the Class Members’ Settlement Shares in the Class Notice.

33. “Qualified Settlement Fund” or “QSF”: The Parties agree that the QSF is intended to be a “Qualified Settlement Fund” under Section 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-1 *et seq.*, that is established by the Settlement Administrator for the benefit of Participating Class Members, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

34. “Released Claims”: Any and all claims alleged in the operative PAGA Letter and forthcoming Complaint, or that reasonably could have been alleged based on the facts and claims asserted in the PAGA Letter and/or Complaint, and arising during the Class Period, including claims under Labor Code sections 201, 202, 203, 204, 210, 226(a), 226(e), 226.3, 226.7, 512, 1194, 1197, 1197.1, 1198, 1199, 2802 as well as IWC Wage Order 4-2001, as well as any civil penalty claims predicated on the claims alleged in Plaintiff’s PAGA Letter and/or Complaint under PAGA and arising during the Class and/or PAGA Period and the LWDA notice of October 19, 2020. Released Claims shall not apply to claims for workers’ compensation benefits, unemployment insurance benefits, or any other claim or right that as a matter of law cannot be waived or released. The Parties acknowledge that Released Claims includes any claims for penalties under PAGA resulting from any LWDA investigation.

35. “Released Parties”: Defendant International Technological University and its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

36. “Response Deadline”: The date sixty (60) days after the Settlement Administrator mails the Class Notice to Class Members, which is the last date on which Class Members may submit opt out requests, written objections to the Settlement, or workweek disputes. In the event the 60th day falls on a Sunday or federal holiday, the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline for opt out requests or objections will be extended fifteen (15) calendar days for any Class Member who is re-mailed a Class Notice by the Settlement

1 Administrator, unless the 15th day falls on a Sunday or federal holiday, in which case the Response
2 Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response
3 Deadline may also be extended by express written agreement between Class Counsel and Counsel for
4 Defendant. Under no circumstances, however, will the Settlement Administrator have the authority to
5 unilaterally extend the Response Deadline.

6 37. "Settlement Administrator": The third-party administrator agreed upon by Parties to
7 administer this Settlement will be CPT Group, Inc.

8 38. "Settlement Share": The amount payable to each Participating Class Member under the
9 terms of this Settlement Agreement. The Settlement Share shall be determined by multiplying the
10 Participating Class Member's total number of Workweeks worked during the Class Period (after
11 resolution of any dispute regarding the number of Workweeks) multiplied by the Workweek Value.

12 39. "Workweeks": The total number of weeks worked by a Class Member for Defendant
13 during the Class Period. The Settlement Administrator will calculate the number of Workweeks
14 worked by the Class Members during the Class Period in California, the amount to be paid per
15 Workweek, and the Settlement Share awards to Class Members. The Workweeks will be calculated
16 by the Settlement Administrator for each Class Member. Based on this employment history data
17 provided by Defendant to the Settlement Administrator, the Workweeks will be calculated by the total
18 work weeks a Class Member worked during the Class Period and rounding any workdays that exceed
19 a whole Workweek that are less than seven (7) days, rounded up to the next whole integer. One day
20 worked in a Workweek will be credited as a Workweek. Defendant's employment data will be
21 presumed to be correct, unless a particular Class Member proves otherwise to the Settlement
22 Administrator by credible, written evidence. All Workweek disputes will be resolved and decided by
23 the Settlement Administrator, and the Settlement Administrator's decision on all shift disputes will be
24 final and non-appealable.

25 II. RECITALS

26 A. The Complaint attached as **Exhibit B** will be filed by Plaintiff in the Superior Court of
27 California for the County of Santa Clara within thirty (30) days after all Parties have executed this
28 Agreement.

1 B. Defendant denies, generally and specifically, each and every allegation and cause of
2 action in the Complaint. The Parties agree that, in light of this Settlement, Defendant shall have no
3 obligation to file a responsive pleading to the Complaint, and no default judgment shall be taken
4 against Defendant for failure to respond.

5 C. Mediation. The Parties attended private mediation with a California wage and hour
6 class action mediator, Steven Mehta, on August 17, 2021. The Parties reached an agreement in
7 principle to settle the case, the terms of which are reflected herein. At all times, the Parties' settlement
8 negotiations have been non-collusive, adversarial, and at arm's length. This Agreement represents a
9 compromise and settlement of highly disputed claims and defenses, as Plaintiff believes his claims
10 have merit and Defendant believes its defenses have merit. Nothing in this Agreement shall be
11 construed as an admission by Defendant or any of the Released Parties that the asserted claims have
12 merit or as an admission by Plaintiff that the defenses asserted by Defendant have merit.

13 D. Benefits of Settlement to Class Members. Plaintiff and Class Counsel recognize the
14 expense and length of continued proceedings necessary to continue the litigation against Defendant
15 through trial and through any possible appeals. Plaintiff and Class Counsel also have taken into
16 account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and
17 delays inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement
18 negotiations. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in
19 this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class
20 Members.

21 E. Defendant's Reasons for Settlement. Defendant and its Counsel recognize that the
22 defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and
23 resources of Defendant has been and, unless this Settlement is made, will continue to be devoted to
24 the defense of the claims asserted by Plaintiff. Defendant, therefore, has agreed to settle in the manner
25 and upon the terms set forth in this Agreement to put to rest the Released Claims.

26 F. Defendant's Denial of Wrongdoing. Defendant generally and specifically denies any
27 and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no
28 concessions or admissions of liability of any sort, and contends that for any purpose other than

1 settlement, the Action is not appropriate for class treatment. Defendant asserts a number of defenses
2 to the claims, and has denied any wrongdoing or liability arising out of any of the alleged facts or
3 conduct in the Action. Neither this Agreement, nor any document referred to or contemplated herein,
4 nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an
5 admission, concession, or indication by or against Defendant or any of the Released Parties of any
6 fault, wrongdoing, or liability whatsoever. There has been no final determination by any court as to
7 the merits of the claims asserted by Plaintiff against Defendant or as to whether a class or classes
8 should be certified, other than for settlement purposes only.

9 G. Plaintiff's Claims. Plaintiff asserts that Defendant's defenses are without merit. Neither
10 this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry
11 out this Agreement is, may be construed as, or may be used as an admission, concession or indication
12 by or against Plaintiff, Class Members, or Class Counsel as to the merits of any claims or defenses
13 asserted, or lack thereof, in the Action. However, in the event that this Settlement is finally approved
14 by the Court, the Plaintiff, Class Members, and Class Counsel will not oppose Defendant's efforts to
15 use this Agreement to prove that Plaintiff and Participating Class Members have resolved and are
16 forever barred from re-litigating the Released Claims.

17 H. Approval Required. Because the Action is a putative class action, this Settlement must
18 receive preliminary and final approval by the Court. Accordingly, Plaintiff and Defendant enter into
19 this Agreement on a conditional basis. Should the Court, or any other court taking jurisdiction of this
20 Action, decline to approve all material aspects of the Agreement or make rulings substantially altering
21 the material terms of the Agreement, except for the awards of the Attorney Fee Award and Cost Award
22 or the Class Representative Payment, the Defendant will have no obligation to make any payment,
23 including any portion of the Gross Settlement Amount. In the event that the Effective Date does not
24 occur, this Agreement will be deemed null and void ab initio and will be of no force or effect
25 whatsoever, and will not be referred to or utilized for any purpose. Defendant denies all of Plaintiff's
26 claims as to liability and damages, as well as Plaintiff's class and PAGA allegations. Defendant
27 expressly reserves all rights to challenge any and all such claims and allegations upon all procedural
28 and factual grounds, including the assertion of all defenses, if the Effective Date does not occur.

III. SETTLEMENT TERMS AND CONDITIONS

A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount, excluding employer payroll taxes, that Defendant is obligated to pay under this Settlement Agreement is One Hundred Twenty-Two Thousand and Zero Cents (\$122,000). Under no circumstance will Defendant be obligated to pay any more than the Gross Settlement Amount except for Defendant's employer payroll taxes on the wage portion of the individual settlement awards.

B. **Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class as defined in this Agreement.

C. **Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiff and Class Members for purposes of this Settlement only. If the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in this Action or in any other lawsuit. If the Settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification and liability.

D. **Appointment of Class Representative.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff Koji S. Sakai shall be appointed as the representative for the Class.

E. **Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.

F. **Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay a Settlement Share from the Net Settlement Amount to each Participating Class Member.

1. Calculation.

a. Plaintiff and Defendant agree that the formula for allocating settlement payments to Participating Class Members provided herein is reasonable and that the payments

1 provided herein are designed to provide a fair settlement, despite any uncertainties of the amounts that
2 could be owed to Participating Class Members and the calculation of them. Plaintiff and Defendant
3 have agreed that the distribution to each Participating Class Member will be determined as set forth in
4 subsections of this paragraph.

5 b. The total amount of all Settlement Shares shall not exceed the NSA. All
6 payments that Defendant is required to make with respect to this Settlement Agreement shall be made
7 from the GSA.

8 c. Workweek Value Calculation. The "Workweek Value" shall be
9 calculated by dividing the NSA by the sum of all Workweeks worked by all Participating Class
10 Members

11 d. Class Member Settlement Share Calculation. All Participating Class
12 Members will automatically receive their Settlement Share of the NSA. The NSA shall be distributed
13 to the individual Participating Class Members based on the Workweeks the individual Participating
14 Class Members worked for Defendant during the Class Period. The amount allocated for each
15 individual Participating Class Member will be determined by multiplying the number of Workweeks
16 worked during the Class Period by each Participating Class Member (after resolution of any dispute
17 regarding the number of Workweeks) multiplied by the Workweek Value.

18 e. PAGA Aggrieved Employees PAGA Payment Share Calculation. All
19 PAGA Aggrieved Employees will automatically receive their Share of the PAGA Payment. The
20 portion of the PAGA Payment to be distributed to the PAGA Aggrieved Employees shall be distributed
21 to the PAGA Aggrieved Employees based on the pay periods the individual PAGA Aggrieved
22 Employees worked for Defendant during the PAGA Period. The amount allocated for each individual
23 PAGA Aggrieved Employees will be determined by multiplying the number of Pay Periods worked
24 during the PAGA Period by each PAGA Aggrieved Employee multiplied by the Pay Period Value.
25 The "Pay Period Value" shall be calculated by dividing the PAGA Aggrieved Employees share of the
26 PAGA Payment by the sum of all Pay Periods worked by all PAGA Aggrieved Employees during the
27 PAGA Period.

28 2. Tax Withholdings. Each Participating Class Member's Settlement Share will

1 be apportioned as follows: 20% wages and 80% non-wages. Each PAGA Aggrieved Employees'
2 PAGA Payment Share shall be apportioned as 100% non-wages. The amounts paid as wages are
3 intended to settle each Participating Class Member's claim for unpaid wages and shall be subject to
4 all tax withholdings customarily made from an employee's wages and all other authorized and required
5 withholdings. The employer's share of legally required payroll taxes for the wage portion will be paid
6 on top of the GSA. The Settlement Administrator shall issue IRS W-2 forms with respect to the wage
7 portion. Payment of all amounts will be made subject to backup withholding unless a duly executed
8 W-9 form is received from the payee(s). The amounts paid as penalties and interest are intended to
9 settle each Participating Class Member's non-wage claims and shall be subject to all authorized and
10 required withholdings other than the tax withholdings customarily made from employees' wages. The
11 Settlement Administrator shall issue IRS 1099 forms with respect to this portion. The employee's
12 share of payroll tax withholdings shall be from that person's Settlement Share out of the NSA.

13 **G. Constituents of GSA Disbursement.** Subject to the terms and conditions of this
14 Agreement, the Settlement Administrator shall disburse the GSA as follows:

15 1. To the Plaintiff. In addition to his Settlement Share, and subject to the Court's
16 approval, the Plaintiff will receive up to \$7,500 in consideration for providing Released Parties a
17 general release, including a California Civil Code Section 1542 Waiver, a release that is broader than
18 the claims released by Participating Class Members in consideration for a settlement share and to
19 compensate Plaintiff for initiating the Action, performing work in support of the Action, and
20 undertaking the risk of liability for attorneys' fees and expenses in the event he was unsuccessful in
21 the prosecution of the Action. The Settlement Administrator will pay the Class Representative
22 Payment out of the Gross Settlement Amount. Payroll tax withholdings and deductions will not be
23 taken from the Class Representative Payment. An IRS Form 1099 will be issued by the Settlement
24 Administrator to the Plaintiff for the Class Representative Payment.

25 2. To Class Counsel. Class Counsel will apply to the Court for, and Defendant
26 agrees not to oppose, a total Attorney Fee Award not to exceed 33.33% percent or \$39,996.00 of the
27 GSA and a Cost Award not to exceed \$10,000. The Settlement Administrator will pay the court-
28 approved amounts for the Attorney Fee Award and Cost Award out of the Gross Settlement Fund. The

1 Settlement Administrator may purchase an annuity to utilize US treasuries and bonds or other attorney
2 fee deferral vehicles for Class Counsel. Payroll tax withholding and deductions will not be taken from
3 the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with
4 respect to the Attorney Fee Award. In the event the Court does not approve the entirety of the
5 application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay
6 whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be
7 responsible for paying the difference between the amount requested and the amount awarded. If the
8 amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award and/or
9 Cost Award, the difference shall become part of the NSA and be available for distribution to
10 Participating Class Members.

11 3. To the Settlement Administrator. The Settlement Administrator will pay to
12 itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed
13 \$5,000. This will be paid out of the Gross Settlement Amount. If the actual amount of Administration
14 Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA
15 and be available for distribution to Participating Class Members.

16 4. To the LWDA. The Settlement Administrator will pay \$20,000 of the Gross
17 Settlement Amount allocated to satisfy the PAGA penalties claim as alleged in the Complaint.
18 Seventy-five percent (75%) of the PAGA Payment shall be paid to the LWDA, and twenty-five percent
19 (25%) of the PAGA Payment shall be distributed to the PAGA Aggrieved Employees.

20 6. To Class Members. The Settlement Administrator will pay Participating Class
21 Members according to the Settlement Share calculations set forth above. All payments to Participating
22 Class Members shall be made from the NSA. In the event that a Settlement Share check sent to a
23 Participating Class Member is not cashed within the 120-day expiration period, that Participating Class
24 Member's Settlement Share shall be disbursed by the Settlement Administrator to the Bay Area Legal
25 Aid.

26 H. **Tax Treatment.** Plaintiff and Participating Class Members shall be exclusively liable
27 for any and all of their respective tax liability, if any. Plaintiff and Participating Class Members should
28 consult with their tax advisors concerning the tax consequences of the payments they receive under

1 the Settlement. The Settlement Shares received by Participating Class Members will be reported as
2 required to the state and federal taxing authorities on IRS forms 1099 and W-2 or similar forms. Each
3 Participating Class Member will be responsible for paying all applicable state, local, and federal
4 income taxes on all amounts the Participating Class Member receives pursuant to this Agreement.
5 Participating Class Members shall cooperate with Defendant and provide documentation as requested
6 to demonstrate such payment should any taxing authority challenge the allocation of Settlement
7 Shares. Each Party to this Agreement acknowledges and agrees that:

8 1. No provision of this Settlement Agreement and no written communication or
9 disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be,
10 nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax
11 advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as
12 amended);

13 2. He or she: (a) has relied exclusively upon his, her, or its own, independent legal
14 and tax advisers for advice (including tax advice) in connection with this Settlement Agreement; (b)
15 has not entered into this Agreement based upon the recommendation of any other Party or any attorney
16 or advisor to any other Party; and (c) is not entitled to rely upon any communication or disclosure by
17 any attorney or adviser to any other Party to avoid any tax penalty that may be imposed on him or her;
18 and

19 3. No attorney or adviser to any other Party has imposed any limitation that
20 protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether
21 such limitation is legally binding) upon disclosure by him or her of the tax treatment or tax structure
22 of any transaction, including any transaction contemplated by this Agreement.

23 I. **Appointment of Settlement Administrator.** Solely for the purposes of this
24 Settlement, the Parties stipulate and agree that CPT Group, Inc. shall be retained to serve as Settlement
25 Administrator. The Settlement Administrator shall be responsible for preparing, printing, and mailing
26 the Class Notice to the Putative Class Members; keeping track of any objections or requests for
27 exclusion from Class Members; performing skip traces and remailing Class Notices and Settlement
28 Shares to Class Members; calculating any and all payroll tax deductions as required by law; calculating

1 each Class Member's Settlement Share; providing weekly status reports to Defendant's Counsel and
2 Class Counsel, which is to include updates on any objections or requests for exclusion that have been
3 received; providing a due diligence declaration for submission to the Court prior to the Final Approval
4 hearing; mailing Settlement Shares to Participating Class Members and PAGA Payment recipients;
5 calculating and mailing the PAGA Payment to the LWDA; distributing the Attorney Fee Award and
6 Cost Award to Class Counsel; printing and providing Class Members and Plaintiff with W-2s and
7 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration
8 for submission to the Court upon the completion of the Settlement; providing any funds remaining in
9 the QSF as a result of uncashed checks to the State of California, California Department of Industrial
10 Relations Unpaid Wage Fund, with the identity of the Participating Class Member to whom the funds
11 belong, including the administration of related tax reimbursements; and for such other tasks as the
12 Parties mutually agree. The Settlement Administrator will have the final authority to resolve all
13 disputes concerning the calculation of a Participating Class Member's Settlement Share subject to the
14 terms set forth in this Agreement. The Parties each represent that they do not have any financial interest
15 in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator
16 that could create a conflict of interest.

17 **J. Procedure for Approving Settlement.**

18 1. Motion for Preliminary Approval and Conditional Certification.

19 a. Plaintiff will move for an order conditionally certifying the Class for
20 settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final
21 Approval hearing, and approving the Class Notice.

22 b. At the Preliminary Approval hearing, the Parties will jointly appear,
23 support the granting of the motion, and submit a proposed order granting conditional certification of
24 the Class and Preliminary Approval of the Settlement; appointing the Class Representative, Class
25 Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval
26 hearing.

27 c. Should the Court decline to conditionally certify the Class or to
28 Preliminarily Approve all material aspects of the Settlement, the Settlement will be null and void, and

1 the Parties will have no further obligations under it. Provided, however, that the amounts of the
2 Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Payment shall be
3 determined by the Court, and the Court's determination on these amounts shall be final and binding,
4 and that the Court's approval or denial of any amount requested for these items are not conditions of
5 this Agreement, and are to be considered separate and apart from the fairness, reasonableness, and
6 adequacy of the Settlement. Any order or proceeding relating to an application for the Attorney Fee
7 Award, Cost Award, Administration Costs, and Class Representative Payment shall not operate to
8 terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiff's or
9 Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorney
10 Fee Award, Cost Award, Administration Costs, and Class Representative Payment.

11 2. Notice to Class Members. After the Court enters its Preliminary Approval
12 Order, every Class Member will be provided with the Class Notice in accordance with the following
13 procedure:

14 a. Within thirty (30) business days after entry of the Preliminary Approval
15 Order, Defendant shall deliver to the Settlement Administrator the Class List. If any information
16 required for the Class List is unavailable to Defendant, Defendant will so inform Class Counsel and
17 the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the
18 unavailable information. The Settlement Administrator will conduct a skip trace for the current address
19 of all Class Members. The Settlement Administrator shall maintain the Class List and all data
20 contained within the Class List as private and confidential, and use the information in the Class List
21 only for the purposes described herein without disclosure to Plaintiff, Class Counsel, or any third party
22 other than as ordered by the Court.

23 b. Within thirty (30) calendar days after entry of the Preliminary Approval
24 Order, the Settlement Administrator will mail the Class Notice to all identified Class Members via
25 first- class regular U.S. Mail, using the mailing address information provided by Defendant and the
26 results of the skip trace performed on all Class Members.

27 c. If a Class Notice is returned because of an incorrect address, within five
28 (5) business days from receipt of the returned Class Notice, the Settlement Administrator will conduct

1 a search for a more current address for the Class Member and re-mail the Class Notice to the Class
2 Member. The Settlement Administrator will use the National Change of Address Database and skip
3 traces to attempt to find the current address. The Settlement Administrator will be responsible for
4 taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is
5 returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum,
6 the tracking of all undelivered mail; performing address searches for all mail returned without a
7 forwarding address; and promptly re-mailing to Class Members for whom new addresses are found.
8 The Settlement Administrator is unable to locate a better address, the Class Notice shall be re-mailed
9 to the original address. If the Class Notice is re-mailed, the Settlement Administrator will note for its
10 own records the date and address of each re-mailing.

11 d. The Settlement Administrator shall provide a weekly status report to the
12 Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel
13 and Counsel for Defendant of the number of Class Notices mailed, the number of Class Notices
14 returned as undeliverable, the number of Class Notices re-mailed, and the number of requests for
15 exclusion or objections received.

16 e. No later than seven (7) calendar days after the Response Deadline, the
17 Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its
18 compliance with its obligations under this Agreement. The declaration from the Settlement
19 Administrator shall also be filed with the Court by Class Counsel no later than ten (10) calendar days
20 before the Final Approval hearing. Before the Final Approval hearing, the Settlement Administrator
21 will supplement its declaration of due diligence if any material changes occur from the date of the
22 filing of its prior declaration.

23 3. Dispute Resolution Procedure Regarding Workweeks. If a Class Member
24 disputes the number of Workweeks shown in the Class Notice, the Class Member must—in writing
25 mailed and postmarked no later than thirty (30) calendar days after the Settlement Administrator first
26 mails the Class Notice— notify the Settlement Administrator of the dispute, provide a statement of
27 the number of total Workweeks the Class Member contends he or she worked while employed with
28 Defendant during the Class Period, and submit written documentation in support of the dispute. The

1 timeframe to submit a dispute will not be increased for returned mailings. In the event of a dispute,
2 Defendant's records regarding the number of Workweeks of the Class Member shall be presumed to
3 be correct and the Class Member will bear the burden of proof (i.e., a Class Member who fails to
4 provide written proof will have his or her challenge denied). The Settlement Administrator shall
5 investigate the challenge, requesting information from Defendant as necessary and make the final
6 determination of whether any additional amount is owed. In no case will a challenge to employment
7 data result in a payment by Defendant in excess of the Gross Settlement Amount.

8 4. No Claim Settlement. This is a non-reversionary, all-in settlement that does not
9 require Class Member to make a claim to receive their proportionate Settlement Shares. The Class
10 Notice mailed to each Class Member shall explain that Participating Class Members will automatically
11 receive a Settlement Share if they do not exclude themselves from the Settlement. The Class Notice
12 will also reflect the individual Class Member's Workweeks based on information provided by
13 Defendant.

14 5. Objections to Settlement. The Class Notice will provide that the Class Members
15 who wish to object to the Settlement must do so in writing, signed, dated, and mailed to the Settlement
16 Administrator postmarked no later than the Response Deadline. The timeframe to submit an objection
17 will not be increased for returned mailings.

18 a. Format. Any Objections shall state: (a) the objecting person's full name,
19 address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection;" (c)
20 describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list
21 identifying witness(es) the objector may call to testify at the Final Approval hearing; and (e) provide
22 true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing.
23 Class Members need not include legal arguments for their written objections to be considered. The
24 objection will not be valid if it objects only to the appropriateness of the Action or the merits thereof.
25 Any Class Member who properly opts out of the Class using this procedure will no longer be a member
26 of the Class, will be barred from participating in this Settlement, will be barred from objecting to this
27 Settlement, and will receive no benefit from this Settlement.

28 b. Notice of Intent to Appear. If an objector also wishes to appear at the

1 Final Approval Hearing, in person, or through an attorney, he or she need not file a notice of intention
2 to appear at the same time as the objection is filed. Filing the notice of intention to appear is not
3 necessary to preserve the right to appear at the Final Approval hearing

4 c. Response to Objections. Plaintiff and/or Defendant may file a response
5 to objections to the Settlement no later than five (5) court days before the Final Approval Hearing.

6 6. Request for Exclusion from the Settlement ("Opt-Out"). The Class Notice will
7 provide that Class Members who wish to exclude themselves from the Settlement must mail to the
8 Settlement Administrator a written request for exclusion. The written request for exclusion must: (a)
9 state the Class Member's name, address, telephone number, and social security number or employee
10 identification number; (b) state the Class Member's intention to exclude themselves from or opt-out
11 of the Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member
12 or his or her lawful representative; and (e) be postmarked no later than the Response Deadline.

13 a. Confirmation of Authenticity. If there is a question about the
14 authenticity of a signed request for exclusion, the Settlement Administrator may demand additional
15 proof of the Class Member's identity. Any Class Member who returns a timely, valid, and executed
16 request for exclusion will not participate in or be bound by the Settlement and subsequent judgment
17 and will not receive an Individual Settlement Share. A Class Member who does not complete and mail
18 a timely request for exclusion will automatically be included in the Settlement, will receive an
19 Individual Settlement Share, and be bound by all terms and conditions of the Settlement, if the
20 Settlement is approved by the Court, and by the subsequent judgment, regardless of whether he or she
21 has objected to the Settlement.

22 b. Report. No later than five (5) business days after the Response Deadline,
23 the Settlement Administrator will provide the Parties with a complete and accurate accounting of the
24 number of Class Notices mailed to Class Members, the number of Class Notices returned as
25 undeliverable, the number of Class Notices re-mailed to Class Members, the number of re-mailed
26 Class Notices returned as undeliverable, the number of Class Members who objected to the Settlement
27 and copies of their submitted objections, the number of Class Members who returned valid requests
28 for exclusion, and the number of Class Members who returned invalid requests for exclusion.

1 7. No Solicitation of Objection or Requests for Exclusion. Neither the Parties nor
2 their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to
3 object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment.

4 8. Right to Rescission. In the event that more than five percent (5%) of the class
5 members opt-out of the Settlement, Defendant has the right to rescind the Settlement. The Parties
6 agree that if Defendant exercises its option to rescind the Settlement, it will be responsible for the
7 Settlement Administrator fees through the rescission date. Otherwise, if the Settlement is not finally
8 approved by the Court, Plaintiff will be responsible for the Settlement Administrator's fees.

9 9. Motion for Final Approval.

10 a. Class Counsel will file motions and memorandums in support thereof
11 for Final Approval of the Settlement and the following payments in accord with the terms of the
12 Settlement: (1) the Attorney Fee Award; (2) the Cost Award; (3) Administrative Costs; (4)
13 the Class Representative Payment; and (5) PAGA Payment. Class Counsel will also move the Court
14 for and order of Final Approval (and associated entry of Judgment) releasing and barring any Released
15 Claims of the Class Members who do not opt out of the Settlement.

16 b. If the Court does not grant Final Approval of the Settlement, or if the
17 Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then
18 this Settlement will become null and void. If that occurs, the Parties will have no further obligations
19 under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or
20 any amounts that otherwise would have been owed under this Agreement. Further, should this occur,
21 Plaintiff agrees he shall be responsible for the Administration Costs through that date. An award by
22 the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative
23 Payment, Attorney Fee Award, or Cost Award will not constitute a material modification to the
24 Settlement within the meaning of this paragraph.

25 c. Upon Final Approval of the Settlement, Plaintiff shall present to the
26 Court a proposed Final Approval Order, approving of the Settlement and entering Judgment in
27 accordance therewith. The Final Approval Order will, among other things: (1) find that the
28 dissemination of the Class Notice in the form and manner ordered by the Court was accomplished as

1 directed, met the requirements of due process, was the best notice practicable under the circumstances,
2 and constituted due and sufficient notice to all persons entitled thereto; (2) find that Plaintiff and Class
3 Counsel herein have fairly and adequately represented and protected the interests of the Class at all
4 times in the Action; (3) grant Final Approval to the Settlement as fair, reasonable, adequate, in good
5 faith, and in the best interests of the Class as a whole, and order the Parties to carry out the provisions
6 of this Agreement; (4) enter final judgment in the Action, which shall include an order containing the
7 following provisions: (a) direction to the Parties to implement the terms of the Settlement, including
8 without limitation the provisions regarding the payment of the Settlement Shares to each Participating
9 Class Member as set forth in this Agreement; (b) a definition of the Class for purposes of the
10 Settlement; (c) entrance of judgment and permanently barring and enjoining all Participating Class
11 Members from prosecuting against any of the Released Parties, any individual, class, or collective
12 claims based on any of the Released Claims released herein and adjudging that the Participating Class
13 Members are conclusively deemed to have released the Released Parties from any and all rights,
14 claims, demands, liabilities, causes of action, liens and judgments arising out of or related to the
15 Action, as more specifically set forth in this Agreement; (d) a prohibition and permanent injunction
16 against each Participating Class Member from pursuing in any fashion against the Released Parties
17 any and all of the Released Claims; (e) an award of a reasonable Attorney Fee Award and Cost Award;
18 (f) an award of a reasonable Class Representative Payment; (g) direction to the Settlement
19 Administrator to pay to the LWDA the PAGA payment; and (h) reserve continuing jurisdiction as
20 provided herein.

21 d. After entry of Judgment, the Court shall have continuing jurisdiction
22 over the Action for purposes of: (i) administration and consummation of the terms of this Settlement
23 Agreement; (ii) enforcing, constructing, and interpreting this Settlement Agreement; (iii) addressing
24 such post-Judgment matters as may be appropriate under Court rules or applicable law; and
25 (iv) enforcing, constructing, and interpreting the Judgment, including, but not limited to, the
26 provisions therein enjoining any further litigation of Released Claims, and over Plaintiff and all
27 Participating Class Members (and their attorneys and law firms) in connection therewith.

28 10. Waiver of Right to Appeal. Provided that the Judgment is consistent with the

1 terms and conditions of this Agreement, if Class Members do not timely object to the Settlement, then
2 the Parties and their respective counsel waive any and all rights to appeal from the Judgment,
3 including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding,
4 such as a motion to vacate or set aside judgment, and any extraordinary writ, and the Judgment will
5 become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of
6 the right to oppose any invalid appeal, appellate proceeding, or post-judgment proceeding.

7 11. Vacating, Reversing, or Modifying Judgment on Appeal. If, after a notice of
8 appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material
9 modification to the Settlement, and that court's decision is not completely reversed and the Judgment
10 is not fully affirmed on review by a higher court, then this Settlement will become null and void and
11 the Parties will have no further obligations under it, and the Settlement Administrator will immediately
12 return to Defendant, without further authorization from Plaintiff or Class Counsel, 100% of any funds
13 paid by Defendant to the QSF pursuant to this Agreement. However, Plaintiff will be responsible for
14 the Administration Cost. A material modification would include, but not necessarily be limited to, any
15 alteration of the Gross Settlement Amount, an alteration in the calculation of the Net Settlement
16 Amount, and any change to the calculation of the Individual Settlement Share.

17 12. Disbursement of Settlement. Subject to the Court finally approving the
18 Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement
19 and the Court's Final Approval Order and Judgment. The maximum amount Defendant can be required
20 to pay under this Settlement for any purpose is the Gross Settlement Amount plus Defendant's
21 employer payroll taxes on the wage portion of the individual settlement awards. The Settlement
22 Administrator shall keep Counsel for Defendant and Class Counsel apprised of all distributions from
23 the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Counsel
24 for Defendant and Class Counsel. No person shall have any claim against Defendant, Counsel for
25 Defendant, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and
26 payments made in accordance with this Agreement.

27 1. Final Calculations. Within five (5) calendar days after the Effective
28 Date, the Settlement Administrator will provide Defendant with the final calculation of all funds

1 necessary to make the payments required under this Agreement, including all payments from the Gross
2 Settlement Amount (i.e., the Court- awarded Attorney Fee Award; the Cost Award; Administrative
3 Costs; the Class Representative Payment; and PAGA Payment) and all payments to Class Members
4 from the Net Settlement Amount along with the employer payroll taxes.

5 2. Funding the Settlement. Defendant shall pay the Gross Settlement
6 Amount to the Settlement Administrator in three parts as follows: The first payment of forty-six
7 thousand, six hundred, sixty-six dollars, and sixty-seven cents (\$46,666.67) will be within thirty (30)
8 days following the Effective Date; the second payment of forty-six thousand, six hundred, sixty-six
9 dollars and sixty-six cents (\$46,666.66) will be made within sixty (60) days after the deadline for the
10 first payment; and the third payment of forty-six thousand, six hundred, sixty-six dollars and sixty-six
11 cents (\$46,666.66) will be made within forty-five (45) days after the deadline for the second payment.

12 3. Disbursement. Within fifteen (15) calendar days after receipt of all
13 funds from Defendant, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to
14 be paid to Participating Class Members in their respective Settlement Shares; (2) the Attorney Fee
15 Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3)
16 the Class Representative Payment paid to the Class Representative, as approved by the Court; (4) the
17 Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to
18 PAGA Aggrieved Employees, as approved by the Court.

19 13. Uncashed Checks. The Parties agree the Settlement is not subject to California
20 Code of Civil Procedure section 384. Participating Class Members must cash or deposit their
21 Settlement Share checks within one hundred twenty (120) calendar days after the checks are mailed
22 to them. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing,
23 the Settlement Administrator will send a postcard indicating that unless the check is redeemed or
24 deposited in the next thirty (30) calendar days, it will expire and become non-negotiable, and offer to
25 replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited by the
26 expiration of the thirty (30) calendar day period after the mailing of the reminder notice, the Settlement
27 Administrator will pay the funds to the *cy pres*, Bay Area Legal Aid, as approved by the Court. In the
28 event a Participating Class Member fails to cash an Individual Settlement Payment Check, the affected

1 Participating Class Member shall be deemed to, nevertheless, be bound to the Settlement.

2 14. Final Report by Settlement Administrator. Within fourteen (14) calendar days
3 after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration
4 providing a final report on the disbursements of all funds.

5 16. Discharge of Obligations. Defendant shall fully discharge its obligations under
6 this Agreement once the Gross Settlement Amount plus Defendant's employer payroll taxes is
7 provided to the Settlement Administrator. The Gross Settlement Amount plus Defendant's employer
8 payroll taxes represents Defendant's complete and total financial obligation with respect to the
9 Settlement and shall be funded to the QSF via wire transfer or electronic funds transfer as set forth
10 above. Upon full provision of the Gross Settlement Amount plus Defendant's employer payroll taxes
11 by Defendant to the QSF, all of Defendant's obligations under this Agreement shall be deemed
12 complete.

13 17. Individual Settlement Payments Do Not Trigger Employment Relationship or
14 Additional Benefits. All monies received by Participating Class Members under the Settlement that
15 are attributable to wages shall constitute income to such Participating Class Members solely in the
16 year in which such monies actually are received by the Participating Class Members. It is expressly
17 understood and agreed that the receipt of Settlement Shares shall not entitle any Participating Class
18 Member to additional compensation or benefits under any collective bargaining agreement or under
19 any bonus, contest or other compensation or benefit plan or agreement in place during the period
20 covered by the Settlement, nor shall it entitle any Participating Class Member to any increased pension
21 and/or retirement, 401K benefits or matching benefits, or other deferred compensation benefits. It is
22 the intent of the Parties that the Settlement Shares provided for in this Agreement are the sole payments
23 to be made by Defendant to Participating Class Members in connection with this Settlement, with the
24 exception of Plaintiff, who may, subject to Court approval, also receive a Class Representative
25 Payment, and that the Participating Class Members are not entitled to any new or additional
26 compensation or benefits as a result of having received the Settlement Share (notwithstanding any
27 contrary language or agreement in any collective bargaining agreement or in any benefit or
28 compensation plan document that might have been in effect during the period covered by this

1 Settlement). Furthermore, the receipt of Settlement Shares by Participating Class Members shall not,
2 and does not, by itself establish any general, special, or joint employment relationship between and
3 among the Participating Class Member(s) and Defendant.

4 K. **Release of Claims.** Provided the Court grants Final Approval of this Agreement, then,
5 as of the Effective Date, each Participating Class Member, individually and on behalf of all their
6 respective successors, assigns, agents, attorneys, executors, heirs, and personal representatives
7 (“Releasers”), shall fully and finally release and discharge Defendant and the Released Parties, and
8 each of them, from the Released Claims.

9 The Parties’ intent in entering into this Settlement is to release Defendant and any of the Released
10 Parties from any and all claims that arise from or relate to the claims alleged in the Action, or which
11 could have been alleged based on the allegations in the LWDA letter and/or operative Complaint, and
12 preclude Defendant and any of the Released Parties from owing any further monies (beyond the
13 payments set forth in this Settlement Agreement) to Participating Class Members based upon the
14 claims made or that could have been made based upon the allegations contained in the operative
15 Complaint filed in this Action or the LWDA letter. This release excludes the release of any claims not
16 permitted to be released by law.

17 L. **Class Representative’s General Release.** As of the Effective Date, and in exchange
18 for the Class Representative Payment, Plaintiff shall give the following general release of claims for
19 himself and his respective spouse, heirs, successors and assigns, forever release the Released Parties
20 from any and all charges, complaints, claims, liabilities, obligations, promises, agreements,
21 controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties
22 and expenses of any nature whatsoever, from the beginning of time through the date of his signature
23 on this Agreement, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or
24 otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including
25 but not limited to all claims arising out of, based upon, or relating to his employment with Defendant
26 or the remuneration for, or termination of, such employment. Plaintiff’s general release of claims also
27 includes a waiver under California Civil Code section 1542, which provides as follows:

28 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE

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

6 This release excludes any release of any claims not permitted to be released by law.

7 **M. Miscellaneous Terms**

8 1. No Admission of Liability or Class Certification for Other Purposes. Defendant
9 and Released Parties make no admission of liability or wrongdoing by virtue of entering into this
10 Agreement. Additionally, Defendant reserves the right to contest any issues relating to class
11 certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any
12 unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under
13 the claims asserted in the Action, or that but for the Settlement, a Class should be certified in the
14 Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims.
15 Nothing in this Agreement is intended or will be construed as an admission by Defendant or Released
16 Parties of liability or wrongdoing. This Settlement and Plaintiff's and Defendant's willingness to settle
17 the Action will have no bearing on, and will not be admissible in connection with, any litigation (other
18 than solely in connection with this Settlement). Whether or not the Settlement set forth in this
19 Agreement becomes final, neither the Settlement, this Agreement, any document, statement,
20 proceeding, or conduct related to the Settlement or the Agreement, nor any reports or accounting of
21 those matters, will be: (i) construed as, offered, or admitted in evidence as, received as, or deemed to
22 be evidence for any purpose adverse to Defendant or any of the Released Parties, including, but not
23 limited to, evidence of a presumption, concession, indication, or admission by any of the Released
24 Parties of any liability, fault, wrongdoing, omission, concession, or damage; or (ii) disclosed, referred
25 to, or offered in evidence against any of the Released Parties, in any further proceeding in the Action,
26 or any other civil, criminal, or administrative action or proceeding except for purposes of effectuating
27 the Settlement pursuant to this Agreement. This Section and all other provisions of this Agreement
28 notwithstanding, any and all provisions of this Agreement, may be admitted in evidence and otherwise

1 used in any and all proceedings to enforce any or all terms of this Agreement or in defense of any
2 claims released or barred by this Agreement.

3 2. No Effect on Employee Benefits. The Class Representative Payment and/or
4 Settlement Shares paid to Plaintiff and Participating Class Members shall not be deemed to be
5 pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the
6 employee benefits (e.g., vacation, holiday pay, retirement plans, etc.) of Plaintiff or the Participating
7 Class Members. The Parties agree that any Class Representative Payment and/or Settlement Share
8 paid to Plaintiff or the Participating Class Members under the terms of this Agreement do not represent
9 any modification of Plaintiff's or Participating Class Members' previously credited hours of service
10 or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan
11 sponsored by Defendant. Further, any Class Representative Payment shall not be considered
12 "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an
13 employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.

14 3. Integrated Agreement. After this Agreement is signed and delivered by all
15 Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between
16 the Parties relating to the Settlement, and it will then be deemed that no oral representations,
17 warranties, covenants, or inducements have been made to any party concerning this Agreement or its
18 exhibits, other than the representations, warranties, covenants, and inducements expressly stated in
19 this Agreement and its exhibits.

20 4. Authorization to Enter into Settlement Agreement. Class Counsel and
21 Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant,
22 respectively, to take all appropriate action required or permitted to be taken by such Parties under this
23 Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms
24 of this Agreement. The Parties and their counsel will cooperate with each other and use their best
25 efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach
26 agreement on the form or content of any document needed to implement this Agreement, or on any
27 supplemental provisions that may become necessary to effectuate the terms of this Agreement, the
28 Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental

provisions, and assistance of the Court will be consistent with this Agreement.

5. No Inducements. Plaintiff and Defendant acknowledge that they are entering into this Settlement Agreement as a free and voluntary act without duress or undue pressure or influence of any kind or nature whatsoever, and that neither Plaintiff nor Defendant have relied on any promises, representations, or warranties regarding the subject matter hereof other than as set forth in this Settlement Agreement.

6. Waiver of Right to Object. By signing this Settlement Agreement, Plaintiff, on behalf of the Class and himself, agrees to be bound by its terms. Plaintiff further agrees not to request to be excluded from the Settlement and agree not to object to any of the terms of the Settlement. Any request for exclusion from the Settlement by Plaintiff or any objection by Plaintiff will be void and of no force and effect. Likewise, Defendant agrees to be bound by the terms of the Settlement and agrees not to object to any of the terms of the Settlement Agreement.

7. Exhibits and Headings. The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

8. Interim Stay of Proceedings. The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.

9. Amendment or Modification of Agreement. This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.

10. Agreement Binding on Successors and Assigns. This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.

11. No Prior Assignment. Plaintiff hereby represents, covenants, and warrants that he has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or

1 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action
2 or rights herein released and discharged.

3 12. Applicable Law. All terms and conditions of this Agreement and its exhibits
4 will be governed by and interpreted according to the laws of the State of California, without giving
5 effect to any conflict of law principles or choice of law principles.

6 13. Fair, Adequate, and Reasonable Settlement. The Parties and their respective
7 counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of
8 the Action and have arrived at this Agreement through arms-length negotiations, taking into account
9 all relevant factors, current and potential.

10 14. No Tax or Legal Advice. The Parties understand and agree that the Parties are
11 neither providing tax or legal advice, nor making representations regarding tax obligations or
12 consequences, if any, related to this Agreement, and that Class Members will assume any such tax
13 obligations or consequences that may arise from this Agreement, and that Class Members shall not
14 seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties
15 agree that, in the event that any taxing body determines that additional taxes are due from any Class
16 Member, such Class Member assumes all responsibility for the payment of such taxes.

17 15. Jurisdiction of the Court. The Court shall retain jurisdiction with respect to the
18 interpretation, implementation, and enforcement of the terms of this Agreement and all orders and
19 judgment entered in connection therewith, and the Parties and their counsel hereto submit to the
20 jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement
21 embodied in this Agreement and all orders and judgments in connection therewith.

22 16. Invalidity of Any Provision; Severability. Before declaring any provision of this
23 Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to
24 the fullest extent possible consistent with applicable precedents, so as to define all provisions of this
25 Agreement valid and enforceable. In the event any provision of this Agreement shall be found
26 unenforceable, the unenforceable provision shall be deemed deleted, and the validity and
27 enforceability of the remaining provisions shall not be affected thereby.

28 17. Cooperation in Drafting. The Parties have cooperated in the drafting and

1 preparation of this Agreement. This Agreement will not be construed against any Party on the basis
2 that the Party was the drafter or participated in the drafting.

3 18. Notice. All notices, demands, or other communications given under this
4 Agreement will be in writing and deemed to have been duly given as of the third (3rd) business day
5 after mailing by United States mail, addressed as follows:

6 To Plaintiff and the Class:

7 Craig J. Ackermann, Esq.
8 ACKERMANN & TILAJEF, P.C.
9 1180 South Beverly Drive, Suite 610
10 Los Angeles, CA 90035
11 (310) 277-0614

12 India Lin Bodien, Esq.
13 INDIA LIN BODIEN, ATTORNEY AT LAW
14 2522 North Proctor Street, No. 387
15 Tacoma, Washington 98406
16 (253) 212-7913

17 To Defendant:

18 Lisa Hird Chung, Esq.
19 Kim L. Carter, Esq.
20 SCHOR VOGELZANG & CHUNG LLP
21 2170 Fourth Avenue
22 San Diego, CA 92101
23 (619) 906-2400

24 19. Execution in Counterpart. This Agreement may be executed in one or more
25 counterparts. All executed counterparts, and each of them, will be deemed to be one and the same
26 instrument. Facsimile, Electronic or PDF signatures will be accepted. Any executed counterpart will
27 be admissible in evidence to prove the existence and contents of this Agreement.

28 20. Dates. If any of the dates in the Stipulation fall on a weekend, bank holiday, or
court holiday, the time to act shall be extended to the next business day.

21. Public Disclosure. Plaintiff and Class Counsel agree that they will not make any
public disclosure of the Settlement until after the Settlement is preliminarily approved by the Court.
Class Counsel will take all steps necessary to ensure the Plaintiff is aware of, and will encourage them
to adhere to, the restriction against any public disclosure of the Settlement until after the Settlement is

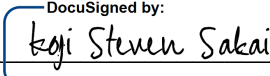
preliminarily approved by the Court.

22. No Media. Following preliminary approval of the Settlement, Plaintiff and Class Counsel agree that they will not have any communications with the media, other than to direct the media to the public records of the Action on file with the Court. Class Counsel will take all necessary steps to ensure Plaintiff is aware of, and will encourage him to adhere to, the restriction against any media comment on the Settlement and its terms. Class Counsel further agrees not to use the Settlement or the Settlement terms for any marketing purposes.

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

APPROVED AS TO FORM AND CONTENT:

Dated: 11/30/2021 | 2:35 PM PST

By: 
Koji Steven Sakai

Dated: 12/15/2021

INTERNATIONAL TECHNOLOGICAL UNIVERSITY

By: 

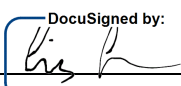
Name: Yau-Gene Chan

Title: CEO

APPROVED AS TO FORM ONLY:

Dated: 11/30/2021 | 2:13 PM PST

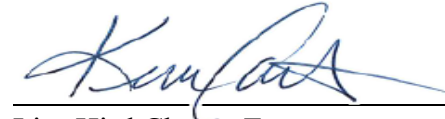
ACKERMANN & TILAJEF, P.C.
INDIA LIN BODIEN, ATTORNEY AT LAW

By: 
Craig Ackermann, Esq.
India Lin Bodien, Esq.
Attorneys for Plaintiff and the Putative
Settlement Class

Dated: December 27, 2021

SCHOR VOGELZANG & CHUNG LLP

By:



Lisa Hird Chung, Esq.

Kim Carter, Esq.

Attorneys for Defendant

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