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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

ADRIAN GOMEZ, individually and on behalf
of others similarly situated, and as an
aggrieved employee and Private Attorney
General,

Plaintiff,

vs.

NEXT LEVEL CONSTRUCTION
SERVICES, INC. a California corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: CVRI2000753

*Assigned for All Purposes to: Hon. Harold W.
Hopp, Dept. 1*

**JOINT STIPULATION OF CLASS
ACTION AND PAGA SETTLEMENT
AND RELEASE OF CLAIMS**

Complaint Filed: December 28, 2020
Trial Date: None Set

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT AND RELEASE OF CLAIMS

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

This Joint Stipulation of Class Action and PAGA Settlement and Release of Claims (“Settlement Agreement” or “Agreement”) is entered into by and between Plaintiff Adrian Gomez, individually and on behalf of all class members and aggrieved employees, and Defendant Next Level Construction Services, Inc. Plaintiff and Defendant are collectively referred to herein as the “Parties.”

DEFINITIONS

The following definitions are applicable to this Settlement Agreement, in addition to other terms defined elsewhere in the Agreement:

1. “Action” means the court action *Adrian Gomez, individually and on behalf of others similarly situated, and as an aggrieved employee and Private Attorney General, Plaintiff, v. Next Level Construction Services, Inc., et al., Defendant*, Case No. CVRI2000753, pending before the Riverside County Superior Court.

2. “Class” or “Class Member(s)” or “Settlement Class” means all current and former non-exempt employees of Defendant who were employed by Defendant in the State of California at any time during the Class Period.

3. “Class Counsel” means the attorneys representing Plaintiff in this Action: Heather Davis, Amir Nayebdadash, and Priscilla Gamino of Protection Law Group, LLP.

4. “Class Counsel’s Fees and Costs Payment” means the amounts awarded to Class Counsel by the Superior Court to compensate them for their fees and expenses incurred in connection with the litigation and resolution of this Action which shall be paid from the Gross Settlement Amount as outlined in this Agreement. Class Counsel will request attorneys’ fees not to exceed Thirty-Five Percent (35%) of the Gross Settlement Amount, *i.e.*, Forty-Nine Thousand Dollars (\$49,000.00), and reimbursement costs and expenses associated with the litigation and settlement of the Action, not to exceed Thirty-Five Thousand Dollars (\$35,000.00), subject to the Court’s approval. Defendant has agreed not to oppose Class Counsel’s request for fees and reimbursement of costs and expenses in the amounts set forth above.

5. “Class List” means a complete list of certain Class Member identifying information in Defendant’s possession that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator within twenty (20) calendar days after Preliminary Approval of this Settlement. The Class List will be formatted in a readable Microsoft Office Excel spreadsheet and will include each Class Member’s: (1) full name; (2) last-known mailing address; (3) social security number; and (4) total Workweeks during the Class Period; and (5) total Workweeks worked during the PAGA Period.

6. “Class Period” means the period from December 28, 2016, until the earlier of (1) the date of preliminary approval of the Settlement by the Court or (2) September 6, 2023.

7. “Class Representative” means Adrian Gomez, the named Plaintiff in the Action, namely Adrian Gomez in his capacity as representative of the Participating Class Members.

8. “Class Representative Enhancement Payment” means the special amount that the Court authorizes to be paid to Plaintiff Adrian Gomez, in addition to and separate from his Individual Class Payment, in recognition of the efforts and risks he has taken in assisting with the prosecution of the Action.

9. “Court” means the Superior Court of the State of California, County of Riverside.

10. “Defendant” means Next Level Construction Services, Inc.

11. “Defense Counsel” means the attorneys representing Defendant in the Action: Bruno W. Katz of Wilson, Elser, Moskowitz, Edelman & Dicker LLP.

12. “Effective Date” means the date after this Agreement has been approved by the Superior Court by entry of Judgment, and the Judgment has become Final. The Judgment becomes “Final” as of the latest of the following occurrences: (a) if no Participating Class Member files a timely objection, or if all such objections are withdrawn, the date upon which the Court enters Judgment; (b) if one or more Participating Class Members files a timely objection to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment, if no such notice of appeal is filed; or (c) if a timely appeal from the Judgment is

1 filed, the day after the appellate court affirms the Judgement and issues a remittitur. The
2 Judgment becoming Final is a prerequisite to any obligation of Defendant to pay any money in
3 connection with this Settlement.

4 13. "Employer Payroll Taxes" means federal and state tax obligations of the
5 employer, separate and apart from employee payroll tax obligations, including employer
6 obligations for federal payroll taxes for Federal Insurance Contribution Act (FICA), Social
7 Security, Medicare, and Federal Unemployment Tax (FUTA); and state employer tax payments,
8 if any, for Unemployment Insurance, Employment Training Tax, State Disability Tax, and
9 Personal Income Tax. After a thorough evaluation of Defendant's financial condition, the Gross
10 Settlement Amount was calculated to include payment for Employer Payroll Taxes.

11 14. "Final Approval" means the Court's Order granting final approval of the
12 Settlement Agreement.

13 15. "Final Approval Hearing" shall mean the Court's hearing on the Motion for Final
14 Approval of the Settlement.

15 16. "Final Judgment" means the Judgment entered by the Court upon granting Final
16 Approval of the Settlement.

17 17. "Gross Settlement Amount" means the maximum settlement amount of One
18 Hundred Forty Thousand Dollars and Zero Cents (\$140,000.00). Except as a result of an
19 increase in the number of workweeks as set forth in paragraph 58, this represents the maximum
20 amount payable in this Settlement by Defendant. The Gross Settlement Amount will be used
21 to pay the Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment,
22 Class Counsel's Fees and Costs Payment, Class Representative Enhancement Payment,
23 Settlement Administration Costs and Employer Payroll Taxes. The Gross Settlement Amount
24 is non-reversionary; no portion of the Gross Settlement Amount will return to Defendant.

25 18. "Individual Class Payment" means each Participating Class Member's pro rata
26 share of the Net Settlement Amount, calculated according to the number of Workweeks worked
27 during the Class Period. Individual Class Payments shall be paid by a settlement check made
28

payable to Participating Class Members.

19. “Individual PAGA Payment” means each PAGA Member’s pro rata share of 25% (which constitutes \$3,750.00), of the PAGA Payment calculated according to the number of Pay Periods worked during the PAGA Period. PAGA Members will receive their Individual PAGA Payments regardless of their decision to participate in the Settlement.

20. “Judgment” shall mean the judgment entered by the Court based upon the Final Approval of the Settlement.

21. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code §2699, subd. (i).

22. “LWDA PAGA Payment” means the 75% (which constitutes \$11,250.00) of the PAGA Payment payable to the LWDA under Labor Code §2699, subd. (i).

23. “Net Settlement Amount” means the Gross Settlement Amount payable by Defendant pursuant to this Settlement, less the following amounts as approved by the Court: (1) Class Counsel’s Fees and Costs Payment; (2) the PAGA Payment (consisting of the Individual PAGA Payment and LWDA PAGA Payment); (3) Settlement Administration Costs; (4) Class Representative Enhancement Payment; and (5) Employer Payroll Taxes which will be calculated by the Settlement Administrator upon receiving the tax rate information from Defendant (estimated to be approximately \$1,000 or less). The remainder is to be paid to Participating Class Members on a pro rata basis as Individual Class Payments. The Net Settlement Amount is estimated to be calculated as follows:

Gross Settlement Amount	\$140,000.00
Class Counsel’s Fees Payment	\$49,000.00
Class Counsel’s Costs Payment	\$35,000.00
PAGA Payment	\$15,000.00
Settlement Administration Costs	\$8,750.00
Class Representative Enhancement Payment	\$7,500.00

Estimated Net Settlement Amount	\$24,750.00 (before payroll taxes)
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24. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion. PAGA Members may not opt-out of the PAGA portion of the Settlement.

25. “Notice” means the proposed Notice of Proposed Class Action Settlement in a form substantially similar to the form attached hereto as Exhibit A, that will be mailed to each Class Member’s/PAGA Member’s last known address, and which will provide Class Members/PAGA Members with information regarding the Action and information regarding the Settlement of the Action.

26. “Notice Packet” or “Class Notice Packet” means the Notice in a form substantially similar to the form attached hereto as Exhibit A; the Objection Form in a form substantially similar to the form attached hereto as Exhibit B; the Request for Exclusion Form in a form substantially similar to the form attached hereto as Exhibit C; and the Workweek Dispute Form in a form substantially similar to the form attached hereto as Exhibit D.

27. “Objection” means a Participating Class Member’s valid and timely objection to the Settlement Agreement. For a written Objection to be valid, it must be sent to the Administrator by fax, email, or mail and must include: (a) the objector’s full name, address, telephone number, last four digits of the employees’ social security number or employee ID number and (b) a written statement of all grounds for the objection accompanied by legal support, if any, for such objection. An Objection Form in a form substantially similar to the form attached hereto as Exhibit B may be used by Participating Class Members to make an objection and shall be included with the Notice Packet and distributed to the Class Members. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing.

28. “PAGA” means the California Labor Code Private Attorneys General Act of

2004 (Cal. Lab. Code §§ 2698, *et seq.*).

29. “PAGA Payment” means the total amount of Fifteen Thousand Dollars (\$15,000.00) in PAGA civil penalties payable from the Gross Settlement Amount that the Parties have agreed to allocate in order to settle claims arising under the PAGA.

30. “PAGA Members” means all current and former non-exempt employees of Defendant who were employed by Defendant in the State of California at any time during the PAGA Period.

31. “PAGA Period” means the period from November 30, 2019, until the earlier of (1) the date of preliminary approval of the Settlement by the Court or (2) September 6, 2023.

32. “Participating Class Members” means all Class Members who do not submit valid and timely Requests for Exclusion Form or otherwise request an exclusion from the Settlement. Participating Class Members will not be required to submit any claim form in order to receive any payment due to them under the terms of the Settlement.

33. “Pay Periods” means any pay period during which a PAGA Member worked for Defendant for at least one day, during the PAGA Period. Defendant’s records shall establish the number of Pay Periods worked by each PAGA Member.

34. “Plaintiff” means Adrian Gomez, the named Plaintiff in the Action.

35. “Preliminary Approval Order” means the Court’s Order granting Preliminary Approval of the Settlement Agreement.

36. “Preliminary Approval Hearing” means the Court’s hearing on Class Counsel’s Preliminary Approval Motion and supporting documentation.

37. “Preliminary Approval Motion” means Class Counsel’s Motion for and Proposed Order granting Preliminary Approval of the Settlement.

38. “Released Parties for PAGA Claims” means Defendant Next Level Construction Services, Inc., and its past, present, and/or future, direct and/or indirect, employees and agents.

39. “Released Parties for Class Claims” means Defendant Next Level Construction

Services, Inc., and its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, and agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, clients, and joint ventures.

40. “Request for Exclusion” means a valid and timely written statement submitted and signed by a Class Member requesting to be excluded from the Class Settlement. A Request for Exclusion Form substantially similar to the form attached hereto as Exhibit C shall be included with the Notice Packet and distributed to the Class Members. Class Members may elect to use the Request for Exclusion form, or submit a written statement by fax, email, or mail to the Settlement Administrator. PAGA Members may not make a Request for Exclusion from the PAGA Payment portion of the Settlement.

41. “Response Deadline” means the date sixty (60) calendar days after the Settlement Administrator mails the Notice Packet to Class Members and PAGA Members, and shall be the last date on which Class Members may: (a) submit a Request for Exclusion from the Settlement, (b) submit an Objection to the Settlement (for Participating Class Members), or (c) dispute the number of allocated workweeks in the Notice. The Response Deadline will be extended fourteen (14) calendar days for any Class Member/PAGA Member who is re-mailed a Notice Packet by the Settlement Administrator. The Response Deadline may also be extended by express agreement between Class Counsel and Defendant. Under no circumstances, however, will the Settlement Administrator have the authority to unilaterally extend the Response Deadline.

42. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

43. “Settlement Administrator” or “Administrator” means Phoenix Class Action Administration Solutions, the neutral entity the Parties have agreed on and appoint to administer the Settlement. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator

that could create a conflict of interest.

44. “Settlement Administration Costs” means the amount payable from the Gross Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, translating the Notice Packet, printing, distributing, and tracking documents for this Settlement, calculating/confirming the Class Members’ Workweeks and PAGA Members’ Pay Periods from the information contained in the Class List, calculating and paying each Participating Class Member’s Individual Class Payment, tax reporting, distributing the Gross Settlement Amount, providing necessary reports and declarations, and other duties and responsibilities set forth herein to process this Settlement, and as requested by the Parties. Settlement Administration Costs shall not exceed Eight Thousand Seven Hundred Fifty Dollars (\$8,750.00).

45. “Workweek” means any week during which a Class Member worked for Defendant for at least one day, during the Class Period. Defendant’s records shall establish the number of Workweeks worked by each Class Member.

46. Whether or not capitalized, “shall” denotes a mandatory command. “Shall” means “will” or “must.” “Shall” is not a permissive term and cannot be construed to mean “may.”

RECITALS

47. On December 28, 2020, Plaintiff filed a Class Action Complaint for Damages on behalf of himself and all current and former non-exempt employees of Defendant in California from December 28, 2016, through the present. The Complaint alleged the following causes of action: (1) Violation of Labor Code Sections 510 and 1198 (unpaid overtime); (2) Violation of Labor Code Sections 226.7 and 512(a) (unpaid meal period premiums); (3) Violation of Labor Code Section 226.7 (unpaid rest period premiums); (4) Violation of Labor Code Sections 1194, 1197, and 1197.1 (unpaid minimum wages); (5) Violation of Labor Code Sections 201, 202, and 203 (final wages not timely paid); (6) Violation of Labor Code Sections Section 226(a) (non-compliant wage statements); (7) Violation of Labor Code Sections 2800 and 2802 (failure to

1 reimburse necessary expenses); and (8) Violation of California Business & Professions Code
2 Sections 17200, *et seq.*

3 48. On November 30, 2020, pursuant to Labor Code §2699.3, subdivision (a),
4 Plaintiff submitted his written PAGA notice to Defendant and the LWDA. On February 4, 2021,
5 Plaintiff filed a First Amended Complaint (“FAC”) adding a cause of action under the PAGA.
6 Plaintiff’s FAC is the operative complaint in the Action.

7 49. On March 19, 2021, Defendant timely answered the FAC. Defendant has
8 consistently denied and continues to deny all of the material allegations. Defendant denies that
9 it is liable for damages, interest, or penalties to Plaintiff, the Class Members, or the PAGA
10 Members.

11 50. In connection with the Action and in preparation for mediation, the Parties
12 propounded and responded to informal and formal discovery. Defendant produced documents
13 relevant to Plaintiff’s claims, all of which were reviewed, investigated, and analyzed by Class
14 Counsel. Class Counsel’s investigation was sufficient to satisfy the criteria for court approval set
15 forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot*
16 *Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130.

17 51. On March 31, 2023, following the foregoing discovery and exchange of
18 information, the Parties participated in a mediation presided over by Mediator Paul Grossman.
19 During the mediation, the Parties had a full day of productive negotiations, but were unable to
20 reach a settlement during that session. However, the Parties continued their arms-length
21 negotiations after the mediation including investigations and analyses of Defendant’s financial
22 records. The Parties agreed to provide Defendant additional time to compile financial documents
23 that would substantiate its claims of financial distress including need for a funding schedule and
24 an all-in figure for settlement. Following the review of the confidential financial documents,
25 information supplied by Defendant, and the further investigations and negotiations, and with the
26 help of the mediator, the Parties ultimately accepted Mr. Grossman’s mediator’s proposal based
27 on Defendant’s current financial condition.

52. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that Plaintiff's claims in the Action have merit or that it has any liability to Plaintiff, the Class Members, or the PAGA Members on those claims. This Agreement is intended to fully, finally, and forever compromise, release, resolve, discharge, and settle the released claims subject to the terms and conditions set forth in this Agreement.

53. Based on their own thorough, independent investigation and evaluation of this case, including Defendant's current financial condition, Class Counsel are of the opinion that the Settlement with Defendant for the consideration and on the terms set forth in this Agreement is fair, reasonable, adequate, and in the best interest of the Settlement Class in light of all known facts and circumstances, including the risk of significant costs and delay, the risk of non-certification of the Class, the defenses asserted by Defendant, the risks of adverse determinations on the merits, and numerous potential appellate issues. Although Defendant contends it has no liability in this case, or that damages have been extinguished by restitution payments made during the Class Period, Defense Counsel shares Class Counsel's belief that the Agreement represents a fair and adequate settlement given the respective risks associated with the case. The Parties affirm that this Settlement was reached through arm's length negotiations.

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

Based on the foregoing Recitals, the Parties agree as follows:

SETTLEMENT CONSIDERATION AND DISTRIBUTION

55. Certification for Settlement Purposes: The Parties agree and stipulate to conditional class action certification only for purposes of effectuating the Settlement, and subject to Court approval. The Parties agree that if, for any reason, the Settlement is not preliminarily and/or finally approved, the stipulation to conditional certification will be void and have no force or effect. The Parties further agree that certification for purposes of the

Settlement is not an admission that class action certification is proper under the standards applied to contested certification motions and that this Agreement will not be admissible in this or any other proceeding.

56. The Parties mutually stipulate and agree that they will not proceed with discovery or any other procedures in the Action except for those necessary for effectuating approval of this Settlement.

57. Gross Settlement Amount: The Parties vigorously dispute each other's claims and defenses in the Action, but following extensive arm's length negotiations including mediation, and the provision and review of documents relating to Defendant's financial condition, the Parties have agreed to settle the Action for the Gross Settlement Amount of One Hundred Forty Thousand Dollars and Zero Cents (\$140,000.00), subject to the approval of the Court and without admission of liability by either Party. Defendant shall fund the Gross Settlement Amount following Final Approval by the Court and the occurrence of the Effective Date.

58. Payments from the Gross Settlement Amount to Plaintiff, Class Counsel and Others. Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount as follows:

a. **To Adrian Gomez in his capacity as Class Representative**: Defendant agrees not to oppose any application or motion by Plaintiff for a Class Representative Enhancement Payment of up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00). Upon Court approval, the Settlement Administrator will pay the Class Representative Enhancement Payment out of the Gross Settlement Amount. Payroll taxes, withholdings, and deductions will not be taken from the Class Representative Enhancement Payment and instead a Form 1099 will be issued with respect to the payment. Plaintiff agrees to assume all responsibility and liability for the payment of taxes due on the Class Representative Enhancement Payment. Any portion of the requested Class Representative Enhancement Payment that is not awarded to the Class Representative shall be reallocated to

1 the Net Settlement Amount.

2 **b. To Class Counsel:** Defendant agrees not to oppose any application or
3 motion by Class Counsel for attorneys' fees of not more than Thirty-Five Percent (35%) of the
4 Gross Settlement Amount, i.e., Forty-Nine Thousand Dollars (\$49,000.00), plus the
5 reimbursement of costs and expenses associated with the litigation and settlement of the Action,
6 in an amount not to exceed Thirty-Five Thousand Dollars (\$35,000.00), both of which will be
7 paid from the Gross Settlement Amount by the Settlement Administrator. Plaintiff and/or Class
8 Counsel will file a motion for Class Counsel's Fees and Costs Payment no later than sixteen (16)
9 court days prior to the Final Approval Hearing. Any portion of the requested fees or costs that is
10 not awarded to Class Counsel shall be reallocated to the Net Settlement Amount. The Released
11 Parties for PAGA Claims and the Released Parties for Class Claims shall have no liability to
12 Class Counsel or any other Plaintiff's counsel arising from any claim to any portion any Class
13 Counsel's Fees and Costs Payment. Withholdings and deductions will not be taken from the
14 Class Counsel's Fees and Costs Payment, and one or more Forms 1099 will be issued to Class
15 Counsel with respect to those payments. Class Counsel assumes full responsibility and liability
16 for taxes owed on the Class Counsel's Fees and Costs Payment and holds the Released Parties
17 for PAGA Claims and Released Parties for Class Claims harmless, and indemnifies them, from
18 any dispute or controversy regarding any division or sharing of any of these Payments. The Class
19 Counsel's Fees and Costs Payment amount may be structured as directed by Class Counsel to
20 the Settlement Administrator.

21 **c. To the Settlement Administrator:** The Settlement Administrator will
22 be paid for the reasonable costs of administration of the Settlement and distribution of payments
23 from the Gross Settlement Amount as further set forth in this Agreement. Settlement
24 Administration Costs shall not exceed Eight Thousand Seven Hundred Fifty Dollars
25 (\$8,750.00).

26 **d. To the LWDA and PAGA Members:** PAGA Penalties in the amount
27 of Fifteen Thousand Dollars and Zero Cents (\$15,000.00) shall be paid from the Gross
28

1 Settlement Amount for settlement of claims for civil penalties under the PAGA. The Settlement
2 Administrator shall pay Seventy-Five Percent (75%) of the PAGA Payment, or Eleven
3 Thousand Two Hundred Fifty Dollars (\$11,250.00), to the LWDA. The remaining Twenty-Five
4 Percent (25%) of the PAGA Payment, or Three Thousand Seven Hundred Fifty Dollars
5 (\$3,750.00), will be allocated to the PAGA Members through Individual PAGA Payments. The
6 Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the
7 PAGA Members' 25% share of PAGA Payment (\$3,750.00) by the total number of Pay Periods
8 worked by all PAGA Members during the PAGA Period and (b) multiplying the result by each
9 PAGA Member's Pay Periods. PAGA Members assume full responsibility and liability for any
10 taxes owed on their Individual PAGA Payment. If the Court approves PAGA Penalties of less
11 than the Fifteen Thousand Dollars (\$15,000.00) allocated, the Administrator will allocate the
12 remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA
13 Payments on IRS 1099 Forms to each PAGA Members. PAGA Members assume full
14 responsibility and liability for taxes owed on their Individual PAGA Payment. PAGA Members
15 shall receive their portion of the PAGA Payment regardless of their decision to be excluded
16 from the Class Settlement.

17 59. Escalator Clause: Defendant has represented that the Workweeks between
18 December 28, 2016 (start of Class Period) and the date of the mediation (March 31, 2023) were
19 approximately 12,455. If the actual number of Workweeks appearing on the Class List provided
20 to the Settlement Administrator exceeds 12,455 by more than 10%, (i.e., if the total number of
21 workweeks on the Class List exceeds 13,701) Defendant will increase the Gross Settlement
22 Amount on a *pro-rata* basis equal to the percentage increase in the number of Workweeks
23 worked by the Class Members above 10%. For example, if the number of number of Workweeks
24 worked by Class Members increases by 11%, Defendant will increase the Gross Settlement
25 Amount by 1%.

26 60. Funding the Gross Settlement Amount: Within thirty (30) calendar days of the
27 Effective Date, Defendant will deposit Fifty Percent (50%) of the Gross Settlement Amount
28

(i.e., \$70,000.00) into a Qualified Settlement Fund (“QSF”) to be established by the Settlement Administrator. The remaining Fifty Percent (50%) of the Gross Settlement Amount (i.e., \$70,000.00) will be paid to the QSF twelve (12) months after the Effective Date. Defendant may deposit the Gross Settlement Amount into the QSF at any time prior to the above referenced deadlines. Except as provided in paragraph 59, Defendant shall not have any obligation to pay any additional funds into the Settlement Account.

61. Payments from the Gross Settlement Amount and Net Settlement Amount: Within fourteen (14) calendar days after Defendant completes funding of the Gross Settlement Amount into the QSF (i.e., 12 months and 14 days after the Effective Date), the Settlement Administrator will mail checks for: (a) the Individual Class Payments; (b) the Individual PAGA Payments and the LWDA PAGA Payment; (c) the Class Representative Enhancement Payment; (d) Class Counsel’s Fees and Costs Payment; and (e) Settlement Administration Costs. Disbursement of the Class Counsel Fees and Costs Payment and the Class Representative Enhancement Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

62. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments to the Participating Class Members (including those for whom Class Notice Packet was returned undelivered) via First Class U.S. Mail, postage prepaid. The Administrator will send checks for Individual PAGA Payments to all PAGA Members, including Non-Participating Class Members who qualify as PAGA Members (including those for whom Class Notice Packet was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients’ mailing addresses using the National Change of Address database. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date.

63. The Administrator must conduct a National Change of Address search for all

1 Class Members/PAGA Members whose checks are returned undelivered without a USPS
2 forwarding address. Within seven (7) days of receiving a returned check, the Administrator must
3 re-mail checks to the USPS forwarding address provided or to an address ascertained through
4 the National Change of Address search. The Administrator need not take further steps to deliver
5 checks to Class Members/PAGA Members whose re-mailed checks are returned as undelivered.
6 The Administrator shall promptly send a replacement check to any Class Member whose original
7 check was lost or misplaced if a replacement check is requested by the Class Member prior to
8 the check void date.

9 64. Uncashed Individual Class Payment Checks: For any Class Member whose
10 Individual Class Payment check or Individual PAGA Payment check remains uncashed and is
11 therefore canceled as of the void check date, the Administrator shall transmit the full amount of
12 the check to the California Controller's Unclaimed Property Fund in the name of the Class
13 Member thereby leaving no "unpaid residue" subject to the requirements of California Code of
14 Civil Procedure §384, subd. (b).

15 65. The payment of Individual Class Payments and Individual PAGA Payments shall
16 not obligate Defendant to confer any additional benefits or make any additional payments to
17 Class Members/PAGA Members beyond those specified in this Agreement.

18 66. Calculation of Individual Class Payments and Employer Payroll Taxes: Subject
19 to the terms and conditions of this Agreement, the Settlement Administrator will calculate
20 Individual Class Payments to each Participating Class Member and Employer Payroll Taxes to
21 appropriate governmental authorities, based on the calculations below in Paragraphs 66(a), (b).
22 The formulas below do not constitute an admission by any party, and are intended only to provide
23 a practical means to simplify and administer the settlement process:

24 a. Calculation of Settlement Ratio: The Settlement Administrator shall
25 assign to each Participating Class Member a "Settlement Ratio," which shall be a fractional
26 number comprised of (a) the Participating Class Member's Individual Class Period Workweeks
27 as the numerator and (b) the aggregate total of all Participating Class Members' Individual Class
28

Period Workweeks as the denominator.

b. Calculation of Individual Class Payments: The Settlement Administrator will calculate the “Individual Class Payment” for each Participating Class Member by multiplying that Participating Class Member’s Settlement Ratio by the Net Settlement Amount. After calculating all Individual Class Payments, the Settlement Administrator shall furnish to Class Counsel and Defense Counsel a worksheet containing a list of the names of the Participating Class Members with their corresponding Individual Class Period Workweeks and Individual Class Payments.

c. Allocation and Withholdings: Twenty Percent (20%) of each Individual Class Payment (the “Wage Portion”) will be allocated as wages to settle Participating Class Members’ claims for unpaid wages and/or premiums. The Settlement Administrator will reduce the Wage Portion of the Individual Class Payments by applicable taxes, withholdings and deductions and the Settlement Administrator will generate and issue to each Participating Class Member a Form W-2 showing such reductions. Each Participating Class Member shall be individually responsible for their share of additional federal, state, and local income and payroll taxes, withholdings, and deductions, including social security and Medicare contributions. The Administrator shall calculate and pay the Employer Payroll Taxes from the Gross Settlement Amount based on the Wage Portion of the Gross Settlement Amount.

d. Eighty percent (80%) of each Individual Class Payment (the “Non-Wage Portion”) is intended to settle each Participating Class Member’s claims for both penalties and interest. Forty Percent (40%) shall be allocated as interest and Forty Percent (40%) shall be allocated as penalties. Accordingly, the Non-Wage Portion will not be reduced by payroll taxes, withholdings, and deductions. Instead, the Settlement Administrator will issue a Form 1099 to each Participating Class Member with respect to the Non-Wage Portion. Each Participating Class Member assumes full responsibility and liability for taxes owed on the Non-Wage Portion of his/her Individual Class Payment.

e. Taxes: The Parties agree and understand that neither Plaintiff, Class

1 Counsel, Defendant, nor Defense Counsel has made any representations regarding the tax
2 obligations or consequences, if any, related to this Settlement or to any payment made in
3 connection with the Settlement. The Parties agree that Plaintiff, Class Counsel, and each
4 Participating Class Member, and each PAGA Member is responsible for determining the tax
5 consequences of payments made to them pursuant to this Settlement and for paying taxes, if
6 any, which are determined to be owed on such payments (including penalties and interest related
7 thereto) by any taxing authority, whether state, local, or federal. Defendant makes no
8 representation as to the tax treatment or legal effect of the payments called for hereunder, and
9 Plaintiff, Participating Class Members, and PAGA Members are not relying on any statement,
10 representation, or calculation by Defendant or by the Settlement Administrator in this regard.
11 Plaintiff, Participating Class Members, and PAGA Members understand and agree that they
12 will be solely responsible for the payment of any taxes and penalties assessed on the payments
13 described herein.

14 67. No Effect on Benefit Plans: The Individual Class Payments and Individual PAGA
15 Payments made to Participating Class Members and PAGA Members under this Settlement, as
16 well as any other payments made pursuant to this Settlement, shall not affect Defendant's
17 obligation, or lack thereof, to confer any additional benefits, including, but not limited to profit-
18 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans,
19 PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement
20 Agreement will not affect any rights, contributions, or amounts to which any Class
21 Members/PAGA Members may be entitled under any benefit plans.

22 68. Settlement Administrator and Settlement Administration Process: The Parties
23 will ask the Court to appoint Phoenix Class Action Administration Solutions, a qualified
24 administrator, to serve as the Settlement Administrator, which, as a condition of appointment,
25 will agree to be bound by this Agreement with respect to the performance of its duties and its
26 compensation. The Parties agree to cooperate in the administration of the Settlement and to
27 make all reasonable efforts to control and minimize the costs and expenses incurred in
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administration of the Settlement. The Settlement Administrator's duties will include, but are not limited to, providing the following services:

- a. Establishing and maintaining a Qualified Settlement Fund.
- b. Calculating the Individual Class Payment for each Participating Class Member.
- c. Calculating Individual PAGA Payment for each PAGA Member.
- d. Translating the Notice Packet from English to Spanish.
- e. Preparing, printing, and mailing the Notice Packet in English and Spanish to all Class Members and PAGA Members.
- f. Using reasonable measures to contact all Class Members and PAGA Members, including conducting a National Change of Address search on all Class Members and PAGA Members whose Notice Packet or settlement check is returned without a forwarding address.
- g. Re-mailing the Class Notice Packet to the Class Member's new address for those Class Members and PAGA Members whose address has changed.
- h. Receiving and processing Requests for Exclusion, Objections, Workweek disputes, and field inquiries from Class Members.
- i. Receiving and processing Pay Period disputes and field inquiries from PAGA Members.
- j. Printing and issuing Individual Class Payment Checks, Individual PAGA Payment Checks, preparing IRS W-2 Forms and IRS 1099 Forms, and any other filings required by any governmental taxing authority.
- k. Paying the Class Representative Enhancement Payment, Class Counsel's Fees and Costs Payment, LWDA PAGA Payment, Individual PAGA Payments, and the Settlement Administration Costs from the Gross Settlement Amount.
- l. Paying the Individual Settlement Payments from the Net Settlement

Amount.

- m. Administering tax withholdings and payments. Including calculating and paying the employer taxes from the Gross Settlement Amount to the appropriate government entity.
- n. Providing declarations and/or other information to this Court as requested by the Parties and/or the Court regarding the settlement administration process.
- o. Providing weekly status reports to counsel for the Parties about delivery of Class Notice Packet, Requests for Exclusion, Objections, and Workweek disputes.
- p. Posting a notice of Final Judgment online at Settlement Administrator's website.

69. The Settlement Administrator will have the final authority to resolve all disputes concerning the calculation of Individual Class Payments, subject to the terms set forth in this Agreement. The Settlement Administrator's reasonable fees and expenses, including the cost of printing and mailing the Class Notice Packet, will be paid out of the Gross Settlement Amount, as set forth herein, subject to Court approval.

PROCEDURES FOR APPROVING SETTLEMENT

70. Preliminary Approval Hearing: Class Counsel will prepare a Preliminary Approval Motion and supporting documentation and obtain a hearing before the Court to request an Order (a) granting Preliminary Approval of the Settlement Agreement, (b) conditionally certifying the Settlement Class for settlement purposes only; (c) approving the Class Notice Packet; and (c) setting a date for a Final Approval Hearing. The Preliminary Approval Order will provide for the Notice Packet to be sent to all Class Members and PAGA Members as specified herein.

71. As part of his Preliminary Approval Motion, Plaintiff will submit this Agreement, which sets forth the terms of the Settlement, and will include the proposed Notice

1 Packet attached as Exhibits A-D. Any disagreement among the Parties concerning the Class
2 Notice Packet or other documents necessary to implement the Settlement will be referred to the
3 Court.

4 72. The Parties anticipate that they will jointly appear at the Preliminary Approval
5 Hearing, support the granting of the Preliminary Approval Motion, and submit a Proposed Order,
6 prepared by Class Counsel and approved by Defense Counsel, granting Preliminary Approval of
7 Settlement, Approval of Class Notice Packet, and setting a date for the Final Approval Hearing.

8 73. Should the Court decline to preliminarily approve all material aspects of the
9 Settlement, the Settlement will be null and void and the Parties will have no further obligations
10 under it.

11 74. Defendant Declarations for Preliminary Approval Hearing: Defendant shall also
12 provide Plaintiff for filing a declaration of Defendant's personal knowledge concerning the
13 likely age, education, and experience of the Class Members, and of the Class Members' ability
14 to read and comprehend English and a declaration from Defendant's Counsel that states whether
15 counsel is aware of any class, representative or other collective action in any other court in this
16 or any jurisdiction that asserts claims similar to those asserted in this Action.

17 75. Notice to Class Members and PAGA Members by First-Class U.S. Mail: After
18 the Court enters its Preliminary Approval Order, every Class Member and PAGA Member will
19 be provided with the Class Notice Packet as follows:

20 a. Within twenty (20) calendar days after the Court enters its order granting
21 Preliminary Approval of the Settlement, Defendant will provide the Class List to the Settlement
22 Administrator. To protect Class Members and PAGA Members' privacy rights, the
23 Administrator must maintain the Class List in confidence, use the Class List only for purposes
24 of this Settlement, and restrict access to the Class List to Administrator employees who need
25 access to the Class List to effect and perform under this Agreement. Defendant has a continuing
26 duty to immediately notify Class Counsel if it discovers that the Class List omitted Class Member
27 identifying information and to provide a corrected or updated Class List as soon as reasonably
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feasible. The Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class List. The number of Workweeks worked during the Class Period for a specific Class Member shall be referred to as that Class Member's "Individual Class Period Workweeks." In determining the Individual Class Period Workweeks to include in the Class Notice Packet, Defendant will round up or down to the nearest whole number.

b. Within fourteen (14) calendar days after receiving the Class List from Defendant, or as soon thereafter as it is able to do so, the Settlement Administrator will mail the Notice Packet to all identified Class Members and PAGA Members via regular First-Class U.S. Mail, using the addresses provided by Defendant in the Class List. All Class Members and PAGA Members will be mailed a Notice Packet in English and Spanish. Each Notice Packet will provide: (a) information regarding the nature of the Action; (b) a summary of the Settlement's principal terms; (c) the Class definition; (d) the aggregated number of Workweeks worked by all Class Members during the Class Period and Pay Periods worked by PAGA Members during the PAGA Period; (e) each Class Member's estimated Workweeks worked during the Class Period and corresponding estimated Individual Class Payment and the formula for calculating the Individual Class Payment; (f) each PAGA Member's estimated Pay Periods worked during the PAGA Period and corresponding estimated Individual PAGA Payment and the formula for calculating the Individual PAGA Payment; (g) the dates which comprise the Class Period and the dates which comprise the PAGA Period; (h) the Response Deadline for Requests for Exclusion, Objections, and Workweek/Pay Period disputes; (i) the claims to be released, as set forth herein; and (j) the date for the Final Approval Hearing.

c. If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than ten (10) days from receipt of the returned Notice Packet take reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing address of any Class Member or PAGA Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These

reasonable steps shall include the tracking of all undelivered mail; performing National Change of Address searches for all mail returned without a forwarding address; and promptly re-mailing the Notice Packet to Class Members/PAGA Members for whom new addresses are found. If the Class Notice Packet is re-mailed, the Settlement Administrator will note for its own records and notify Defense Counsel of the date and address of each such re-mailing.

d. As part of its weekly status report, the Settlement Administrator will:

i. send Defense Counsel and Class Counsel the number of Notice Packets re-mailed;

ii. send Defense Counsel all Requests for Exclusion that it receives and inform Class Counsel of the number of Requests for Exclusion it receives;

iii. send Defense Counsel all Objections to the Settlement that it receives and inform Class Counsel of the number of Objections to the Settlement it receives;

iv. send Defense Counsel all Class Member disputes as to the Workweeks and/or PAGA Periods allocated to that Class Member/PAGA Member in the Notice Packet that it receives and inform Class Counsel of the number of disputes it receives.

e. No later than fourteen (14) days prior to the Final Approval Hearing, the Settlement Administrator will serve on the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement, and providing complete lists of all Class Members (if any) objecting to the Settlement and the names of all Class Members (if any) requesting exclusion from the Settlement. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

76. Final Report by Settlement Administrator to Court: Within ten (10) days after the final disbursement of all funds from the Qualified Settlement Account, the Settlement

1 Administrator will serve on the Parties for filing with the Court a declaration providing a final
2 summary report on the disbursements of such funds.

3 77. Workweek/Pay Period Disputes: Class Members/PAGA Members shall have
4 until the Response Deadline (i.e., sixty (60) days after the Administrator mails the Notice
5 Packet, plus an additional fourteen (14) days for Class Members/PAGA Members whose Notice
6 Packet is re-mailed) to dispute the number of Workweeks and/or Pay Periods allocated in their
7 Notice Packets. The Class Member/PAGA Member may challenge the allocation by
8 communicating with the Administrator via fax, email or mail. Class Members/PAGA Members
9 may use the “Workweek Dispute Form” received with their Notice Packet and attached hereto
10 as Exhibit D.

11 78. The Administrator must encourage the challenging Class Member/PAGA
12 Member to produce evidence to the Settlement Administrator showing that his/her allocated
13 Workweeks and/or Pay Periods are incorrect. In the absence of any contrary documentation, the
14 Administrator is entitled to presume that the Workweeks/Pay Periods contained in the Class
15 Notice Packet are correct so long as they are consistent with the Class List. The Administrator’s
16 determination of each Class Member/PAGA Member’s allocation of Workweeks and/or Pay
17 Periods shall be final and not appealable or otherwise susceptible to challenge. However, if a
18 Class Member/PAGA Member produces evidence to the contrary by the Response Deadline,
19 the Parties will evaluate the evidence submitted by the Class Member/PAGA Member and the
20 Parties will make the final decision as to the number of eligible Workweeks and/or Pay Periods
21 that should be allocated and the resulting Individual Class Payment and/or Individual PAGA
22 Payment amount. If the Parties do not agree, the dispute will be submitted to the Court.

23 79. Request for Exclusion from Settlement: Any Class Member wishing to be
24 excluded (opt-out) from the Settlement must send by fax, email, or mail a written Request for
25 Exclusion to the Settlement Administrator. The Class Member wishing to be excluded may
26 submit the Request for Exclusion Form included with the Notice Packet, or a separate written
27 Request for Exclusion that includes (a) the Class Member’s name, address, telephone number,
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1 and email address (b) a clear statement requesting to be excluded from the Settlement. To be
2 valid, the Request for Exclusion must be timely faxed, emailed, or postmarked by the Response
3 Deadline (i.e., not later than sixty (60) days after the Administrator mails the Class Notice
4 Packet, plus an additional fourteen (14) days for Class Members whose Class Notice Packet is
5 re-mailed).

6 80. The Administrator may not reject a Request for Exclusion as invalid because it
7 fails to contain all the information specified in the Class Notice Packet and/or this Agreement.
8 The Administrator shall accept any Request for Exclusion as valid if the Administrator can
9 reasonably ascertain the identity of the person as a Class Member and the Class Member's desire
10 to be excluded. The Administrator's determination shall be final and not appealable or otherwise
11 susceptible to challenge. If the Administrator has reason to question the authenticity of a Request
12 for Exclusion, the Administrator may demand additional proof of the Class Member's identity.
13 The Administrator's determination of authenticity shall be final and not appealable or otherwise
14 susceptible to challenge.

15 81. All Class Members who do not submit a timely and valid Request for Exclusion
16 are deemed to be Participating Class Members under this Agreement, entitled to all benefits and
17 bound by all terms and conditions of the Settlement, including the Released Class Claims under
18 this Agreement, regardless of whether the Participating Class member actually receives the Class
19 Notice Packet or objects to the Settlement.

20 82. Every Class Member who submits a valid and timely Request for Exclusion is a
21 Non-Participating Class Member and shall not receive an Individual Class Payment or have the
22 right to object to the Settlement. Because future PAGA claims are subject to claim preclusion
23 upon entry of the Judgement, Non-Participating Class Members who are PAGA Members are
24 deemed to release the claims in Paragraph 99 and will receive their Individual PAGA Payments.

25 83. Defendant's Right to Rescind: If five percent (5%) or more of the Class Members
26 (rounded to the next whole number) elect not to participate in the Settlement, Defendant may,
27 at its election, rescind the Settlement Agreement and all actions taken in furtherance of it will
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1 be thereby null and void. Defendant must meet and confer with Class Counsel prior to
2 exercising this right and must make clear its intent to rescind the Agreement within fourteen
3 (14) calendar days of the Settlement Administrator notifying the Parties that five percent (5%)
4 or more of the Class Members have elected not to participate in the Settlement. If Defendant
5 exercises its right to rescind the Agreement, the Parties shall be jointly responsible for all
6 Settlement Administration Costs incurred up to the date of rescission.

7 84. Objections to Settlement: Only Participating Class Members may object to the
8 class action components of the Settlement and/or this Agreement, including contesting the
9 fairness of the Settlement, and/or amounts requested for the Class Counsel's Fees and Costs
10 Payment and/or Class Representative Enhancement Payment.

11 85. To object to the Settlement, a Participating Class Member may send by fax,
12 email, or mail, a written objection to the Settlement Administrator by the Response Deadline
13 (i.e., sixty (60) days after the Administrator's mailing of the Class Notice Packet, plus an
14 additional fourteen (14) days for the Class Members whose Class Notice Packet was re-mailed.)
15 Participating Class Members may object by completing and sending the Objection Form
16 included with their Notice Packet to the Settlement Administrator by the Response Deadline.

17 86. Additionally, Participating Class Members may verbally object to the Settlement
18 and/or this Agreement by appearing in Court (or hiring an attorney to appear in Court) at the
19 Final Approval Hearing.

20 87. Non-Participating Class Members have no right to object to this Settlement.

21 88. Not later than fourteen (14) days after the Response Deadline, the Settlement
22 Administrator will provide the Parties with a complete and accurate list of all Participating Class
23 Members who objected to the settlement.

24 89. No Solicitation of Objections or Exclusions. Neither the Parties, nor their
25 respective counsel, will directly or indirectly solicit or otherwise encourage Class Members to
26 seek exclusion from the Settlement, object to the Settlement, or appeal from the Judgment. Class
27 Counsel will not represent any Class Members with respect to any objections to this Settlement.

1 90. Final Settlement Approval Hearing: Upon expiration of the Response Deadline,
2 Class Counsel will prepare motions and supporting memoranda for: (1) final approval of the
3 Settlement, (2) approval and payment of the Settlement Administrator's Costs; (3) approval and
4 payment of the Class Representative Enhancement Payment; (4) approval and payment of Class
5 Counsel's Fees and Costs Payment. Class Counsel will file these motions and memoranda with
6 the Court after Defense Counsel's review. Class Counsel shall obtain a date with the Court for
7 a hearing on these motions.

8 91. Before the Final Approval Hearing, the Parties shall be entitled to file and serve
9 a response to any Class Member's objection to the Settlement. The Parties shall also be entitled
10 to engage in motion practice, unless specifically prohibited by or inconsistent with this
11 Agreement, regarding motions filed by Class Counsel pursuant to Paragraph 90.

12 92. If the Court fails to grant Final Approval of the Settlement, or grants Final
13 Approval conditioned on any material change to the Settlement, then Plaintiff and Defendant
14 will each have the unilateral right to void the Settlement in its entirety. Should this occur, the
15 Parties will have no further obligations under the Agreement, including any obligation by
16 Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been
17 payable under this Agreement, except that Defendant on the one hand, and Plaintiff on the other
18 hand, will jointly and equally pay the Settlement Administrator's reasonable fees and expenses
19 incurred as of the date that the Party exercises the right to void the Settlement under this
20 paragraph. The Court's refusal to approve the release language will not be considered a material
21 change to this Agreement, and the Parties agree to continue to be bound by the Agreement in
22 that event, but will meet and confer to resolve any necessary language of the release and to
23 amend this agreement as necessary.

24 93. Judgment and Continued Jurisdiction: Upon Final Approval of the Settlement
25 by the Court at or after the Final Approval Hearing, the Parties will present a Proposed Final
26 Order and Judgment to the Court for its approval. The Proposed Final Order and Judgment shall
27 be prepared by Class Counsel and provided to Defense Counsel for its approval. The Proposed
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Final Order and Judgment shall permanently bar all Class Members and PAGA Members (other than those Class Members who have submitted timely and valid requests to be excluded from the Action as provided in this Agreement) from prosecuting against Defendant and Releasees any of the Released Claims.

94. After the entry of the Judgment, the Court will have continuing jurisdiction over the Action solely for purposes of: (a) enforcing the Settlement, (b) settlement administration matters, and (c) such post-Judgment matters as may be appropriate under court rules or applicable law.

95. Waiver of Certain Appeals: The Parties, including Plaintiff, Defendant, Class Members who did not validly exclude themselves from the Settlement, Class Counsel, and Defense Counsel agree to waive all rights to appeal from the Judgment; except, however, that either party may appeal any court order or Judgment that materially alters the Settlement Agreement's terms. If an appeal is taken from the Judgment, the time for consummation of the Settlement (including making any payments under the Settlement) will be suspended until such time as the appeal is fully and finally resolved and the Judgment, consistent with the terms of this Agreement, becomes Final.

96. Vacating, Reversal, or Material Modification of Judgment on Appeal or Review: If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, writ, application, or appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then Plaintiff and Defendant will each have the unilateral right to void the Settlement, which the Party must do by giving written notice to the other Parties, the reviewing court, and the Court, not later than fourteen (14) days after the reviewing court's decision vacating, reversing, or materially modifying the Judgment becomes final. The Party exercising its right to unilaterally void the Settlement pursuant to this provision agrees to pay any fees owing to the Settlement Administrator for services rendered. A vacation, reversal, or modification of the Court's award

1 of the Class Representative Enhancement Payment or the Class Counsel's Fees and Costs
2 Payment will not constitute a vacation, reversal, or material modification of the Judgment within
3 the meaning of this paragraph, and shall not render the Settlement voidable.

4 **RELEASE OF CLAIMS**

5 97. Release by Settlement Class: Upon the completing funding of the Gross
6 Settlement Amount Defendant, Plaintiff and each Class Member who has not been excluded
7 from the Settlement, without the need to manually sign a release document, in exchange for the
8 consideration recited in this Agreement, on behalf of himself or herself and on behalf of his/her
9 current, former, and future heirs, executors, administrators, attorneys in fact, agents, and
10 assigns, shall and does hereby fully and finally release Defendant and the other Released Parties
11 from those claims based upon the facts and/or legal theories/allegations alleged in the operative
12 Complaint in this Action, or that could have been brought, including but not limited to the following
13 claims: (i) failure to pay all regular wages, minimum wages and overtime wages due (Labor Code §§
14 510, 1194, 1197, 1197.1, 1198); (ii) failure to provide meal periods or compensation in lieu thereof
15 (Labor Code §§ 226.7 and 512); (iii) failure to provide rest periods or compensation in lieu thereof
16 (Labor Code § 226.7); (iv) failure to pay timely wages at time of termination or resignation (Labor Code
17 §§ 201, 202, 203); (v) failure to provide itemized wage statements (Labor Code § 226(a)); (vi) failure to
18 reimburse for necessary business expenditures (Labor Code §§ 2800, 2802); (vii) unfair business
19 practices that could have been premised on the claims, causes of action or legal theories of relief
20 described above or any of the claims, causes of action or legal theories of relief pleaded in the operative
21 Complaint; and (v) all damages, penalties, restitution, attorneys' fees, interests, and other amounts
22 recoverable in connection with the above legal authorities and/or claims for relief under local, California,
23 and federal law. (collectively, the "RELEASED CLAIMS"). The period of the RELEASED
24 CLAIMS shall be the Class Period. The *res judicata* effect of the Judgment will be the same as
25 that of this Agreement.

26 98. Plaintiff and the Class Members may hereafter discover facts or legal arguments in
27 addition to or different from those they now know or currently believe to be true with respect to the
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claims, causes of action and legal theories of recovery in the Actions which are the subject matter of the RELEASED CLAIMS. Regardless, the discovery of new facts or legal arguments shall in no way limit the scope or definition of the RELEASED CLAIMS, and by virtue of this Agreement, Plaintiff and the Class Members shall be deemed to have, and by operation of the final judgment approved by the Court, shall have, fully, finally, and forever settled and released all of the RELEASED CLAIMS against the RELEASED PARTIES as defined in this Agreement.

99. Released PAGA Claims: Upon the complete funding of the Gross Settlement Amount by Defendant, Plaintiff, the LWDA, the State of California, and all PAGA Members, on behalf of themselves and their former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Defendant and the Released Parties for PAGA Claims that were alleged or could have been sought by the Labor Commissioner based on the PAGA Period facts and/or legal theories/allegations stated in the operative complaint or Plaintiff's pre-filing letter to the LWDA, including (i) failure to pay all regular wages, minimum wages and overtime wages due (Labor Code §§ 510, 1194, 1197, 1197.1, 1198); (ii) failure to provide meal periods or compensation in lieu thereof (Labor Code §§ 226.7 and 512); (iii) failure to provide rest periods or compensation in lieu thereof (Labor Code § 226.7); (iv) failure to pay timely wages at time of termination or resignation (Labor Code §§ 201, 202, 203); (v) failure to provide itemized wage statements (Labor Code § 226(a)); (vi) failure to reimburse for necessary business expenditures (Labor Code §§ 2800, 2802); and all attorneys' fees recoverable in connection with such claims ("PAGA RELEASED CLAIMS"). The Period of the PAGA RELEASED CLAIMS shall be the PAGA Period.

100. General Release by Plaintiff: Upon the complete funding of the Gross Settlement Amount by Defendant, Plaintiff Gomez agrees, in addition to the Settlement Class RELEASED CLAIMS and PAGA RELEASED CLAIMS described above, to release all claims, whether known or unknown, under federal, state, or local law, against Defendant and all Releasees through the date this Settlement is signed by Plaintiff ("Plaintiff's Released Claims"). This includes, but is not limited to, all claims arising from or based on Plaintiff's employment with Defendant, or separation from employment with Defendant, as well as any claims attributable

1 to: common law; contract, quasi-contract or tort; unpaid salary, compensation or benefits; the
2 Employee Retirement Income Security Act of 1974, as amended; the Internal Revenue Code of
3 1986, as amended; harassment, discrimination or retaliation under Title VII of the Civil Rights
4 Act of 1964, the Civil Rights Act of 1991, the Americans With Disabilities Act, Section 1981
5 of the Civil Rights Act of 1866; age discrimination under the Age Discrimination in
6 Employment Act, as amended by the Older Workers Benefit Protection Act of 1990; the Federal
7 Medical Leave Act; the laws of California; the California Labor, Government and/or Business
8 and Professions Codes including but not limited to California Fair Employment and Housing
9 Act, the California Family Rights Act, and the California Unfair Business Practices Act; the
10 California Constitution; the California Consumer Credit Reporting Agencies Act; any federal,
11 state, or local employment, discrimination, harassment, or retaliation law, regulation, or
12 ordinance relating to employment or separation from employment. This general release also
13 includes the RELEASED CLAIMS as set forth in Paragraph 97 above. This includes a waiver
14 of Plaintiff's right to appeal any and all rulings by the Court in this case and claims that Plaintiff
15 knew about and claims that Plaintiff may not know about. Plaintiff understands that this release
16 includes unknown claims and that he is, as a result, waiving all rights and benefits afforded by
17 §1542 of the California Civil Code, which provides:

18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
19 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
20 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
21 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
22 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
23 DEBTOR OR RELEASED PARTY.

24 Specifically excluded from Plaintiff's Released Claims are any claims that cannot be
25 released as a matter of law, such as claims for workers' compensation benefits or unemployment
26 benefits.

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MISCELLANEOUS TERMS

101. Amended Judgment: If any amended judgment is required under Code of Civil Procedure §384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

102. Circular 230 Disclaimer: Each Party to this Agreement (for purposes of this section, the “acknowledging party” and each Party to this Agreement other than the acknowledging party, an “other party”) acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

103. No Prior Assignments: The Parties and their respective counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

104. Neutral Employment Reference: Defendant agrees that it will adopt a neutral reporting policy regarding any future employment references related to Plaintiff. In the event

1 that any potential or future employers of Plaintiff requests a reference regarding Defendant's
2 employment of Plaintiff, Defendant shall only provide the requested Plaintiff's dates of
3 employment and job titles during employment. Defendant shall not refer to the Action or this
4 Settlement.

5 105. Nullification of Settlement Agreement: In the event that: (a) the Court does not
6 finally approve the Settlement as provided herein; (b) the Court strikes or does not approve any
7 material term of this Settlement Agreement; or (c) the Settlement does not become final as
8 written and agreed to by the Parties for any other reason, then this Settlement Agreement, and
9 any documents generated to bring it into effect, will be null and void, all amounts deposited into
10 the QSF will be returned to Defendant, and the Parties shall be returned to their original
11 respective positions. Any order or judgment entered by the Court in furtherance of this
12 Settlement Agreement will likewise be treated as void from the beginning. Should the Court
13 fail to approve this Settlement for any reason, the Parties agree that they will return to and attend
14 mediation with a mutually agreed Mediator in an effort to reach a settlement that may be
15 approved by the Court.

16 106. Exhibits Incorporated by Reference: The terms of this Settlement include the
17 terms set forth in any attached Exhibits, which are incorporated by this reference as though fully
18 set forth herein. Any Exhibits to this Settlement are an integral part of the Settlement.

19 107. Entire Agreement: After this Agreement is signed and delivered by all Parties and
20 their counsel, this Settlement Agreement and any attached Exhibits will constitute the entirety
21 of the Parties' agreement relating to the Settlement. It it will then be deemed that no oral
22 representations, warranties, covenants, or inducements have been made to any Party concerning
23 this Agreement or its exhibits other than the representations, warranties, covenants, and
24 inducements expressly stated in this Agreement and its exhibits.

25 108. Amendment or Modification of Agreement: This Settlement Agreement, and any
26 and all parts of it, may be amended, changed, modified, or waived only by an express written
27 instrument signed by all Parties or their successors-in-interest.

1 109. Binding on Successors and Assigns: This Settlement Agreement will be binding
2 upon, and inure to the benefit of, the successors of each of the Parties hereto.

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

6 111. Execution and Counterparts: This Settlement Agreement may be executed in one
7 or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes
8 of this Agreement shall be accepted as an original. All executed counterparts and each of them,
9 will be deemed to be one and the same instrument provided that counsel for the Parties will
10 exchange among themselves original signed counterparts. Any executed counterpart will be
11 admissible in evidence to prove the existence and contents of this Agreement.

12 112. Acknowledgement that the Settlement is Fair and Reasonable: The Parties
13 believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action
14 and have arrived at this Settlement after arm's-length negotiations and in the context of
15 adversarial litigation, taking into account all relevant factors, present and potential. The Parties
16 further acknowledge that they are each represented by competent counsel and that they have
17 had an opportunity to consult with their counsel regarding the fairness and reasonableness of
18 this Settlement.

19 113. Invalidity of Any Provision: Before declaring any provision of this Agreement
20 invalid, the Court will first attempt to construe the provision as valid to the fullest extent
21 possible consistent with applicable precedents so as to define all provisions of this Agreement
22 valid and enforceable.

23 114. Non-Admission of Liability: The Parties enter into this Agreement to resolve the
24 dispute that has arisen between them and to avoid the burden, expense, and risk of continued
25 litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, it
26 has violated any federal, state, or local law; violated any regulations or guidelines promulgated
27 pursuant to any statute or any other applicable laws, regulations, or legal requirements; breached
28

any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to their employees. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendant of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

115. Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any other Releasee, including, but not limited to, evidence of a presumption, concession, indication or admission by Defendant or any of the Releasees of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against Defendant or any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal, or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.

116. Notwithstanding any other provision of this Agreement, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings to enforce any or all terms of this Agreement, or in defense against any claims released or barred by this Agreement.

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

118. Waiver: No waiver of any condition or covenant contained in this Settlement

Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

119. Dispute About Terms: Should a dispute arise about the terms of this Agreement, such disputes shall be submitted to Paul Grossman for consultation.

120. Enforcement Action: In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

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

122. Representation by Counsel: The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel and reviewed in full. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the Agreement.

123. All Terms Subject to Final Court Approval: All amounts and procedures described in this Settlement Agreement herein will be subject to final Court approval.

124. Cooperation and Execution of Necessary Documents: The Parties agree to cooperate to promote participation in the Settlement, and in seeking court approval of the Settlement. The Parties agree not to take any action to encourage any Class Members to request

1 exclusion of and/or object to the Settlement. Defendant agrees not to obtain any settlement
2 agreement waivers, *Pick-Up Stix* agreements, or arbitration agreements from any Class Member
3 prior to the funding of the Gross Settlement Amount concerning claims released via this
4 Agreement, or enter into any arbitration agreement with any Class Member that covers the
5 claims released via this Agreement during the Settlement approval process prior to the funding
6 of the Gross Settlement Amount and that the Parties will work in good faith to reach an
7 agreement approved by the Court.

8 125. Confidentiality: The Parties agree to keep the terms of the Settlement
9 confidential until the filing of Plaintiff's Preliminary Approval Motion. The Parties agree that
10 they will not issue any press releases, initiate any contact with the press, respond to any press
11 inquiry or have any communication with the press about the fact, amount or terms of the
12 Settlement Agreement. Nothing in this Settlement Agreement shall limit Defendant's ability to
13 fulfill disclosure obligations reasonably required by law or in furtherance of business purposes,
14 including the fulfillment of obligations stated in this Settlement Agreement or limit Class
15 Counsel's communications with the Class Members in furtherance of approval of this
16 Settlement.

17 126. Stay of Litigation: The Parties agree that upon the execution of this Agreement
18 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties
19 further agree that upon the signing of this Agreement that pursuant to CCP § 583.330 the date
20 to bring a case to trial under CCP § 583.310 is extended for the entire period of this settlement
21 process.

22 127. Calendar days: Unless otherwise noted, all reference to "days" in this Agreement
23 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
24 weekend or federal legal holiday, such date or deadline shall be on the first business day
25 thereafter.

26 128. Binding Agreement: The Parties warrant that they understand and have full
27 authority to enter into this Settlement, and further intend that this Settlement Agreement will be
28

fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any settlement confidentiality provisions that otherwise might apply under federal or state law.

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

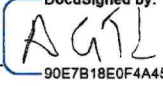
To Class Counsel: Heather Davis, Amir Nayebdadash, Priscilla Gamino, of Protection Law Group, LLP, 237 California Street, El Segundo, California 90245.

To Defense Counsel: Bruno W. Katz of Wilson, Elser, Moskowitz, Edelman & Dicker LLP, 401 West A Street, Suite 1900, San Diego, CA 92101.

Dated: 3/22/2024

PLAINTIFF

By: _____

DocuSigned by:

90E7B18E0F4A45F...
Adrian Gomez

Dated: 4/9/24

DEFENDANT

**NEXT LEVEL CONSTRUCTION SERVICES,
INC.**

By: _____

Name: Kevin Fox

Title: President