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Additional Counsel Listed on Next Page

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

STEPHEN MARANO, an individual, on behalf
of himself, the State of California, as a private
attorney general, and on behalf of all others
similarly situated,

Plaintiff,

v.

LIBERTY MUTUAL GROUP, INC., a
Massachusetts Corporation; and DOES 1 TO 50,

Defendants.

Case No.: 8:20-cv-2215-CJC-ADS

**Settlement Agreement and Release of Class
and Representative Action Claims**

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SETTLEMENT AGREEMENT AND RELEASE
OF REPRESENTATIVE AND CLASS ACTION CLAIMS

This Settlement Agreement and Release of Class and Representative Action Claims (“Settlement Agreement”) is made and entered into by: **(1)** Plaintiff Stephen Marano (“Plaintiff”), individually and in his representative capacity on behalf of the Settlement Class, as defined below, and as a private attorney general on behalf of the State of California; and **(2)** Defendant Liberty Mutual Group Inc. (“Defendant”). Plaintiff and Defendant are collectively referred to herein as the “Parties,” or individually, a “Party.” This Settlement Agreement is subject to the approval of the Court, pursuant to , Federal Rule of Civil Procedure Rule 23(e) and is made for the sole purpose of attempting to consummate settlement of the action on a class-wide basis subject to the following terms and conditions. As detailed below, in the event the Court does not enter an order granting final approval of this Settlement Agreement or the conditions precedent are not met for any reason, this Settlement Agreement is void and of no force or effect whatsoever.

1. DEFINITIONS

As used in this Settlement Agreement, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Settlement Agreement are not specifically defined in this section immediately below, but are defined elsewhere in this Settlement Agreement, they are incorporated by reference into this definition section.

1.1. ACTION

“Action” shall mean the following civil action: *Stephen Marano v. Liberty Mutual Group, Inc.*, case number 8:20-cv-2215-CJC-ADS, currently pending before the United States District Court, Central District of California.

1.2. ADMINISTRATIVE EXPENSES

“Administrative Expenses” shall include all costs and expenses associated with and paid to the third-party settlement administrator, which are estimated not to exceed \$20,000.00.

1 **1.3. APPLICABLE WAGE ORDER**

2 “Applicable Wage Order” shall mean the California Industrial Welfare Commission (“IWC”)
3 Wage Order applicable to the facts of this case, including IWC Wage Order 4-2001 and others that
4 may be applicable. (Cal. Code of Regs., tit. 8, § 11040.)

5 **1.4. CLAIMS**

6 “Claims” shall mean the claims asserted in the Action.

7 **1.5. CLASS ATTORNEY FEES AND EXPENSES**

8 “Class Attorney Fees and Expenses” shall mean the portion of the Gross Settlement Amount
9 attributable to attorney fees and litigation expenses. The Parties agree that the fee-portion of the Class
10 Attorney Fees and Expenses shall be up to 33.33% of the Gross Settlement Amount (i.e., \$224,977.50),
11 as approved by the Court, and the award of costs and expenses shall be up to an additional \$20,000.00.
12 In the event the Escalator Provision described below is triggered so as to increase the Gross Settlement
13 Amount, the Parties agree that the fee portion of the Class Attorney Fees and Expenses will increase
14 proportionally such that the total amount of attorneys’ fees remains 33.33% of the Gross Settlement
15 Amount *after* the upward adjustment required by the Escalator Provision is implemented.

16 **1.6. CLASS COUNSEL**

17 “Class Counsel” shall mean Jonathan Melmed, Kyle Smith, and Joanne Kim of Melmed Law
18 Group P.C.

19 **1.7. CLASS MEMBER**

20 “Class Member” shall mean any person who is a member of the Settlement Class, or, if such
21 person is incompetent or deceased, the person’s legal guardian, executor, administrator, heir, or
22 successor-in-interest.

23 **1.8. CLASS NOTICE**

24 “Class Notice” shall mean the *Notice of Proposed Class Action Settlement*, as set forth in the
25 form of **Exhibit 1** attached hereto, or as otherwise approved by the Court, which is to be mailed to
26 Class Members along with the Share Form.

1 **1.9. CLASS PARTICIPANTS**

2 “Class Participants” shall mean all Class Members who do not timely request exclusion from
3 the Class Settlement.

4 **1.10. CLASS PERIOD**

5 “Class Period” shall mean the period from October 21, 2016, through the Preliminary Approval
6 Date.

7 **1.11. CLASS REPRESENTATIVE**

8 “Class Representative” shall mean Plaintiff Stephen Marano.

9 **1.12. CLASS SETTLEMENT**

10 “Class Settlement” shall mean the settlement of the class-claims embodied in this Settlement
11 Agreement, which is subject to Court approval.

12 **1.13. COMPLAINT**

13 “Complaint” shall mean the currently-operative complaint in the Action.

14 **1.14. COURT**

15 “Court” shall mean the United States District Court, Central District of California.

16 **1.15. DEFENDANT**

17 “Defendant” shall mean Defendant Liberty Mutual Group Inc.

18 **1.16. DEFENSE COUNSEL**

19 “Defense Counsel” shall mean Defendant’s counsel of record in the Action, Katherine A.
20 Roberts and David R. Carpenter of Sidley Austin LLP.

21 **1.17. EFFECTIVE DATE**

22 “Effective Date” shall be the date when all of the following events have occurred: **(a)** this
23 Settlement Agreement has been executed by all Parties and by Class Counsel and Defense Counsel;
24 **(b)** the Court has given preliminary approval to the Class Settlement; **(c)** notice has been given to the
25 Settlement Class providing them with an opportunity to request exclusion from, and/or object to, the
26 Class Settlement; **(d)** the Court has held a Final Approval and Fairness Hearing and entered a final
27 order and judgment certifying the Settlement Class and approving this Settlement Agreement; and
28 **(e)** the later of the following events: **(i)** the expiration of the period for filing any appeal, writ, or other

1 appellate proceeding opposing the Class Settlement has elapsed without any appeal, writ, or other
2 appellate proceeding having been filed; (ii) the dismissal of any appeal, writ, or other appellate
3 proceeding opposing the Class Settlement with no right to pursue further remedies or relief; or (iii) any
4 appeal, writ, or the issuance of such other final appellate order upholding the Court's final order with
5 no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Class
6 Settlement shall not become effective until the Court's order approving the Class Settlement is
7 completely final and there is no further recourse by an appellant or objector who seeks to contest the
8 Class Settlement. In the event no objections are filed, the Effective Date shall be after steps (a) through
9 (d) are completed (*i.e.*, the date that the court has entered a final order and judgment certifying the
10 Settlement Class and approving this Settlement Agreement).

11 **1.18. EMPLOYEE'S TAXES AND REQUIRED WITHHOLDING**

12 "Employee's Taxes and Required Withholding" shall mean the employee's share of any and all
13 applicable federal, state, or local payroll taxes, including but not limited to those collected under
14 authority of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act
15 (FUTA), and/or the State Unemployment Tax Act (SUTA) on the portion of any Class Participant's
16 Individual Settlement Amount allocated in this Settlement Agreement to allegedly unpaid wages. The
17 Employee's Taxes and Required Withholdings will be withheld from and paid out of the Net Settlement
18 Amount by the Settlement Administrator.

19 **1.19. EMPLOYER'S TAXES**

20 "Employer's Taxes" shall mean and refer to Defendant's share of payroll taxes (*e.g.*,
21 Unemployment Insurance, Employment Training Tax, Social Security, and Medicare taxes) that is
22 owed on the portion of any Class Participant's Individual Settlement Amount allocated in this
23 Settlement Agreement to allegedly unpaid wages. The Employer's Taxes shall be separately paid by
24 Defendant and shall not be paid from the Gross Settlement Amount or Net Settlement Amount.

25 **1.20. FINAL APPROVAL AND FAIRNESS HEARING**

26 "Final Approval and Fairness Hearing" shall mean the final hearing held to ascertain the
27 fairness, reasonableness, and adequacy of the Class Settlement.
28

1 **1.21. GROSS SETTLEMENT AMOUNT**

2 “Gross Settlement Amount” is the agreed upon non-reversionary settlement amount totaling
3 \$675,000.00 to be paid by Defendant in full settlement of the Released Claims asserted in this case,
4 inclusive of the Administrative Expenses, the Employee’s Taxes and Required Withholdings, the Class
5 Attorney Fees and Expenses, the Incentive Award, and PAGA Payment. Defendant shall separately
6 pay its share of the Employer’s Taxes in addition to the Gross Settlement Amount on the portion of
7 each Individual Settlement Amount allocated to allegedly unpaid wages.

8 **1.22. HEARING ON PRELIMINARY APPROVAL**

9 “Hearing on Preliminary Approval” shall mean the hearing held on the motion for preliminary
10 approval of the Class Settlement.

11 **1.23. INCENTIVE AWARD**

12 “Incentive Award” shall mean any additional monetary payment from the Gross Settlement
13 Amount that is beyond the Individual Settlement Amount provided to the Class Representative for his
14 efforts and risks on behalf of the Settlement Class in this Action.

15 **1.24. INDIVIDUAL SETTLEMENT AMOUNT**

16 “Individual Settlement Amount” shall mean the amount which is ultimately distributed to each
17 Class Participant, less any Employee’s Taxes and Required Withholdings. The Individual Settlement
18 Amount does not include any portion of the PAGA Payment.

19 **1.25. NET SETTLEMENT AMOUNT**

20 “Net Settlement Amount” shall mean the Gross Settlement Amount minus: Administrative
21 Expenses; Class Attorney Fees and Expenses; 75% of the PAGA Payment; and the Incentive Award.

22 **1.26. OPT OUT**

23 “Opt Out” shall refer to the process of a Class Member submitting a timely and valid request
24 for exclusion from the Class Settlement in accordance with the terms of the Class Notice and no later
25 than the Response Deadline; provided, however, that PAGA Class Members shall not be eligible to opt
26 out of the portion of the Class Settlement allocated to PAGA penalties.

1 **1.27. OPT-OUTS**

2 “Opt-Outs” shall mean all Class Members who timely and validly request exclusion from the
3 Class Settlement in accordance with the terms of the Class Notice and no later than the Response
4 Deadline.

5 **1.28. PAGA CLASS MEMBER**

6 “PAGA Class Member” shall mean any person who is a member of the PAGA Settlement Class,
7 or, if such person is incompetent or deceased, the person’s legal guardian, executor, administrator, heir,
8 or successor-in-interest.

9 **1.29. PAGA PAYMENT**

10 “PAGA Payment” means the penalties pursuant to the California Labor Code Private Attorney
11 General Act of 2004 (“PAGA”), codified at Labor Code sections 2698 through 2699, that the Parties
12 have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action,
13 which is \$20,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code
14 section 2699 and is to be distributed as follows: seventy-five percent (75%) (*i.e.*, \$15,000.00) to the
15 California Labor and Workforce Development Agency (“LWDA”) and twenty-five percent (25%) (*i.e.*,
16 \$5,000.00) to the PAGA Settlement Class. Class Counsel shall give timely notice of this Settlement
17 Agreement to the LWDA pursuant to Labor Code section 2699, subdivision (1)(2). In the event that
18 the Court alters the sum allocated to PAGA penalties, the same percentages shall apply.

19 **1.30. PAGA PERIOD**

20 “PAGA Period” shall mean the period from October 14, 2019, through the Preliminary
21 Approval Date..

22 **1.31. PAGA SETTLEMENT CLASS**

23 “PAGA Settlement Class” shall mean all individuals who are or were employed by Defendant
24 in California as Sales Representatives and equivalent positions during the PAGA Period. For purposes
25 of this Settlement Agreement, the Parties stipulate that the PAGA Settlement Class consists of
26 approximately 136 employees that worked a total of approximately 6,464 pay periods during the PAGA
27 Period.
28

1 **1.32. PARTIES**

2 “Parties” shall mean Plaintiff and Defendant.

3 **1.33. PLAINTIFF**

4 “Plaintiff” shall mean Plaintiff Stephen Marano.

5 **1.34. PRELIMINARY APPROVAL DATE**

6 “Preliminary Approval Date” shall mean the date upon which the Court enters an order
7 preliminarily approving this Settlement Agreement.

8 **1.35. RELEASED CLAIMS**

9 “Released Claims” shall mean those claims arising out of or related to the allegations set forth
10 in the Complaint and/or PAGA notice to the LWDA, which arose during the Class Period, including
11 but not limited to claims for: **(1)** failure to pay minimum wage for all hours worked in violation of
12 Labor Code sections 1194, 1194.2, 1197, and 1197.1 and the Applicable Wage Order; **(2)** failure to
13 pay proper overtime wages in violation of Labor Code sections 510 and 1198, and the Applicable Wage
14 Order; **(3)** failure to provide compliant rest periods and pay missed rest break premiums in violation of
15 Labor Code section 226.7 and the Applicable Wage Order; **(4)** failure to provide compliant meal
16 periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and
17 the Applicable Wage Order; **(5)** failure to reimburse business expenses in violation of Labor Code
18 sections 2802; **(6)** unlawful deductions from wages in violation of Labor Code section 221; **(7)** failure
19 to provide complete and accurate wage statements in violation of Labor Code sections 226; **(8)** failure
20 to pay timely wages during employment in violation of Labor Code sections 204 and 210;
21 **(9)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation
22 of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); **(10)** statutory penalties
23 based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698–2699.6); and **(11)** all claims for
24 liquidated damages, penalties, interest, attorneys’ fees, and costs based on the foregoing. The period
25 of the release set forth in Section 11 below shall extend to the limits of the Class Period. The *res*
26 *judicata* effect of the Judgment will be the same as that of the Release. Except as provided herein, the
27 definition of Released Claims shall not be limited in any way by the possibility that Plaintiff, Settlement
28 Class Members or PAGA Settlement Class Members may discover new facts or legal theories or legal

arguments not alleged in the Complaint but which might serve as an alternative basis for pursuing claims, causes of action, or legal theories of relief falling within the definition of Released Claims.

Except as set forth in Section 11.3, below, this Settlement Agreement will not release any person, Party, or entity from claims, if any, by Class Members for workers compensation, unemployment, or disability benefits of any nature. Nor does it release any claims, actions, or causes of action which may be possessed by Class Members other than Plaintiff under state or federal discrimination statutes, including, without limitation, the California Fair Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh Civil Rights Act (Civ. Code, § 51); the California Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000, et seq.); the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their implementing regulations and interpretive guidelines.

1.36. RELEASED PARTIES

“Released Parties” shall mean Defendant and all of Defendant’s parent companies, subsidiaries, affiliates, and otherwise related entities, and any of their past, present and/or future direct and/or indirect officers, directors, shareholders, agents, employees, representatives, attorneys, insurers, partners, investors, administrators, members, agents, predecessors, successors, assigns, divisions and joint venturers.

1.37. RELEASING PARTIES

“Releasing Parties” shall mean every Class Participant and all persons purporting to act on their behalf or purporting to assert a claim under or through them, including, but not limited to, their dependents, heirs, assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives, and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity.

1.38. RESPONSE DEADLINE

“Response Deadline” shall mean the date forty-five (45) days following the date on which the Settlement Administrator first mails Class Notice to the Class Members. The Response Deadline shall be the last day on which Class Members may submit a request for exclusion and/or objection to the Class Settlement.

1 **1.39. SETTLEMENT ADMINISTRATOR**

2 “Settlement Administrator” shall mean ILYM Group, Inc. (or other administrator agreed on by
3 the Parties) which the Parties have agreed will be responsible for administration of the Class Settlement
4 and related matters.

5 **1.40. SETTLEMENT CLASS**

6 “Settlement Class” shall mean all individuals who are or were employed by Defendant in
7 California as Sales Representatives and equivalent positions during the Class Period. For purposes of
8 this Settlement Agreement, the Parties stipulate that the Settlement Class consists of approximately
9 192 Class Members who worked a total of approximately 27,827 workweeks during the Class Period.

10 **1.41. SHARE FORM**

11 “Share Form” shall mean the *Class Action Settlement Share Form*, as set forth in the form of
12 **Exhibit 2** attached hereto, or as otherwise approved by the Court, which is to be mailed to Class
13 Members along with the Class Notice.

14 **2. FACTUAL AND PROCEDURAL BACKGROUND**

15 **2.1. PLAINTIFF’S CLAIMS**

16 Plaintiff, individually and in his representative capacity on behalf of the Settlement Class, and
17 as a private attorney general on behalf of the State of California, has alleged the following violations:
18 **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194, 1194.2,
19 1197, 1197.1 and the Applicable Wage Order; **(2)** failure to pay proper overtime wages in violation of
20 Labor Code sections 510 and 1198, and the Applicable Wage Order; **(3)** failure to provide compliant
21 rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the
22 Applicable Wage Order; **(4)** failure to provide compliant meal periods and pay missed meal period
23 premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage Order;
24 **(5)** failure to reimburse business expenses in violation of Labor Code section 2802; **(6)** unlawful
25 deductions from wages in violation of Labor Code section 221; **(7)** failure to provide complete and
26 accurate wage statements in violation of Labor Code section 226; **(8)** failure to pay timely wages during
27 employment in violation of Labor Code sections 204 and 210; **(9)** deceptive, fraudulent, or otherwise
28 unlawful business practices based on the foregoing in violation of California’s Unfair Competition Law

(Bus. & Prof. Code, §§ 17200–17210); and **(10)** statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698–2699.6).

2.2. DISCOVERY, INVESTIGATION, RESEARCH, AND MEDIATION

Class Counsel has conducted significant informal discovery during the prosecution of the Action. This discovery, investigation, and prosecution has included, among other things, **(a)** over a dozen telephonic conferences with Plaintiff; **(b)** inspection and analysis of hundreds of pages of documents and other information produced by Plaintiff and Defendant; **(c)** analysis of employment data from a sample of Class Members; **(d)** an analysis of the legal positions taken by Defendant; **(e)** investigation into the viability of class treatment of the claims asserted in the Action; **(f)** analysis of potential class-wide damages, including information sufficient to understand Defendant’s potential defenses to Plaintiff’s claims; **(g)** research of the applicable law with respect to the claims asserted in the Complaint and the potential defenses thereto; and **(h)** assembling and analyzing of data for calculating damages.

Class Counsel and the Class Representative have vigorously prosecuted this case, and Defendant has vigorously contested it. The Parties have engaged in sufficient investigation and discovery to assess the relative merits of the claims of the Class Representative and of the defenses to them. After such discovery, investigation, and prosecution, the Parties attended a full-day mediation with an experienced employment law mediator, which culminated in a settlement in principle, the terms of which are elaborated in this Settlement Agreement.

2.3. ALLEGATIONS OF THE CLASS REPRESENTATIVE AND BENEFITS OF CLASS SETTLEMENT

The document and data exchanged in this matter, as well as discussions between counsel, have been adequate to give the Class Representative and Class Counsel a sound understanding of the merits of their positions and to enable them to evaluate the value of the claims of the Settlement Class. The informal discovery conducted in this Action and the information exchanged by the Parties through pre-mediation discussions are sufficient to reliably assess the merits of the Parties’ respective positions and to compromise the issues on a fair and equitable basis.

1 The Class Representative and Class Counsel believe that the claims, causes of action,
2 allegations, and contentions asserted in the Action have merit. However, the Class Representative and
3 Class Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings
4 necessary to prosecute the Action against Defendant through trial and through appeals. Class Counsel
5 has taken into account the uncertain outcome of the litigation, the risk of continued litigation in complex
6 actions such as this, as well as the difficulties and delays inherent in such litigation, and the potential
7 difficulty of obtaining certification of a class as well as trying the claims of the class. Class Counsel is
8 mindful of the potential problems of proof under, and possible defenses to, the claims alleged in the
9 Action.

10 The Class Representative and Class Counsel believe that the settlement set forth in this
11 Settlement Agreement confers substantial benefits upon Plaintiff and the Settlement Class and that an
12 independent review of this Settlement Agreement by the Court in the approval process will confirm
13 this conclusion. Based on their own independent investigation and evaluation, Class Counsel has
14 determined that the settlement set forth in this Settlement Agreement is in the best interests of Plaintiff
15 and the Class Members.

16 **2.4. DEFENDANT'S DENIALS OF WRONGDOING AND LIABILITY**

17 Defendant has denied and continues to deny all allegations, claims, and contentions alleged by
18 Plaintiff in the Action. Defendant has expressly denied and continues to deny all charges and
19 allegations of wrongdoing or liability of any kind arising out of any of the conduct, statements, acts, or
20 omissions alleged in the Action. Defendant contends, among other things, that it complied at all times
21 with California and federal wage and hour laws and the Industrial Welfare Commission Wage Orders,
22 and that it has dealt legally and fairly with Plaintiff and the Class Members.

23 Defendant further denies that, for any purpose other than settling this Action, these claims are
24 appropriate for class or representative treatment. Nonetheless, Defendant has concluded that further
25 proceedings in the Action would be protracted and expensive and that it is desirable that the Action be
26 fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement
27 Agreement to dispose of burdensome and protracted litigation, to permit the operation of Defendant's
28 business without further expensive litigation and the distraction and diversion of its personnel with

1 respect to matters at issue in the Action. Defendant has also taken into account the uncertainty and risks
2 inherent in any litigation, especially in complex cases such as the Action. Defendant has, therefore,
3 determined that it is desirable and beneficial to it that the Action be settled in the manner and upon the
4 terms and conditions set forth in this Settlement Agreement.

5 **2.5. INTENT OF THE CLASS SETTLEMENT**

6 The Class Settlement set forth herein intends to achieve the following: **(1)** entry of an order
7 approving the Class Settlement; **(2)** entry of judgment of the Action; **(3)** discharge and release of the
8 Released Parties from liability for any and all of the Released Claims; and **(4)** discharge and release of
9 Defendant from liability for any and all claims arising out of the Action.

10 **3. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

11 For the purposes of this Settlement Agreement and the Class Settlement of this Action only, the
12 Parties agree to conditional class certification of the Settlement Class. Defense Counsel believe this
13 conditional certification is appropriate because the Released Claims are being compromised without
14 need to establish the elements of those claims on which liability turns. The certification of the
15 Settlement Class shall not constitute, in this or any other proceeding, an admission of any kind by
16 Defendant, including without limitation, that certification of a class for trial purposes is or would be
17 warranted, appropriate or proper; or that Plaintiff could establish any of the requisite elements for class
18 treatment of any of the claims in the Action. Nor does Defendant concede or waive any rights to dispute
19 that this matter, should it have proceeded, is properly brought as a representative action or that Plaintiff
20 or any PAGA Class Members are aggrieved employees as defined by PAGA.

21 In the event that the Settlement Agreement is not finally approved by the Court, a final Effective
22 Date is not achieved, or the Class Settlement is rejected, terminated, or otherwise rendered null and
23 void as set forth herein, then certification of the Settlement Class shall be automatically vacated, shall
24 be void *ab initio*, of no force or effect, and shall not constitute evidence or a binding determination that
25 the requirements for certification of a class for trial purposes (or for any other purpose) in this Action
26 or in any other action have been, are or can be, satisfied. Further, if the Agreement does not reach a
27 final Effective Date, Plaintiff agrees that Plaintiff will not argue, claim, reference, or otherwise raise
28

any preliminary approval of the Settlement Class in connection with any later proceeding before the Court or any court.

4. APPOINTMENT OF CLASS COUNSEL

For purposes of this Settlement Agreement and subject to the Court's approval, the Parties agree to the appointment of Class Counsel as counsel for the Settlement Class and the effectuation of the Class Settlement pursuant to this Settlement Agreement.

5. CONSIDERATION

5.1. SETTLEMENT AMOUNT

The Parties agree to settle this Action for the Gross Settlement Amount of \$675,000.00. There shall be no reversion to Defendant. Defendant shall pay the Gross Settlement Amount in full. The Gross Settlement Amount and other actions and forbearances taken by Defendant shall constitute adequate consideration for the Class Settlement and will be made in full and final settlement of: the Released Claims, the Class Attorney Fees and Expenses, Administrative Expenses, the Incentive Award, the PAGA Payment (and any payments to individual PAGA Class Members resulting from the PAGA Payment), and any other obligation of Defendant under this Settlement Agreement (other than the Employer's Taxes on the portion of the Net Settlement Amount allocated to the payment of allegedly unpaid wages).

After the Court issues an order preliminarily approving this Class Settlement, the Settlement Administrator will distribute to the Class Members: (i) the Class Notice to the Class Members, which shall describe the terms of the Class Settlement and procedures to Opt Out, object, and/or participate in the Class Settlement, and (ii) the Share Form, which shall identify the Class Member, the number of workweeks worked by each Class Member while employed by Defendant in California as a Sales Representative or in an equivalent position during the Class Period ("Workweeks"), as well as the estimated amount of the Individual Settlement Amount the Class Member can expect to receive once the Class Settlement becomes effective on the Effective Date. Class Members shall be given the opportunity to challenge their Workweeks information.

1 **5.2. INCENTIVE AWARD FOR PLAINTIFF**

2 Plaintiff may petition the Court to approve an Incentive Award in an amount up to \$10,000.00
3 to acknowledge his efforts on behalf of the Settlement Class in this Action, including assisting in the
4 investigation and consulting with Class Counsel and providing crucial documents to Class Counsel.
5 Defendant shall not oppose any request by Plaintiff for an Incentive Award in such an amount. Any
6 Incentive Award approved by the Court shall be paid to Plaintiff from the Gross Settlement Amount
7 and shall be in addition to any distribution to which he may otherwise be entitled as a Class Participant.
8 Any Incentive Award approved by the Court shall not be considered wages, and the Settlement
9 Administrator shall issue to Plaintiff an IRS Form 1099 reflecting such payment. Plaintiff shall be
10 responsible for the payment of all taxes with respect to any Incentive Award approved by the Court
11 and shall hold Defendant harmless from all liability with regard thereto.

12 **5.3. PAYMENT TO CLASS PARTICIPANTS**

13 Each Class Participant shall be eligible to receive payment of his or her Individual Settlement
14 Amount if (i) he or she does not Opt Out; and (ii) the Settlement Agreement takes effect as a result of
15 the passing of the Effective Date. Each Class Participant's Individual Settlement Amount shall be
16 calculated by determining his or her pro rata share of the Net Settlement Amount based on the Class
17 Participant's Workweeks compared to the total number of Workweeks worked by all Class Members.
18 Each Class Participant, including Plaintiff, shall be responsible for the payment of the Employee's
19 Taxes and Required Withholding with respect to his or her Individual Settlement Amount and shall
20 hold Defendant harmless from any and all liability with regard thereto.

21 **5.4. PAYMENT TO PAGA SETTLEMENT CLASS**

22 Provided that the Settlement Agreement takes effect as a result of the passing of the Effective
23 Date, each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA
24 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have
25 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which
26 is \$20,000.00. The PAGA Payment must be approved by the Court pursuant to Labor Code section
27 2699 and is to be distributed as follows: seventy-five percent (75%) (*i.e.*, \$20,000.00) to the LWDA
28 and twenty-five percent (25%) (*i.e.*, \$5,000.00) to the PAGA Settlement Class. The portion of the

1 PAGA Payment allocated to the PAGA Settlement Class shall be distributed to the PAGA Settlement
2 Class based on the pro rata number of pay periods worked by each particular PAGA Class Member
3 during the PAGA Period as a proportion of all pay periods worked by all members of the PAGA
4 Settlement Class.

5 **5.5. TAX TREATMENT AND PAYMENT**

6 For the purpose of calculating Employee's Taxes and Required Withholding for the Individual
7 Settlement Amounts for Class Participants (including any payments to the Class Representative but
8 exclusive of his Incentive Award), the Parties agree that 20% of each Individual Settlement Amount
9 shall be allocated to payment of allegedly unpaid wages (and each Class Participant will be issued an
10 IRS Form W-2 for such payment to him or her), and 80% of each Individual Settlement Amount shall
11 be allocated to payment of penalties and interest allegedly due (and each Class Participant will be
12 issued an IRS Form 1099 for such payment to him or her). Prior to final distribution, the Settlement
13 Administrator shall calculate the total Employee's Taxes and Required Withholding due as a result of
14 the wage portion of Class Participants' anticipated Individual Settlement Amounts and such actual
15 amount will be deducted from the Net Settlement Amount. Additionally, prior to the funding of the
16 Gross Settlement Amount and final distribution, the Settlement Administrator shall calculate the total
17 Employer's Taxes due on the wage portion of the Class Participants' Individual Settlement Amounts
18 and issue instructions to Defendant to separately fund these tax obligations/withholdings. The Parties
19 understand that Plaintiff and the Class Participants who receive any payment pursuant to this Settlement
20 Agreement shall be solely responsible for all other individual tax obligations.

21 With respect to the PAGA Payment and any payments made to individual members of the
22 PAGA Settlement Class, all such payments shall be treated as payments owing for alleged penalties
23 and interest thereon and shall not be considered wages. The Settlement Administrator shall issue to
24 each member of the PAGA Settlement Class an IRS Form 1099 reflecting such payment. Members of
25 the PAGA Settlement Class shall be solely responsible for the payment of all taxes with respect to any
26 PAGA payments made to them.

1 **5.6. NO EFFECT ON EMPLOYEE BENEFIT PLANS**

2 Neither the Class Settlement nor any amounts paid pursuant to this Settlement Agreement will
3 modify any previously credited hours, days, or weeks of service under any employee benefit plan,
4 policy or bonus program sponsored by Defendant. Such amounts will not form the basis for additional
5 contributions to, benefits under, or any other monetary entitlement under Defendant's sponsored
6 benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement
7 Agreement shall not be applied retroactively, currently, or on a going forward basis, as salary, earnings,
8 wages, or any other form of compensation for the purposes of any of Defendant's benefit plans,
9 policies, or bonus programs. Defendant retains the right to modify the language of its benefits plans,
10 policies, and bonus programs to reflect this intent and to make clear that any amounts paid pursuant to
11 this Settlement Agreement are not for "hours worked," "weeks worked," "weeks paid," "weeks of
12 service," "years of service" or any similar measuring term as defined by applicable plans, policies, and
13 bonus programs for purpose of eligibility, vesting, benefit accrual, or any other purpose, and that
14 additional contributions or benefits are not required by or by virtue of the payments to be made pursuant
15 to this Settlement Agreement. Defendant does not consider the Class Settlement payments
16 "compensation" for purposes of determining eligibility for, or benefit accrual within, any benefit plans,
17 policies, or bonus programs, or any other plan sponsored by Defendant. None of the payments called
18 for by this Settlement Agreement shall be subject to matching contributions or included as benefits-
19 eligible earnings under any benefit plan or policy applicable to any of the Released Parties' employees.

20 **5.7. CLASS ATTORNEY FEES AND EXPENSES**

21 As part of the motion for final approval of the Class Settlement, Class Counsel may apply for
22 an award of Class Attorney Fees and Expenses with the fee portion not to exceed 33.33% of the Gross
23 Settlement Amount (*i.e.*, \$224,977.50) and the award of costs and expenses up to an additional
24 \$20,000.00. Defendant agrees to not object to any such fee, cost, or expense application in those
25 amounts.

26 As a condition of this Class Settlement, Class Counsel have agreed to pursue fees only in the
27 manner reflected by this subsection. Any Class Attorney Fees and Expenses awarded by the Court shall
28 be paid from the Gross Settlement Amount prior to arriving at the Net Settlement Amount and shall

1 not constitute payment to any Class Members. If Class Counsel voluntarily reduce the request for Class
2 Attorney Fees and Expenses or the Court's award of Class Attorney Fees and Expenses is less than set
3 forth above, the Net Settlement Amount shall be recalculated to reflect the actual Class Attorney Fees
4 and Expenses awarded.

5 The Class Attorney Fees and Expenses approved by the Court shall reflect: **(a)** all work
6 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
7 represent the Settlement Class through the date of this Settlement Agreement; **(b)** all work to be
8 performed and costs to be incurred in connection with approval by the Court of the Class Settlement;
9 **(c)** all work to be performed and costs and expenses, if any, incurred in connection with administering
10 the Class Settlement through the Effective Date and dismissal of the Action with prejudice; and **(d)** may
11 be based on the "catalyst theory" and/or the "common fund doctrine."

12 **6. SETTLEMENT ADMINISTRATION**

13 **6.1. COSTS AND EXPENSES**

14 All costs and expenses due to the Settlement Administrator in connection with its administration
15 of the Class Settlement, including, but not limited to, providing the Class Notice, locating Class
16 Members, processing Opt Out requests and objections, distributing the portion of the PAGA Payment
17 payable to the LWDA, distributing the portion of the PAGA Payment payable to the members of the
18 PAGA Settlement Class, and calculating, administering and distributing Individual Settlement
19 Amounts to the Class Participants and related tax forms, shall be paid from the Gross Settlement
20 Amount, and is not expected to exceed \$20,000.00.

21 **6.2. PAYMENT BY DEFENDANT**

22 Defendant shall issue a check or otherwise cause the deposit of the Gross Settlement Amount
23 in a lump sum payment plus the employer-side payroll taxes to the Settlement Administrator within
24 twenty (20) days of the Effective Date. In no event shall Defendant be obligated to pay or deposit with
25 the Settlement Administrator more than \$675,000.00 plus the Employer's Taxes, except where the
26 Escalator Provision is triggered.

1 **7. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS**

2 **7.1. THE SETTLEMENT ADMINISTRATOR**

3 The Settlement Administrator will be responsible for: mailing the Class Notice and Share Form
4 (**Exhibit 1** and **Exhibit 2**, respectively) to Class Members; handling inquiries from Class Members
5 concerning the Class Notice and/or Share Form; determining Individual Settlement Amounts;
6 determining individual payments to members of the PAGA Settlement Class; maintaining the
7 settlement funds in an appropriate interest-bearing account; preparing, administering, and distributing
8 Individual Settlement Amounts to Class Participants; preparing, administering, and distributing
9 individual payments to members of the PAGA Settlement Class; distributing the portion of the PAGA
10 Payment payable to the LWDA; issuing a final report and performing such other duties as the Parties
11 may direct. Additionally, the Settlement Administrator will handle all tax document preparation and
12 reporting, including state and federal tax forms, if any.

13 On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and
14 Defense Counsel with summary information updating them as to the number of validated and timely
15 objections and Opt Out requests. The Settlement Administrator will serve on Class Counsel and
16 Defense Counsel via e-mail date-stamped copies of the original Opt Out requests and objections no
17 later than seven (7) days after their receipt. The Settlement Administrator will provide Class Counsel
18 with proof of mailing of the Class Notice, without listing individual Class Member names.

19 No later than thirty (30) days prior to the Final Approval and Fairness Hearing, the Settlement
20 Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary
21 information regarding: **(a)** the total amount of the final Individual Settlement Amounts of each Class
22 Participant; **(b)** the number of Class Participants to receive such payments, and **(c)** the final number of
23 Opt-Outs and objections.

24 Administrative Expenses are not anticipated to exceed \$20,000.00. Prior to the calculation and
25 distribution of the Individual Settlement Amounts, the Settlement Administrator shall calculate the
26 total Administrative Expenses through the conclusion of its services, and such actual amount will be
27 deducted from the Gross Settlement Amount prior to the final calculation of the Individual Settlement
28 Amounts.

1 **7.2. NOTICE TO CLASS MEMBERS**

2 Notice shall be provided to Class Members in the following manner: within twenty-eight (28)
3 days after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with
4 an updated list of Class Members and members of the PAGA Settlement Class containing names, social
5 security numbers, start and end dates of employment in a Sales Representative or equivalent position
6 in California during the Class Period and the PAGA Period, last-known addresses, and phone numbers
7 (the “Database”). The Database shall be marked “Confidential – Settlement Administrator’s Eyes
8 Only.” Class Counsel shall not receive a copy of this list.

9 Within forty-two (42) days following the Preliminary Approval Date, the Settlement
10 Administrator shall determine the number of Workweeks worked by each Class Member, populate the
11 data for each Class Member accordingly, and send each Class Member the Class Notice and Share
12 Form via first-class, United States mail. The Class Notice shall also contain an easily-understood
13 statement agreed upon by the Parties alerting the Class Members that, unless he or she elects to Opt
14 Out of the Class Settlement, the Class Member is releasing and waiving all Released Claims against
15 the Released Parties.

16 The Class Notice and Share Form will inform Class Members of their estimated Individual
17 Settlement Amount and the number of Workweeks they worked during the Class Period. Class
18 Members may dispute their Workweeks – if they believe they worked more weeks in the Class Period
19 while employed by Defendant in California as a Sales Representative or in an equivalent position than
20 Defendant’s records show – by submitting information to the Settlement Administrator no later than
21 the Response Deadline. The Settlement Administrator will jointly work with Plaintiff and Defendant
22 to resolve the dispute in good faith. If Plaintiff and Defendant cannot agree over the Workweeks to be
23 credited, the Settlement Administrator shall make the decision based on the information presented by
24 the Class Member and Defendant, with the understanding that the Court shall retain the ability to make
25 any final Workweek determinations.

1 **7.3. OPT OUT PROCEDURE**

2 To Opt Out of the Class Settlement, the Class Member must submit a letter to the Settlement
3 Administrator by the Response Deadline. The Opt Out request must state the Class Member's name,
4 address, telephone number, and signature. The Opt Out request should state something to the effect of:

5 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE
6 *STEPHEN MARANO V. LIBERTY MUTUAL GROUP, INC.* LAWSUIT. I
7 UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT
8 CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT
9 OF THIS LAWSUIT AND WILL NOT BE RELEASING ANY CLAIMS I MAY
10 HAVE."

11
12 Any Opt Out request that is not postmarked or fax-stamped by the Response Deadline will be
13 invalid. In the event that, prior to the Response Deadline, any Class Notice mailed to a Class Member
14 is returned as having been undelivered by the United States Postal Service, the Settlement
15 Administrator shall perform a skip trace search and seek an address correction for such Class Members,
16 and another Class Notice will be sent to any new or different address obtained. Such Class Members
17 shall have an additional fourteen (14) days from the date of the mailing of the second Class Notice in
18 which to Opt Out if the Response Deadline would have otherwise passed prior to fourteen (14) days
19 from the date of the mailing of the second Class Notice.

20 It will be presumed that, if an envelope containing the Class Notice has not been returned within
21 thirty (30) days of the mailing, the Class Member received the Class Notice. At least twenty-one (21)
22 days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class
23 Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard
24 to the mailing of the Class Notice and its attempts to locate Class Members. The declaration shall
25 specify the number of Class Members to whom the Class Notice was sent and the number of Class
26 Members to whom the Class Notice was not delivered, as well as information relating to the number
27 of Opt-Outs and objectors. Class Counsel shall file this declaration with the Court.
28

1 If the Settlement Administrator determines that an Opt Out request returned by a Class Member
2 before the Response Deadline is deficient, then the Settlement Administrator shall mail a deficiency
3 letter to that Class Member identifying the problem. If a Class Member submits both a dispute of his
4 or her Workweeks and an Opt Out request, the Settlement Administrator shall make reasonable
5 attempts to clarify the inconsistency with the Class Member.. If the Class Member fails to resolve the
6 inconsistency, the Opt Out request shall be deemed deficient and disregarded, the claim will be paid,
7 and the Class Member will become bound by the judgment.

8 Class Participants will be bound by the Release of Released Claims set forth in the definition
9 of "Released Claims" provided in this Settlement Agreement.

10 A request to Opt Out of the Class Settlement shall **not** serve to exclude the Class Member from
11 participation in the PAGA Settlement Class. Opt-Outs shall still be entitled to their share of the PAGA
12 Payment. Class Members who are also members of the PAGA Settlement Class shall have no right or
13 ability to opt out of the portion of this Settlement Agreement releasing PAGA claims.

14 **7.4. OBJECTION PROCEDURE**

15 The Class Notice shall inform the Class Members of their right to object to the Class Settlement.
16 Any Class Member who wishes to object to the Class Settlement may submit a written objection to the
17 Settlement Administrator no later than the Response Deadline. Only Class Participants may object to
18 the Settlement. The objection should include the case name and number and must set forth, in clear and
19 concise terms, a statement of the reasons why the objector believes that the Court should find that the
20 proposed Class Settlement is not in the best interest of the Settlement Class and the reasons why the
21 Class Settlement should not be approved, including the legal and factual arguments supporting the
22 objection. If an objector also wishes to appear at the Final Approval and Fairness Hearing, in person
23 or through an attorney, they may seek Court permission to do so. The Settlement Administrator will
24 promptly serve copies of any objection or notice of request to appear on Class Counsel and Defense
25 Counsel. Subject to Court approval, Class Participants wishing to make an objection may appear at the
26 Final Approval and Fairness Hearing, either in person or through a lawyer retained at their own
27 expense.
28

1 **8. CLASS SETTLEMENT FUNDING AND DISTRIBUTION**

2 **8.1. ALLOCATION OF THE GROSS SETTLEMENT AMOUNT**

3 The claims of all Class Members are settled for the Gross Settlement Amount of \$675,000.00,
4 which will be allocated as follows:

- 5 1. The Administrative Expenses, estimated not to exceed \$20,000.00;
- 6 2. Class Counsel's attorney fees not to exceed \$224,977.50;
- 7 3. Class Counsel's litigation costs and expenses not to exceed \$20,000.00;
- 8 4. The Incentive Award, not to exceed \$10,000.00; and
- 9 5. PAGA penalties in the amount of \$20,000.00.

10 **8.2. CALCULATION OF THE INDIVIDUAL SETTLEMENT AMOUNTS FOR**
11 **CLASS PARTICIPANTS**

12 For purposes of calculating the estimated Individual Settlement Amounts, the Settlement
13 Administrator shall calculate the estimated Net Settlement Amount based on the estimated values
14 provided above prior to sending Notice to the Class Members. If any Class Member timely Opts Out,
15 his or her share of the Class Settlement will be included in the distribution to the remaining Class
16 Participants. Prior to final distribution, the Settlement Administrator shall recalculate the final Net
17 Settlement Amount based on the actual values of the amounts in each category. Individual Settlement
18 Amounts to be paid to Class Participants shall be paid from the Net Settlement Amount. The Net
19 Settlement Amount shall be allocated and distributed pro rata based on the proportional number of
20 Workweeks worked by each Class Member as a Sales Representative or equivalent position in
21 California during the Class Period.

22 Defendant will provide the Settlement Administrator with any information reasonably
23 necessary to perform the calculation of number of Workweeks for each Class Member, and any other
24 reasonably required information the Settlement Administrator requests to perform the calculations
25 required under this Settlement Agreement. Defendant shall have no responsibility for deciding the
26 validity of the Individual Settlement Amounts or any other payments made pursuant to this Settlement
27 Agreement, shall have no involvement in or responsibility for the determination or payment of
28 Employee's Taxes and Required Withholding, and shall have no liability for any errors made with

1 respect to such Employee's Taxes and Required Withholding. Although the Settlement Administrator
2 will calculate and pay from the Net Settlement Amount the Employee's Taxes and Required
3 Withholding on the portion of the Individual Settlement Amounts allocated to allegedly unpaid wages
4 on their behalf, Plaintiff and Class Participants represent and understand that they shall be solely
5 responsible for any and all tax obligations associated with their respective Individual Settlement
6 Amounts and the Incentive Award.

7 **8.3. CALCULATION OF THE PAYMENTS FOR INDIVIDUAL MEMBERS OF**
8 **THE PAGA SETTLEMENT CLASS**

9 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA
10 Payment.

11 The portion of the PAGA Payment allocated to the PAGA Settlement Class shall be distributed
12 to the PAGA Settlement Class based on the pro rata number of pay periods worked by each particular
13 PAGA Settlement Class member while in California and employed as a Sales Representative or in an
14 equivalent position during the PAGA Period as a proportion of all pay periods worked by all PAGA
15 Settlement Class members while in California and employed as a Sales Representative or in an
16 equivalent position during the PAGA Period. Each member of the PAGA Settlement Class, including
17 Plaintiff, shall be responsible for the payment of the Employee's Taxes and Required Withholding with
18 respect to his or her share of the PAGA Payment and shall hold Defendant harmless from any and all
19 liability with regard thereto.

20 Defendant will provide the Settlement Administrator with any information reasonably
21 necessary to perform the calculation of the number of pay periods worked by each PAGA Settlement
22 Class member, and any other reasonably required information the Settlement Administrator requests
23 to perform the calculations required under this Settlement Agreement. Defendant shall have no
24 responsibility for deciding the validity of the individual payment amounts allocated to each member of
25 the PAGA Settlement Class or any other payments made pursuant to this Settlement Agreement, shall
26 have no involvement in or responsibility for the determination or payment of Employee's Taxes and
27 Required Withholding, and shall have no liability for any errors made with respect to such Employee's
28 Taxes and Required Withholding.

1 The members of the PAGA Settlement Class shall be solely responsible for any and all tax
2 obligations associated with their respective shares of the PAGA Payment.

3 **8.4. TIME FOR PAYMENT OF ATTORNEY FEES AND EXPENSES**

4 The Settlement Administrator shall distribute to Class Counsel any attorney fees and expenses
5 approved by the Court no later than fourteen (14) days after payment to the Claims Administrator of
6 the Gross Settlement Amount.

7 **8.5. TIME FOR PAYMENT OF INCENTIVE AWARD**

8 The Settlement Administrator shall distribute to Plaintiff the Incentive Award approved by the
9 Court no later than fourteen (14) days after payment to the Claims Administrator of the Gross
10 Settlement Amount.

11 **8.6. TIME FOR PAYMENT OF PAGA PAYMENT TO THE LWDA**

12 The Settlement Administrator shall distribute to the LWDA the portion of the PAGA Payment
13 due to it and approved by the Court no later than fourteen (14) days after payment to the Claims
14 Administrator of the Gross Settlement Amount.

15 **8.7. TIME FOR PAYMENT OF TAXES AND REQUIRED WITHHOLDING AND**
16 **INDIVIDUAL SETTLEMENT AMOUNTS**

17 The Settlement Administrator shall make every effort to pay the Employee's Taxes and
18 Required Withholding associated with each Class Participant's Individual Settlement Amount and mail
19 the Individual Settlement Amount to each Class Participant, by first-class United States mail, to the
20 last-known address no later than fourteen (14) days after payment to the Claims Administrator of the
21 Gross Settlement Amount. If the Settlement Administrator is not able to do so within the time period
22 set forth above, it shall so inform Class Counsel and Defense Counsel and provide an approximate date
23 by which the Employee's Taxes and Required Withholding shall be paid and the Individual Settlement
24 Amounts will be mailed. Under no circumstances shall the Settlement Administrator distribute checks
25 to Class Participants until all Individual Settlement Amounts have been considered, calculated, and
26 accounted for, and all of the remaining monetary obligations have been calculated and accounted for.

27 Within two hundred ten (210) days of mailing the Individual Settlement Amounts to Class
28 Participants, the Settlement Administrator shall file with the Court and provide to Class Counsel a

1 declaration of payment. In the event that any Class Participant is deceased, payment shall be made
2 payable to the estate of that Class Participant and delivered to the executor or administrator of that
3 estate, unless the Settlement Administrator has received an affidavit or declaration pursuant to
4 California Probate Code section 13101, in which case payment shall be made to the affiant(s) or
5 declarant(s).

6 **8.8. NON-CASHED SETTLEMENT CHECKS**

7 Any funds associated with checks that have not been cashed within one hundred eighty (180)
8 days, will become void and the Individual Settlement Amount associated with the uncashed check will
9 be remitted pursuant to Code of Civil Procedure section 384 to the California State Controller for
10 deposit in the Unclaimed Property Fund in the name of the individual whose check was uncashed. For
11 the purposes of determining whether Defendant has met its financial obligation under the Class
12 Settlement, Defendant will be deemed to have fulfilled its obligation upon the mailing of the check to
13 the Class Participant, regardless of whether such Class Participant subsequently negotiates the check.

14 **8.9. DISPUTES REGARDING CLASS MEMBER WORKWEEKS DATA OR**
15 **PAYMENT OF INDIVIDUAL SETTLEMENT AMOUNTS**

16 Class Member Workweeks and the corresponding Individual Settlement Amount shall be
17 calculated using the employment and payroll records of Defendant, which presumptively shall be
18 deemed to be full, complete, and accurate for purposes of this Settlement Agreement. To overcome
19 that presumption, any Class Member objecting to the accuracy of the number of Workweeks or amount
20 of the Individual Settlement Amount must submit documentary evidence, such as pay stubs or other
21 written employment records, to the Settlement Administrator. Each Class Member may dispute the
22 number of Workweeks or their estimated Individual Settlement Amount contained on their Class
23 Notice ("Workweeks Dispute"). Any such Workweeks Dispute must be mailed or faxed to the
24 Settlement Administrator by the Class Member, postmarked or fax-stamped on or before the Response
25 Deadline. The Settlement Administrator shall immediately provide copies of all Workweek Disputes
26 to counsel for Defendant, shall inform Class Counsel of the Workweeks Dispute without disclosing the
27 identity of the Class Member making the dispute, and shall immediately attempt to resolve all such
28 disputes directly with relevant Class Members with the assistance of Defendant, Defense Counsel, and

1 Class Counsel. If the Workweeks Dispute cannot be resolved, it shall be submitted to the Settlement
2 Administrator for decision, subject to Court approval. The Settlement Administrator shall use its best
3 efforts to resolve all Workweeks Disputes prior to the Effective Date. If, however, if a Workweeks
4 Dispute arises or is not resolved until after the Settlement Amount has been distributed, the initial
5 calculation shall stand (as Defendant shall be under no obligation to pay any amounts in excess of the
6 Gross Settlement Amount under this Settlement Agreement).

7 **9. NULLIFICATION OF THIS SETTLEMENT AGREEMENT**

8 **9.1. NON-APPROVAL OF THIS SETTLEMENT AGREEMENT**

9 The Class Settlement and conditional class certification shall be considered null and void, and
10 neither the Class Settlement, conditional class certification, nor any of the related negotiations or
11 proceedings, shall be of any force or effect, and all Parties to the Class Settlement shall stand in the
12 same position, without prejudice, as if the Class Settlement had been neither entered into nor filed with
13 the Court, if any of the following occur: **(a)** the Court should for any reason fail to approve this
14 Settlement Agreement in the form agreed to by the Parties; **(b)** the Court should for any reason fail to
15 enter a judgment with prejudice of the Action, or **(c)** the approval of the Class Settlement and judgment
16 is reversed, modified, or declared or rendered void. Notwithstanding the foregoing, the Parties may
17 attempt in good faith to cure any perceived defects in this Settlement Agreement to facilitate approval.

18 **9.2. PARTIES' RIGHTS TO VOID CLASS SETTLEMENT; ESCALATOR**
19 **PROVISION**

20 If 10% or more members of the Settlement Class timely submit Opt Out requests, Defendant
21 shall have the right (but not the obligation) to void this Settlement Agreement. If the number of
22 Workweeks is greater than 5% above that stipulated by the Parties, as described above, then the Gross
23 Settlement Amount shall be increased proportionally for each additional week worked.

24 **9.3. INVALIDATION**

25 Invalidation of any material portion of this Settlement Agreement shall invalidate the Class
26 Settlement in its entirety, unless the Parties subsequently agree in writing that the remaining provisions
27 of the Class Settlement are to remain in full force and effect.
28

1 **9.4. STAY ON APPEAL**

2 In the event of a timely appeal from the approval of the Class Settlement and judgment, the
3 judgment shall be stayed, and Defendant shall not be obligated to fund the Gross Settlement Amount
4 or take any other actions required by this Settlement Agreement until all appeal rights have been
5 exhausted by operation of law, or by agreement of the Parties.

6 **10. MOTIONS FOR COURT APPROVAL**

7 **10.1. PRELIMINARY APPROVAL**

8 As soon as practicable after execution of this Settlement Agreement, Class Counsel will submit
9 this Settlement Agreement to the Court along with a Motion for Preliminary Approval of the Class
10 Settlement. Each Party shall cooperate to present the Class Settlement to the Court for preliminary
11 approval in a timely fashion.

12 **10.2. FINAL APPROVAL**

13 The Final Approval and Fairness Hearing shall be held before the Court. At the Final Approval
14 and Fairness Hearing, Plaintiff shall move the Court for the entry of the final order certifying the
15 Settlement Class for settlement purposes only and approving the Class Settlement as being fair,
16 reasonable, and adequate to the Class Participants within the meaning of Federal Rule of Civil
17 Procedure Rule 23(e), and for the entry of a final judgment of the Action consistent with the terms of
18 the Class Settlement and Federal Rule of Civil Procedure Rule 23(c). Class Counsel and Defense
19 Counsel shall submit to the Court such pleadings and/or evidence as may be required for the Court's
20 determination.

21 **11. RELEASES AND WAIVERS**

22 **11.1. RELEASE OF CLAIMS BY THE SETTLEMENT CLASS**

23 Upon the Effective Date, the Releasing Parties shall be deemed to each release the Released
24 Parties, and each of them, of and from any and all Released Claims. It is the desire of the Parties and
25 the Releasing Parties to fully, finally, and forever settle, compromise, and discharge the Released
26 Claims. Each of the Releasing Parties, including each Class Participant, will be bound by the release
27 of Released Claims as a result of the Class Settlement and to the terms of the final judgment and the
28 satisfaction of such judgment.

1 Class Participants will be deemed to have acknowledged and agreed that their claims for wages
2 and/or penalties in the Action are disputed, and that their Individual Settlement Amount constitutes
3 payment of all sums allegedly due to them. As such, Class Participants will be deemed to have
4 acknowledged and agreed that California Labor Code section 206.5 is not applicable to the Individual
5 Settlement Amounts. That section provides in pertinent part as follows:

6 “An employer shall not require the execution of a release of a claim or right on account
7 of wages due, or to become due, or made as an advance on wages to be earned, unless
8 payment of those wages has been made.”
9

10 **11.2. RELEASE OF CLAIMS BY THE PAGA SETTLEMENT CLASS**

11 Upon the Effective Date, members of the PAGA Settlement Class shall be deemed to each
12 release the Released Parties, and each of them, of and from the Released Claims relating to PAGA.
13 Each PAGA Class Member will be bound by the release of the PAGA claims as a result of the Class
14 Settlement and to the terms of the final judgment and the satisfaction of such judgment. Members of
15 the PAGA Settlement Class shall have no right or ability to opt out of the portion of this Settlement
16 Agreement releasing PAGA claims.

17 **11.3. RELEASE OF CLAIMS BY PLAINTIFF**

18 Plaintiff, on behalf of himself and his dependents, heirs and assigns, beneficiaries, devisees,
19 legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives,
20 and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect,
21 or any other type or in any other capacity, shall and does hereby forever release, discharge and agree
22 to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities,
23 obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights,
24 demands, costs, losses, debts and expenses (including attorney fees and costs), known or unknown, at
25 law or in equity, which exist or may exist on Plaintiff's behalf as of the date he signs this Settlement
26 Agreement, arising out of or in any way connected with his employment with Defendant including but
27 not limited to the Released Claims, claims that were asserted or could have been asserted in the
28 Complaint, and any and all transactions, occurrences, or matters between the Parties occurring prior to

1 the date this Settlement Agreement is fully executed. Without limiting the generality of the foregoing,
2 this release shall include, but not be limited to, any and all claims under: **(a)** the Americans with
3 Disabilities Act; **(b)** Title VII of the Civil Rights Act of 1964; **(c)** the Civil Rights Act of 1991; **(d)** 42
4 U.S.C. § 1981; **(e)** the Age Discrimination in Employment Act (limited to any claims he may have had
5 in the past or has currently); **(f)** the Fair Labor Standards Act; **(g)** the Equal Pay Act; **(h)** the Employee
6 Retirement Income Security Act, as amended; **(i)** the Consolidated Omnibus Budget Reconciliation
7 Act; **(j)** the Rehabilitation Act of 1973; **(k)** the Family and Medical Leave Act; **(l)** the Civil Rights Act
8 of 1966; **(m)** the California Fair Employment and Housing Act; **(n)** the California Constitution; **(o)** the
9 California Labor Code; **(p)** the California Government Code; **(q)** the California Civil Code; and **(r)** any
10 and all other federal, state, and local statutes, ordinances, regulations, rules, and other laws, and any
11 and all claims based on constitutional, statutory, common law, or regulatory grounds as well as any
12 other claims based on theories of wrongful or constructive discharge, breach of contract or implied
13 contract, fraud, misrepresentation, promissory estoppel, or intentional infliction of emotional distress,
14 negligent infliction of emotional distress, or damages under any other federal, state, or local statutes,
15 ordinances, regulations, rules, or laws. This release is for any and all relief, no matter how denominated,
16 including, but not limited to, back pay, front pay, vacation pay, bonuses, compensatory damages,
17 tortious damages, liquidated damages, punitive damages, damages for pain and suffering, and
18 attorneys' fees and costs, and Plaintiff hereby forever releases, discharges and agrees to hold harmless
19 Defendant and the Released Parties from any and all claims for attorneys' fees and costs arising out of
20 the matters released in this Settlement Agreement.

21 Plaintiff specifically acknowledges that he is aware of and familiar with the provisions of
22 California Civil Code section 1542, which provides as follows:

23 **"A general release does not extend to claims that the creditor or releasing party**
24 **does not know or suspect to exist in his or her favor at the time of executing the**
25
26
27
28

1 **release and that, if known by him or her, would have materially affected his or her**
2 **settlement with the debtor or released party.”**

3
4 Plaintiff, being aware of California Civil Code section 1542, hereby expressly waives and
5 relinquishes all rights and benefits he may have under section 1542 as well as any other statutes or
6 common law principles of a similar effect. Plaintiff may hereafter discover facts in addition to or
7 different from those which he now knows or believes to be true with respect to the subject matter of all
8 the claims referenced herein, but agrees that, upon the Effective Date and to the extent consistent with
9 the ADEA, Plaintiff shall and hereby does fully, finally, and forever settle and release any and all
10 claims against the Released Parties, known or unknown, suspected or unsuspected, contingent or non-
11 contingent, that were asserted or could have been asserted upon any theory of law or equity without
12 regard to the subsequent discovery of existence of such different or additional facts.

13 **11.4. CIRCULAR 230 DISCLAIMER**

14 Each Party to this Settlement Agreement (for purposes of this section, the “Acknowledging
15 Party”; and each Party to this Agreement other than the Acknowledging Party, an “Other Party”)
16 acknowledges and agrees that **(1)** no provision of this Settlement Agreement, and no written
17 communication or disclosure between or among the parties or their attorneys and other advisers, is or
18 was intended to be, nor shall any such communication or disclosure constitute or be construed or be
19 relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31
20 C.F.R. Part 10); **(2)** the Acknowledging Party **(a)** has relied exclusively upon her or its own
21 independent legal and tax advisers for advice (including tax advice) in connection with this Settlement
22 Agreement, **(b)** has not entered into this Settlement Agreement based upon the recommendation of any
23 other Party or any attorney or advisor to any other Party, and **(c)** is not entitled to rely upon any
24 communication or disclosure by any attorney or adviser to any Other Party to avoid any tax penalty
25 that may be imposed on the Acknowledging Party; and **(3)** no attorney or adviser to any Other Party
26 has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax
27 strategies (regardless of whether such limitation is legally binding) upon disclosure by the
28

1 Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction
2 contemplated by this Settlement Agreement.

3 **12. DUTIES OF THE PARTIES**

4 **12.1. MUTUAL FULL COOPERATION**

5 The Parties agree to cooperate fully with one another to accomplish and implement the terms
6 of this Settlement Agreement. Such cooperation shall include, but not be limited to, execution of such
7 other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms
8 of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated
9 by this Settlement Agreement and any other efforts that may become necessary by court order or
10 otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable
11 after execution of this Settlement Agreement, Class Counsel, with the cooperation of Defendant and
12 Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final approval of
13 this Settlement Agreement.

14 **12.2. DUTY TO SUPPORT AND DEFEND THE CLASS SETTLEMENT**

15 The Parties agree to abide by all of the terms of this Settlement Agreement in good faith and to
16 support the Class Settlement fully and to use their best efforts to defend this Class Settlement from any
17 legal challenge, whether by appeal or collateral attack.

18 **12.3. DUTIES PRIOR TO COURT APPROVAL**

19 Class Counsel shall promptly submit this Settlement Agreement to the Court for preliminary
20 approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly
21 upon execution of this Settlement Agreement, Class Counsel shall apply to the Court for the entry of a
22 preliminary order scheduling a hearing on the question of whether the proposed Class Settlement
23 should be approved as fair, reasonable, and adequate as to the Class Members, approving as to form
24 and content the proposed Class Notice and Share Form attached hereto as **Exhibit 1** and **Exhibit 2**,
25 respectively, and directing the mailing of the Class Notice to Class Members. Class Counsel will
26 provide a reasonable opportunity for Counsel for Defendant to review the Motions for Preliminary and
27 Final Approval, including the Order Granting Final Approval of Class Action Settlement, and
28 Judgment thereon, prior to filing with the Court. The Parties and their counsel will cooperate with each

1 other and use their best efforts to effect the Court's approval of the Motions for Preliminary and Final
2 Approval of the Settlement, and entry of Judgment.

3 **13. MISCELLANEOUS PROVISIONS**

4 **13.1. VOIDING THIS SETTLEMENT AGREEMENT**

5 Pending Court approval and other than as provided herein, if any of the conditions set forth in
6 this Settlement Agreement are not met and satisfied, this Settlement Agreement may, at the option of
7 either Plaintiff or Defendant, be ineffective, void, and of no further force and effect, and may not be
8 used or be admissible in any subsequent proceeding, either in this Court or in any other court or forum.
9 If either Party decides to void the Settlement Agreement, then the Settlement Agreement and
10 conditional class certification shall be considered void, and neither the Settlement Agreement,
11 conditional class certification, nor any of the related negotiations or proceedings, shall be of any force
12 or effect, and the Parties shall stand in the same position, without prejudice, as if this Settlement
13 Agreement had been neither entered into nor filed with the Court. Should any Party choose to void the
14 Class Settlement under this subsection, such Party shall be responsible for all Settlement Administrator
15 fees and costs actually incurred.

16 **13.2. DIFFERENT FACTS**

17 The Parties acknowledge that, except for matters expressly represented herein, the facts in
18 relation to the dispute and all claims released by the terms of this Settlement Agreement may turn out
19 to be different from the facts now known by each Party and/or its counsel, or believed by such Party or
20 counsel to be true, and each Party therefore expressly assumes the risk of the existence of different or
21 presently unknown facts, and agrees that this Settlement Agreement shall be in all respects effective
22 and binding despite such difference.

23 **13.3. NO PRIOR ASSIGNMENTS**

24 The Parties represent, covenant, and warrant that they have not directly or indirectly assigned,
25 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any
26 portion of any liability, claim, demand, action, cause of action, or right herein released and discharged
27 except as set forth herein.
28

1 **13.4. NON-ADMISSION**

2 Nothing in this Settlement Agreement shall be construed as or deemed to be an admission by
3 any Party of any liability, culpability, negligence, or wrongdoing toward any other Party, or any other
4 person, and the Parties specifically disclaim any liability, culpability, negligence, or wrongdoing
5 toward each other or any other person. Each of the Parties has entered into this Settlement Agreement
6 with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses,
7 and contingencies. Nothing herein shall constitute any admission by Defendant of wrongdoing or
8 liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute any
9 admission by Defendant regarding the merits of the Claims in this Action, including but not limited to
10 claims for unpaid wages or violations under California or federal law. Nothing herein shall constitute
11 an admission by Defendant that the Action was properly brought as a class or representative action
12 other than for settlement purposes. To the contrary, Defendant has denied and continues to deny each
13 and every material factual allegation and all Claims. To this end, the Class Settlement of the Action,
14 the negotiation and execution of this Settlement Agreement, and all acts performed or documents
15 executed pursuant to or in furtherance of this Settlement Agreement or the Class Settlement are not,
16 shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or
17 liability on the part of Defendant or of the truth of any of the factual allegations in the Complaint in the
18 Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence of
19 any fault or omission on the part of Defendant in any civil, criminal, or administrative proceeding in
20 any court, administrative agency, or other tribunal.

21 **13.5. NON-EVIDENTIARY USE**

22 Neither this Agreement nor any of its terms, nor any statements or conduct in the negotiation
23 or drafting of it, shall be offered or used as evidence by Plaintiff, any Class Member (including any
24 individual who requested to be excluded from the Settlement Class), Defendant, or its, her, his, or their
25 respective counsel, in the Action, except as is reasonably necessary to effectuate the Settlement
26 Agreement's purpose and terms. This Settlement Agreement may, however, be used by Defendant and
27 the Released Parties to prove or defend against any claim released herein by any Class Member in any
28 judicial, quasi-judicial, administrative, or governmental proceeding.

1 **13.6. COMMUNICATIONS**

2 Plaintiff and Defendant, and their respective counsel, recognize, accept, and agree that the
3 Parties to this Settlement Agreement desire that the terms of this Settlement Agreement, the fact of the
4 Class Settlement embodied in this Settlement Agreement, the disposition of the Action, the Action, and
5 all matters relating to the litigation of the Action, including discovery proceedings therein, and evidence
6 obtained during the course of the Action, shall not be discussed with or presented to the media or press,
7 which includes social media. Specifically, the Parties and their respective counsel agree that they will not
8 issue any press releases, initiate any contact with the press, respond to any press inquiry, post anything
9 about this Action on any internet websites, intranet websites, blogs, social media websites and/or services
10 (including but not limited to Facebook and/or Twitter), and any other mass media, or have any
11 communication with the press about this Action and/or the fact, amount, or terms of the Settlement. Plaintiff
12 and his counsel shall make no unsolicited communications regarding the action or settlement and shall
13 not make reference to the Action or the Settlement on or through any internal or external websites. If
14 any Party or counsel for that Party is contacted about this Action by the press or other media, the Party or
15 their counsel shall state only that the case was settled on mutually satisfactory terms. Before the date on
16 which the motion for preliminary approval of the Settlement is filed, the Parties and their respective counsel
17 will not initiate any contact with Settlement Class Members or other current or former employees of
18 Defendant about the Settlement, except that Class Counsel and the Class Representative, if contacted by a
19 Settlement Class Member, may respond that a Settlement has been reached and that the details will be
20 communicated in a forthcoming Court-approved notice.

21 **13.7. NON-RETALIATION**

22 Defendant understands and acknowledges that it has a legal obligation to not retaliate against
23 any Class Member who elects to participate in the Class Settlement or elects to Opt Out of the Class
24 Settlement. Defendant will make good faith efforts to refer any inquiries regarding this Class
25 Settlement to the Settlement Administrator or Class Counsel and will not discourage Class Members
26 who are employees, directly or indirectly, from making claims, opting out, or objecting to the Class
27 Settlement. None of the Parties, or their respective attorneys or agents, shall solicit or encourage any
28 Class Members, directly or indirectly, to Opt Out of the Class Settlement.

1 **13.8. CONSTRUCTION**

2 The Parties agree that the terms and conditions of this Settlement Agreement are the result of
3 lengthy, intensive, arms-length, non-collusive negotiations between the Parties and that this Settlement
4 Agreement is not to be construed in favor of or against any Party by reason of the extent to which any
5 Party or its counsel participated in the drafting of this Settlement Agreement. If any of the dates in this
6 Settlement Agreement fall on a weekend, bank or court holiday, the time to act shall be extended to the
7 next business day.

8 **13.9. GOVERNING LAW**

9 This Settlement Agreement is intended to and shall be governed by the laws of the State of
10 California, without regard to conflict of law principles, in all respects, including execution,
11 interpretation, performance, and enforcement.

12 **13.10. NOTICES**

13 Except for Class Member notices required to be made by the Settlement Administrator, all
14 notices or other communications required or permitted under this Settlement Agreement shall be in
15 writing and shall be sufficiently given if delivered in person to the Party or their counsel by U.S.
16 certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed to the address of the
17 Party appearing in this Settlement Agreement.

18 **13.11. CAPTIONS AND INTERPRETATIONS**

19 Section titles or captions contained herein are inserted as a matter of convenience and for
20 reference only and in no way define, limit, extend, or describe the scope of this Settlement Agreement
21 or any provision thereof.

22 **13.12. MODIFICATION**

23 This Settlement Agreement may not be changed, altered, or modified, except in writing signed
24 by the Parties. If preliminary or final approval of this Settlement Agreement has been granted by the
25 Court, then any such amendments or modifications to this Settlement Agreement shall be approved by
26 the Court. This Settlement Agreement may not be discharged except by performance in accordance
27 with its terms or by a writing signed by the Parties.
28

1 **13.13. INTEGRATION CLAUSE**

2 This Settlement Agreement contains the entire agreement between the Parties relating to the
3 Class Settlement of the Action and the transactions contemplated thereby, and all prior or
4 contemporaneous agreements, understandings, representations, and statements, whether oral or written,
5 and whether by a Party or such Party's legal counsel, are hereby superseded. No rights under this
6 Settlement Agreement may be waived except in writing as provided above.

7 **13.14. SUCCESSORS AND ASSIGNS**

8 This Settlement Agreement shall be binding on and inure to the benefit of the Parties and Class
9 Participants and their respective present and former heirs, trustees, executors, administrators,
10 representatives, officers, directors, shareholders, agents, employees, insurers, attorneys, accountants,
11 auditors, advisors, consultants, pension plans, welfare benefit plans, fiduciaries, parent companies,
12 subsidiaries, affiliates, related companies, joint ventures, predecessors, successors, and assigns.

13 **13.15. CORPORATE SIGNATORIES**

14 Any person executing this Settlement Agreement or any such related document on behalf of a
15 corporate signatory or on behalf of a partnership hereby warrants and promises, for the benefit of all
16 Parties hereto, that such person has been duly authorized by such corporation or partnership to execute
17 this Settlement Agreement or any such related document.

18 **13.16. EXECUTION IN COUNTERPARTS**

19 This Settlement Agreement shall become effective upon its execution by all of the undersigned.
20 The Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall
21 have the same force and effect as if all Settling Parties had signed the same instrument.

22 **13.17. ATTORNEY FEES, COSTS, AND EXPENSES**

23 Except as otherwise specifically provided for herein, each party shall bear his or its own
24 attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising out of the Action
25 and shall not seek reimbursement thereof from any other party to this Settlement Agreement.

26 **13.18. ACTION TO ENFORCE AGREEMENT**

27 In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be
28 entitled to recover her or its attorney fees and costs.

14. EXECUTION

The Parties and their counsel have executed this Settlement Agreement on the date adjacent to their signatures. The date of this Settlement Agreement shall be the date of the latest signature.

APPROVAL AND EXECUTION BY PARTIES**CLASS REPRESENTATIVE:**

Dated: 8/11/2022 _____

DocuSigned by:



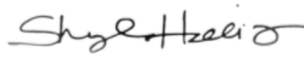
2FA9BA94CBC94E5...

Stephen Marano
Plaintiff and Class Representative

DEFENDANT:

Dated: 8/12/2022 _____

Liberty Mutual Group Inc.



By: Sherryl Hollis

Title: Vice President and Manager, Global ER
and HR Policy

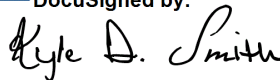
APPROVED AS TO FORM BY COUNSEL

CLASS COUNSEL:

Dated: 8/11/2022 _____

Melmed Law Group P.C.

DocuSigned by:



Kyle D. Smith

Attorneys for Plaintiff

DEFENDANT'S COUNSEL:

Dated: 8/12/2022 _____

Sidley Austin LLP



Katherine A. Roberts

Attorneys for Defendant

EXHIBIT 1

Notice of Proposed Class Action Settlement

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

STEPHEN MARANO, an individual, on behalf of himself, the
State of California, as a private attorney general, and on behalf
of all others similarly situated,

Plaintiff,

v.

LIBERTY MUTUAL GROUP, INC., a Massachusetts
Corporation; and DOES 1 TO 50,

Defendants.

Case No.: 8:20-cv-2215-CJC-ADS

**Notice of Proposed Class Action
Settlement**

A court authorized this notice. This is not a solicitation from a lawyer.

1 **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

2 *You may be eligible to receive a settlement payment. Please read this notice carefully.*

3 A proposed class action settlement agreement (the “Settlement”) has been reached between:
4 (1) Plaintiff Stephen Marano (“Plaintiff”), individually and in his representative capacity on behalf of
5 a group of prospective class members defined below, and as a private attorney general on behalf of the
6 State of California; and (2) Defendant Liberty Mutual Group Inc. (“Defendant”). The Settlement
7 resolves disputed claims against Defendant arising out of its compensation practices during the period
8 from October 21, 2016, through [Preliminary Approval Date] (the “Class Period”) as applied to all
9 individuals who were employed by Defendant in California as Sales Representatives and equivalent
10 positions during the Class Period (“Class Members”).

11 The Court has granted preliminary approval of the Settlement on [DATE] and ordered this
12 notice to be sent to you because you may be entitled to money under the Settlement and because the
13 Settlement affects your legal rights.

14 **NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE**
15 **SETTLEMENT:** If you are a Class Member (as defined above) and received this notice, you are
16 automatically included in the Settlement and do not need to take any further action to receive a
17 payment. If you accept your settlement amount, you will release the claims described below.

18 **1. DESCRIPTION OF THE LAWSUIT**

19 Plaintiff, individually and in his representative capacity on behalf of the Class Members, and
20 as a private attorney general on behalf of the State of California, is pursuing a lawsuit against Defendant
21 in the United States District Court, Central District of California in the matter of *Stephen Marano v.*
22 *Liberty Mutual Group, Inc.*, case number **8:20-cv-2215-CJC-ADS** (the “Action”). The Action seeks
23 recovery for Defendant’s alleged: (1) failure to pay minimum wage for all hours worked; (2) failure to
24 pay proper overtime wages; (3) failure to provide compliant rest periods and pay missed rest break
25 premiums; (4) failure to provide compliant meal periods and pay missed meal period premiums;
26 (5)) failure to reimburse business expenses; (6) unlawful deductions from wages; (7) failure to pay
27 timely wages during employment; (8) failure to provide complete and accurate wage statements; and
28 (9) deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation

1 of California’s Unfair Competition Law; and **(10)** statutory penalties based on the foregoing claims
2 pursuant to the California Private Attorney General Act of 2004, Labor Code §§ 2698–2699.6
3 (“PAGA”).

4 **Defendant denies all liability, denies all allegations in the Action, and has raised various**
5 **defenses to the claims.** Defendant asserts that it fully complied with all applicable wage and hour laws
6 and contends that civil penalties under PAGA are not warranted. Defendant also denies that the Action
7 is suitable for class certification. Defendant has entered into the Settlement solely for purposes of
8 resolving this dispute and avoiding costly, disruptive, and time-consuming litigation and does not admit
9 to any wrongdoing or liability.

10 The Court has not ruled on the merits in the Action. By approving the Settlement and issuing
11 this notice, the Court is *not* suggesting which side would win or lose the case if it went to trial or
12 whether the claims are suitable for class certification. To avoid the additional expense, inconvenience,
13 and risk of continued litigation, however, Plaintiff and Defendant (the “Parties”) have concluded that
14 it is in their respective best interests and the interests of the Class Members to settle the Action on the
15 terms summarized in this notice. The Settlement was reached after Defendant provided extensive
16 information and documents to Plaintiff’s counsel, and after lengthy arms-length non-collusive
17 negotiations between the Parties, including mediation with an experienced and well-respected mediator
18 in California. In these negotiations, both sides recognized the substantial risk of the Court deciding
19 against them at trial and determined that the Settlement was a fair, reasonable, and adequate way to
20 resolve the disputed claims.

21 Plaintiff and Plaintiff’s counsel—Jonathan Melmed, Kyle Smith, and Joanne Kim of Melmed
22 Law Group P.C. (“Class Counsel”)—support the Settlement. Among the reasons for support are the
23 defenses to liability potentially available to Defendant, the risk of denial of class certification, the
24 inherent risk of trial on the merits, and the delays and uncertainties associated with litigation. Plaintiff
25 and Class Counsel believe that the settlement described in this notice is fair, adequate, reasonable, and
26 in the best interests of Plaintiff and the Class Members.

27 Under the Settlement, the following settlement class will be certified under California law: all
28 individuals who are or were employed by Defendant in California as Sales Representatives and

1 equivalent positions during the Class Period. The “Class Period” is defined as the period from
2 October 21, 2016, through [Preliminary Approval Date]. The Settlement provides for a gross settlement
3 amount of \$675,000.00, a share of which is to be distributed to the Class Members based on the pro
4 rata number of weeks worked by each Class Member during the Class Period as a proportion of all
5 weeks worked by all Class Members during the Class Period. In exchange for their share of the
6 settlement amount, all participating Class Members will be deemed to have released Defendant from
7 liability on the terms described in this notice.

8 On [date of preliminary approval], the Court preliminarily approved the Settlement and
9 conditionally certified the settlement class. This notice is being sent to you because Defendant’s records
10 indicate that you worked for Defendant during the Class Period and that you meet the definition
11 required to be treated as a Class Member.

12 **2. IF YOU ARE STILL EMPLOYED BY DEFENDANT, THIS SETTLEMENT WILL**
13 **NOT AFFECT YOUR EMPLOYMENT.**

14 Liberty Mutual policy and California law strictly prohibit retaliation. Further, Defendant is
15 prohibited by law from taking any adverse action against or otherwise target, retaliate, or discriminate
16 against any Class Member because of the Class Member’s participation or decision not to participate
17 in the Settlement.

18 **3. TERMS OF THE SETTLEMENT**

19 Defendant has agreed to pay \$675,000.00 (the “Gross Settlement Amount”) to resolve the
20 claims in the Action. The Parties agreed to the following payments from the Gross Settlement Amount:

- 21 1. **Settlement Administration Costs.** The Court has approved ILYM Group, Inc. to act
22 as the “Settlement Administrator,” who is sending this notice to you and will perform
23 many other duties relating to the Settlement. Under the Settlement, up to \$20,000.00
24 will be paid from the Gross Settlement Amount to pay the Settlement administration
25 costs.
- 26 2. **Attorneys’ Fees and Expenses.** Class Counsel have been prosecuting the Action on
27 behalf of the Class Members on a contingency fee basis (that is, without being paid any
28 money to date) and have been paying all litigation costs and expenses. To date, the

Parties have aggressively litigated many aspects of the case including investigation, settlement efforts, and a full-day mediation session. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross Settlement Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for fees of 33.33% of the Gross Settlement Amount (*i.e.*, \$224,977.50) as reasonable compensation for the work Class Counsel performed and will continue to perform in the Action. Class Counsel also will ask for reimbursement of up to \$20,000.00 for the costs Class Counsel incurred in connection with the Action.

3. **Service Payment to Class Representative.** Class Counsel will ask the Court to provide a service payment to Plaintiff in the amount of \$10,000.00 for Stephen Marano to compensate him for his efforts on behalf of the Class Members in the Action, including assisting in the investigation and consulting with Class Counsel and providing crucial documents to Class Counsel. Plaintiff also may receive a share of the Settlement as a Class Member.

4. **PAGA Payment.** The Parties have agreed on a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is \$20,000.00 (the "PAGA Payment"). The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-five percent (75%) (*i.e.*, \$15,000.00) to the LWDA and twenty-five percent (25%) (*i.e.*, \$5,000.00) to be divided into pro rata shares amongst the individuals who come within the definition of an "aggrieved employee" for the purposes of the Settlement (*i.e.*, all individuals who are or were employed by Defendant in California as Sales Representatives and equivalent positions during the PAGA Period). The "PAGA Period" is defined for these purposes to mean the period from October 14, 2019, through [Preliminary Approval Date].

After deducting the amounts above, the balance of the settlement amount will form the "Net Settlement Amount" for distribution to the Class Members.

1 **4. DISTRIBUTION OF THE SETTLEMENT TO THE CLASS MEMBERS**

2 Each eligible Class Member who does not request exclusion from the Settlement will be deemed
3 a “Class Participant.” After the Court issues a final order approving the Settlement, judgment is entered,
4 and the Settlement Agreement takes effect, each Class Participant will receive a share from the Net
5 Settlement Amount which will be distributed pro rata based on the proportional number of weeks
6 worked by each Class Member during the Class Period (the “Individual Settlement Amount”). If any
7 Class Member requests exclusion from the Settlement, his or her share will be distributed to the
8 remaining Class Participants.

9 Twenty percent (20%) of each Individual Settlement Amount will constitute payment in the
10 form of wages (and each Class Participant will be issued an IRS Form W-2 for such payment to him
11 or her), and Eighty percent (80%) of each Individual Settlement Amount will constitute penalties and
12 interest (and each Class Participant will be issued an IRS Form 1099 for such payment to him or her).

13 The Settlement Administrator shall take all usual and customary deductions from the Individual
14 Settlement Amount payments that are distributed as wages, including, but not limited to, state and
15 federal tax withholding. There will be no deductions taken from the interest or penalty distribution—it
16 will, however, be reported on IRS Form 1099 as income. Class Participants are responsible for the
17 proper income tax treatment of their Individual Settlement Amounts. The Settlement Administrator,
18 Defendant and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Class Members
19 should consult with their tax advisors concerning the tax consequences and treatment of payments they
20 receive under the Settlement.

21 The workweeks you worked for Defendant during the Class Period will be calculated based on
22 Defendant’s records. If you feel that you were not credited with the correct number of workweeks
23 worked during the Class Period, you may submit evidence to the Settlement Administrator on or before
24 [Response Deadline] with documentation to establish the number of workweeks you claim to have
25 actually worked during the Class Period. **Documentation sent to the Settlement Administrator will**
26 **not be returned or preserved, so do *not* send originals.** The Parties and the Settlement Administrator
27 will promptly evaluate the evidence submitted and discuss in good faith how many workweeks should
28 be credited. The Settlement Administrator will decide how many weeks are credited and report the

1 outcome to the Class Participant, subject to approval by the Court. If you are unsatisfied with the
2 decision, you may submit an objection, which is explained below.

3 Settlement checks will be mailed to all Class Participants after the Court grants final approval
4 of the Settlement, judgment is entered and the settlement takes effect.

5 **5. THE RELEASE OF CLAIMS**

6 If the Court approves the Settlement, the Court will enter judgment (“Judgment”) and the
7 Settlement will bind all Class Participants. The Class Participants will then be barred from bringing
8 any “Released Claims” against the “Released Parties” as those terms are defined below.

9 The “Released Parties” are Defendant Liberty Mutual Group Inc. and all of Defendant’s parent
10 companies, subsidiaries, affiliates, and otherwise related entities, and any of their past, present and/or
11 future direct and/or indirect officers, directors, shareholders, agents, employees, representatives,
12 attorneys, insurers, partners, investors, administrators, members, agents, predecessors, successors,
13 assigns, divisions and joint ventures.

14 The “Released Claims” are those claims arising out of or related to the allegations set forth in
15 the Action and/or the PAGA notice to the California Labor & Workforce Development Agency, which
16 arose during the Class Period, including claims for: **(1)** failure to pay minimum wage for all hours
17 worked in violation of Labor Code sections 1194, 1194.2, 1197, and 1197.1 and the Applicable Wage
18 Order; **(2)** failure to pay proper overtime wages in violation of Labor Code sections 510 and 1198, and
19 the Applicable Wage Order; **(3)** failure to provide compliant rest periods and pay missed rest break
20 premiums in violation of Labor Code section 226.7 and the Applicable Wage Order; **(4)** failure to
21 provide compliant meal periods and pay missed meal period premiums in violation of Labor Code
22 sections 226.7 and 512, and the Applicable Wage Order; **(5)** failure to reimburse business expenses in
23 violation of Labor Code sections 2802; **(6)** unlawful deductions from wages in violation of Labor Code
24 section 221; **(7)** failure to provide complete and accurate wage statements in violation of Labor Code
25 sections 226; **(8)** failure to pay timely wages during employment in violation of Labor Code sections
26 204 and 210; **(9)** deceptive, fraudulent, or otherwise unlawful business practices based on the
27 foregoing in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210);
28 **(10)** statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698–2699.6); and

(11) all claims for liquidated damages, penalties, interest, attorneys' fees, costs based on the foregoing. The period of the release shall extend to the limits of the Class Period. The *res judicata* effect of the Judgment will be the same as that of the Release. Except as provided herein, the definition of Released Claims shall not be limited in any way by the possibility that Plaintiff, Settlement Class Members or PAGA Settlement Class Members, as these terms are defined in the Settlement Agreement, may discover new facts or legal theories or legal arguments not alleged in the operative complaint but which might serve as an alternative basis for pursuing claims, causes of action, or legal theories of relief falling within the definition of Released Claims.

Class Members who do not request exclusion from the Settlement will be deemed to have acknowledged and agreed that their claims for wages and penalties in the Action are disputed, and that the Settlement payments constitute payment of all sums allegedly due to them. As such, Class Members will be deemed to have acknowledged and agreed that California Labor Code section 206.5 is not applicable to the Settlement payments. That section provides in pertinent part as follows:

“An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.”

6. YOUR OPTIONS

6.1. DO NOTHING AND RECEIVE YOUR PORTION OF THE SETTLEMENT

If you do nothing, you will be automatically included as a Class Participant in the Settlement and will receive a settlement payment. You do *not* have to take any further action to receive your settlement payment. It is, however, the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or a settlement payment. The estimated amount of your settlement payment if you do nothing is included on the attached *Class Action Settlement Share Form*.

6.2. REQUEST EXCLUSION FROM THE CLASS AND THE CLASS SETTLEMENT

If you do **not** wish to take part in the class action portion of the Settlement (the “Class Settlement”), you may exclude yourself (*i.e.*, opt out of the Class Settlement) by sending the Settlement Administrator a letter or card postmarked no later than [Response Deadline] that specifically requests exclusion from the Class Settlement in this case. The request for exclusion must include your name, address, telephone number, and signature, and it should state:

“I wish to be excluded from the settlement class in the case of *Stephen Marano v. Liberty Mutual Group, Inc.*. I understand that if I ask to be excluded from the settlement class, I will not receive any money from the class settlement of this lawsuit and will not be releasing any claims I may have.”

Send the request for exclusion directly to the Settlement Administrator at the following address by no later than [Response Deadline]:

ILYM Group, Inc.
14751 Plaza Drive, Suite J
Tustin, California 92780

Any person who submits a timely request for exclusion from the Class Settlement shall, upon receipt, no longer be a Class Member, shall be barred from participating in the Class Settlement, and shall receive no benefits from the class action portion of the Settlement. If you want confirmation of receipt of your request for exclusion, please send it by United States certified mail, return receipt requested, or contact the Settlement Administrator.

Importantly, Class Members who timely and validly request exclusion from the Class Settlement will *not* be excluded from their share of the PAGA Payment. Requesting exclusion from the Class Settlement applies solely to the Class Members’ entitlement to the class action portion of the Settlement and not their entitlement to the PAGA Payment. If you request exclusion from the Class Settlement you will still be entitled to your pro rata share, if any, of the PAGA Payment.

6.3. OBJECT TO THE SETTLEMENT

You have the right to object to the terms of the Settlement if you do not request exclusion. If, however, the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may file with the Settlement Administrator and the Court a written objection stating your name, address, telephone number, dates of employment with Defendant, the case name and number, each specific reason in support of your objection, and any legal support for each objection. Objections in writing must be mailed to the Settlement Administrator—ILYM Group, Inc., 14751 Plaza Drive, Suite J, Tustin, California 92780—by no later than **[Response Deadline]** to be considered. **Objections that do not include all required information, or that are not timely submitted, might not be considered by the court.**

If you choose to object to the Settlement, you may also seek Court permission to appear at the final approval and fairness hearing scheduled for **[Final Approval Hearing Date]**, at **[Final Approval Hearing Time]** in Department **[Court Department]** of the United States District Court, Central District of California, located at **[Court Location]**. Subject to Court approval, you have the right to appear either in person or through your own attorney at this hearing.

If you object to the Settlement, you will remain a Class Member, and if the Court approves the Settlement, you will receive payment and be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided above shall have waived any objection to the Settlement, whether by appeal or otherwise.

The Court may, at the time of the final approval and fairness hearing, have certain social distancing requirements or procedures for attendance at hearings. If you wish to object to the Settlement by speaking at the final approval and fairness hearing, you may contact Class Counsel, whose information is provided below, for more information about the Court's current social distancing procedures. You may also review the Court's website for the most current information.

7. HOW TO UPDATE OR CHANGE YOUR ADDRESS

If you move after receiving this notice or if it was misaddressed, please contact the Settlement Administrator, ILYM Group, Inc., at **(888) 250-6810** or by email at

1 **claims@ilymgroupclassaction.com**, as soon as possible. **This is important to ensure that future**
2 **notices and/or the Settlement payment reach you.**

3 **8. IF THE SETTLEMENT IS NOT APPROVED**

4 If the Settlement is not approved by the Court, or if any of its conditions are not satisfied, the
5 Settlement may be voided, in which case no money will be paid, and the case will return to litigation.
6 If that happens, there is no assurance: **(1)** that any class will be certified by the Court; **(2)** that any
7 decision at trial would be in favor of Class Members; **(3)** that a trial decision, if any, would be as
8 favorable to the Class Members as the Settlement; or **(4)** that any favorable trial decision would be
9 upheld if an appeal was filed.

10 **9. QUESTIONS OR COMMENTS**

11 **PLEASE DO NOT CALL OR CONTACT THE COURT.** If you have any questions about
12 the settlement, you may contact the Settlement Administrator at: **(888) 250-6810** or by e-mail at
13 **claims@ilymgroupclassaction.com**. You may also contact Class Counsel at the addresses or phone
14 numbers listed below.

15
16 **Lawyers Representing Plaintiff and the Class Members**

17 **MELMED LAW GROUP P.C.**

18 Jonathan Melmed

19 jm@melmedlaw.com

20 Kyle D. Smith

21 ks@melmedlaw.com

22 Joanne H. Kim

23 joanne@melmedlaw.com

24 1801 Century Park East, Suite 850

25 Los Angeles, California 90067

26 Phone: (310) 824-3828

27 Fax: (310) 862-6851

EXHIBIT 2

Class Action Settlement Share Form

CLASS ACTION SETTLEMENT SHARE FORM

Stephen Marano v. Liberty Mutual Group, Inc.

Case Number 8:20-cv-2215-CJC-ADS

United States District Court, Central District of California

The proposed class action settlement agreement (the “Settlement”) described in the accompanying *Notice of Proposed Class Action Settlement* resolves disputed claims against Defendant Liberty Mutual Group Inc. (“Defendant”) arising out of its compensation practices during the period from October 21, 2016, through [Preliminary Approval Date] (the “Class Period”) as applied to all individuals who are or were employed by Defendant in California as Sales Representatives and equivalent positions during the Class Period (“Class Members”).

You are receiving this form because you are believed to be a Class Member. **According to Defendant’s records, you actively worked [redacted] workweeks for Defendant as a Sales Representative or equivalent position in California during the Class Period. Accordingly, your share of the Settlement is currently estimated to be \$ [redacted],** which is an estimate of your allocated portion the Net Settlement Amount, as that term is defined in the accompanying *Notice of Proposed Class Action Settlement*. Your estimated share of the Settlement may change depending on factors such as, but not limited to, the number of Class Members who effectively exclude themselves from the Settlement.

You do not need to do anything to receive money under the Settlement.

If you believe the information provided above as to the number of your workweeks is incorrect and wish to dispute it, please contact the Settlement Administrator no later than [Response Deadline] at:

ILYM Group, Inc.
claims@ilymgrouclassaction.com
(888) 250-6810
14751 Plaza Drive, Suite J
Tustin, California 92780

If you dispute the information stated above, the information Defendant provided to the Settlement Administrator will control unless you are able to provide documentation that establishes otherwise. Any disputes, along with supporting documentation, must be postmarked no later than [Response Deadline].

Do not send originals; documentation sent to the claims administrator will not be returned or preserved.