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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

LAUREN FLETCHER HERNANDEZ,
individually, and on behalf of all others
similarly situated,

Plaintiff,

v.

FACEY MEDICAL FOUNDATION, a
corporation; FACEY MEDICAL GROUP, a
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 20STCV41624

CLASS ACTION

[Assigned to: Hon. Carolyn B. Kuhl, Dept.
12]

**DECLARATION OF JUSTIN F.
MARQUEZ IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

[Filed concurrently with: Plaintiff's Notice of
Motion and Motion for Preliminary Approval
of Class Action Settlement, Memorandum of
Points and Authorities; Declaration of Lauren
Fletcher Hernandez; Declaration of Amanda
Rivera; Declaration of Ilbret Pourmanafy; and
[Proposed] Order]

PRELIMINARY APPROVAL HEARING

Date: September 27, 2023
Time: 11:00 a.m.
Dept: 12

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I, Justin F. Marquez, declare as follows:

1. I am admitted, in good standing, to practice as an attorney in the State of California, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Southern, Eastern, and Northern Districts of California. I am a Senior Partner at Wilshire Law Firm, PLC, counsel of record for Plaintiffs Lauren Fletcher Hernandez, Amanda Rivera, and Ilbret Pourmanafy (collectively, “Plaintiffs”). I have personal knowledge of the facts set forth in this declaration and could and would competently testify to them under oath if called as a witness. This Declaration is submitted in support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement.

CASE BACKGROUND

2. This is a wage and hour class and Private Attorneys General Act (“PAGA”) (Cal. Lab. Code §§ 2699, *et seq.*) representative action. Plaintiffs and the putative class members worked in California as hourly-paid or non-exempt employees for Defendant Facey Medical Foundation (“Defendant”) during the class period. Defendant is a medical group that provides medical services to patients throughout Southern California.

3. Plaintiffs allege that Defendant's payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. Plaintiffs allege that Defendant failed to pay for all hours worked and failed to provide employees with legally compliant meal and rest periods. Based on these allegations, Plaintiffs assert claims against Defendant for failure to pay minimum and straight time wages, failure to pay overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay all final wages at termination, failure to provide accurate itemized wage statements, unfair business practices, and civil penalties under PAGA.

4. On October 30, 2020, Plaintiff Hernandez filed a putative wage and hour class action complaint against Defendant for: (1) failure to pay minimum and straight time wages (Labor Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§ 1194 and 1198); (3) failure to provide meal periods (Labor Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Labor Code §§ 226.7); (5) failure to timely pay final wages at termination (Labor Code §§ 201-203); (6) failure to provide accurate itemized wage statements

(Labor Code § 226); (7) failure to indemnify employees for expenditures (Labor Code § 2802); and (7) unfair business practices (Business and Professions Code 17200, *et seq.*) (*Id.* at ¶ 4.) On November 19, 2020, Plaintiff Hernandez also sent a notice to Defendant and the California Labor & Workforce Development Agency (“LWDA”) alleging similar wage and hour violations pursuant to the PAGA. Attached as **Exhibit 1** is a true and correct copy of Plaintiff Hernandez’s Notice of Labor Code Violations and PAGA Penalties. Plaintiff Hernandez also paid the \$75.00 filing fee on November 19, 2020.

5. On May 7, 2021, Plaintiff filed a First Amended Class & Representative Action Complaint, which added a claim for civil penalties under the PAGA and modified the starting date for the class period to January 16, 2019 in light of a prior wage-and-hour class action settlement involving Providence Little Company of Mary Foundation, which provided releases for hourly-paid, non-exempt employees of Facey through January 15, 2019.

6. On April 7, 2021, Plaintiff Hernandez dismissed Defendant Facey Medical Group from this action.

7. On August 25, 2022, Plaintiff Hernandez filed a motion for class certification.

8. Plaintiff Hernandez will concurrently file a Joint Stipulation to File the Second Amended Complaint adding Plaintiff Rivera and Plaintiff Pourmanafy as plaintiffs and class representatives to the current action.

DISCOVERY AND INVESTIGATION

9. Following the initial Status Conference, Plaintiffs propounded formal written discovery. After Plaintiffs filed the motion for class certification, the Parties agreed to stay briefing and hearing of the motion for class certification in exchange for participating in private mediation and engaging in informal discovery. In advance of mediation, Defendant produced a sample of timekeeping and pay records for the class members, which included time records and corresponding pay records for approximately 25% of the total shifts in the class period. Defendant also provided documents of its wage and hour policies and practices during the class period and information regarding the total number of current and former employees.

10. After reviewing documents regarding Defendant’s wage and hour policies and

1 analyzing Defendant's timekeeping and payroll records with the assistance of a retained expert,
2 Class Counsel was able to evaluate the probability of class certification, success on the merits, and
3 Defendant's maximum monetary exposure for all claims. Class Counsel also investigated the
4 applicable law regarding the claims and defenses asserted in the litigation. Class Counsel reviewed
5 these records and prepared a damage analysis prior to mediation.

6 SETTLEMENT NEGOTIATIONS

7 11. On January 9, 2023, the Parties participated in private mediation with experienced
8 class action mediator David Phillips, Esq. The mediation was conducted via Zoom. The settlement
9 negotiations were at arm's length and, although conducted in a professional manner, were
10 adversarial. The Parties went into the mediation willing to explore the potential for a settlement
11 of the dispute, but each side was also prepared to litigate their position through trial and appeal if
12 a settlement had not been reached.

13 12. After extensive negotiations and discussions regarding the strengths and
14 weaknesses of Plaintiffs' claims and Defendant's defenses, the mediator issued a mediator's
15 proposal that the Parties ultimately accepted. The Parties subsequently negotiated and drafted a
16 long-form agreement, the material terms of which are encompassed within the Settlement
17 Agreement. Attached as Exhibit 2 is a true and correct copy of the Stipulation and Settlement of
18 Class Action and Private Attorneys General Act Representative Claims and Class Notice
19 ("Settlement" or "Settlement Agreement").

20 13. The Parties used the Los Angeles Superior Court's Form Class Notice and model
21 long-form agreement. Attached as Exhibit 3 is a true and correct copy of a redlined version of the
22 Settlement Agreement, which shows changes made from the model long-form agreement.

23 14. Class Counsel submitted the proposed Settlement to the LWDA before filing the
24 Motion for Preliminary Approval.

25 15. I requested several bids from experienced class action settlement administrators to
26 handle the responsibilities of the Settlement Administrator under this Settlement. The Parties
27 accepted the bid of Apex Class Action ("Apex"). Apex's founder has numerous years of
28 experience in the field of Class Action Administration, particularly in the wage and hour arena. In

its bid, Apex agreed to cap its costs at \$17,490 for approximately 1,700 class members. A true and correct copy of the bid is attached hereto as **Exhibit 4**.

16. Plaintiffs do not have any interest, financial or otherwise, in the third-party administrator, Apex.

17. No one at Wilshire Law Firm, PLC (meaning the law firm itself and anyone employed at the law firm) has any interest, financial or otherwise, in the third-party administrator, Apex.

18. Wilshire Law Firm, PLC has no fee-splitting agreement with any other counsel in this case.

THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE

19. Class Counsel has conducted a thorough investigation into the facts of this case. Based on the foregoing discovery and their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members in light of all known facts and circumstances, the risk of significant delay, the defenses that could be asserted by Defendant both to certification and on the merits, trial risk, and appellate risk.

20. Based on an analysis of the facts and legal contentions in this case, documents and information from Defendant, I evaluated Defendant's maximum exposure. I took into account the risk of not having the claims certified and the risk of not prevailing at trial, even if the claims are certified. After using the data Defendant provided, including class member timekeeping and payroll records, as well as class member demographics (i.e., the number of class members, workweeks, and average total compensation of the class), with the assistance of a statistics expert, I created a damages model to evaluate the realistic range of potential recovery for the class. The damages model is based on the following benchmarks:

Total Class Members: 1,492

Terminated Class Members during 3-year statute: 524

Total Workweeks: 194,000

Total Shifts Worked by the Class: 848,423

Average Shift Length: 7.9 hours

PAGA Pay Periods: 93,605

PAGA-Eligible Employees: 1,460

Avg. Hourly Rate: \$26.19

21. Based on Plaintiffs' discovery and investigation, Class Counsel reached the conclusion that: Defendant failed to pay class members for all hours worked, including overtime wages; Defendant had a policy and practice of not providing its employees with California compliant meal and rest periods which they did not pay appropriate premiums for; and Defendant failed to indemnify class members for all necessary business expenses incurred. Defendant denies these claims. Defendant also contends that class action relief was limited by a prior wage-and-hour class action settlement.

22. Plaintiffs allege that Defendant failed to pay for all hours worked, including minimum, straight time, and overtime wages, by required class members to work off-the-clock, unpaid. For purposes of calculating Defendant's liability for this claim, I estimate that Defendant's maximum potential exposure by assuming that 50% of the unpaid work time should have been paid at the overtime rate and I assumed, as based on the experiences from Plaintiffs and other class members, that Defendant is liable for approximately 30 minutes of unpaid worktime per workweek. This results in an estimate of \$3,175,537.50 (194,000 workweeks * \$26.19 average hourly rate * 1.25 weighted overtime rate when considering the unpaid work was 50% overtime * 0.5 hours of unpaid work per workweek), but I discounted this figure by 90% to account of the prior class action settlement and the difficulty of prevailing on a motion for class certification and a trial on the merits because liability depends on whether Defendant knew or should have known that class members were working off-the-clock, yielding a **realistic damages estimate of \$317,553.75.**¹

23. Plaintiffs also allege that Defendant failed to pay for all recorded hours worked

¹ A 90% discount for risk at certification and trial is reasonable because the Judicial Council of California found that only 21.4% of all class actions were certified either as part of a settlement or as part of a contested certification motion. (See Findings of the Study of California Class Action Litigation, 2000-2006, available at [http:// www.courts.ca.gov/documents/class-action-lit-study.pdf](http://www.courts.ca.gov/documents/class-action-lit-study.pdf).)

1 based on Defendant's practice of rounding time entries that was in effect for a majority of the class
2 period. For purposes of calculating Defendant's liability based its rounding practice, my expert
3 analyzed the sampling of time and pay records and found that, using an extrapolated damages
4 model, employees were underpaid an approximate net amount of 2,174 hours. When factoring in
5 the occasions in which the unpaid rounding time should have been paid at overtime and double
6 overtime rates, my expert concluded that Defendant's rounding practice resulted in approximately
7 \$119,195 of unpaid wages), but I discounted this figure by 50% to account for the difficulty of
8 prevailing on a motion for class certification and a trial on the merits, yielding a **realistic damages**
9 **estimate of \$59,597.50.**

10 24. With respect to the meal period claim, Plaintiffs allege that Defendant required them
11 and similarly situated class members to perform work duties during their allocated meal periods
12 and/or to take meal periods after having worked at least five hours in a workday. Plaintiffs also
13 allege that Defendant failed to provide compliant meal periods. Based on the records produced,
14 and as corroborated by Plaintiffs, my expert found a potential 8.5% meal period violation rate for
15 the class period. However, when factoring in the existence of meal period waivers and Defendant's
16 payment of numerous meal period premiums, the rate of unpaid premiums as based on the records
17 dropped to approximately 1.8%, yielding a maximum damages estimate of approximately
18 378,801.05 ([803,532 shifts in excess of five hours] * \$26.19 average hourly rate * 1.8%); however,
19 I discounted this figure by 80% to account for the difficulty of certifying and proving meal period
20 claims at trial, yielding a **realistic damages estimate of \$75,760.21.**

21 25. With respect to the rest period claim, Plaintiff alleges that Defendant required him
22 and similarly situated class members to work in lieu of taking rest periods. Assuming a 25%
23 violation rate for the class period as based on Plaintiff's and other class members' experience
24 working for Defendant, Defendant's potential liability for the rest period claim is \$5,506,938.56
25 ([841,075 shifts in excess of 3.5 hours] * \$26.19 average hourly rate * 25%); however, I discounted
26 this figure by 90% to account for the difficulty of certifying and proving rest period claims,
27 particularly because rest periods do not have to be recorded, to account for the possibility of class
28 members voluntarily choosing to forego a rest period, and to account for the prior class action

1 settlement, yielding a **realistic damages estimate of \$550,693.85.**

2 26. With respect to the business expense claim, Plaintiffs allege that Defendant required
3 them and similarly situated class members to incur costs for work attire, such as personal protective
4 equipment, and equipment, including personal cell phones, in order to perform their job duties.
5 Based on Plaintiffs' and other class members' experience working for Defendants, Class Counsel
6 assumed an average potential of \$10 per workweek, which would result in Defendant's potential
7 liability for the business expense claim being \$1,940,000 (194,000 workweeks * \$10); however,
8 Class Counsel discounted this figure by 90% to account for the difficulty of certifying and proving
9 business expense claim, particularly because Defendant may be able to show that such expenses
10 did not occur for all class members and, even if the expenses did occur, the costs were not necessary
11 for class members to perform their job duties. Based on this discount, **realistic damages estimate**
12 **for this claim is \$194,000.**

13 27. In sum, I estimated that Plaintiffs' maximum recovery for the non-penalty claims is
14 \$11,120,472.10, but, after factoring in the risk and uncertainty of prevailing at certification and
15 trial, I estimate that Plaintiffs' realistic estimated recovery for the non-penalty claims is
16 \$1,197,605.31.

17 28. With respect to Plaintiff's derivative claims for statutory and civil penalties,
18 Plaintiff estimated that Defendant's realistic potential liability is \$300,000. While Defendant's
19 maximum potential liability for waiting time penalties is \$3,327,694 based on approximately 524
20 terminated class members during the 3-year statute, \$5,840,000 for inaccurate wage statements
21 based on approximately 1,460 class members who worked 93,605 pay periods within the 1-year
22 statute, and \$9,360,500 for PAGA violations based on the Court assessing a \$100 penalty for initial
23 violations for all 93,605 pay periods within the 1-year statute, I believe that it would be unrealistic
24 to expect the Court to award the full \$18,528,194 in penalties given Defendant's defenses, the
25 contested nature of Plaintiffs' claims, and the discretionary nature of penalties. Additionally, I
26 have taken into account the prior class action settlement, which resulted in Defendant improving
27 its labor code compliance practices. Considering that the underlying claims are realistically
28 estimated to be \$1,197,605.31, such a disproportionate award would also raise due process

1 concerns. Weighing these factors and applying a discount to account for the risk and uncertainty
2 of prevailing at trial, I arrived at \$240,000.00 for statutory and civil penalties, which amounts to
3 approximately 20% of the realistic damages estimate for the non-penalty claims.

4 29. Using these estimated figures, Plaintiff predicted that the realistic maximum
5 recovery for all claims, including penalties, would be \$1,427,605.32. This means that the
6 \$750,000.00 settlement figure represents 52.5% of the realistic maximum recovery ($\$750,000.00 /$
7 $\$1,427,605.32 = 52.5\%$). Considering the risk and uncertainty of prevailing at class certification
8 and at trial on the claims, this is a good result for the Class.² This result is also significant
9 considering that the class period is limited by a prior class action settlement, which resulted in
10 Defendant improving much of its labor code practices. Indeed, because of the proposed Settlement,
11 class members will receive timely, guaranteed relief that they likely would have been unable to
12 achieve on their own, and will avoid the risk of an unfavorable judgment.

13 30. While Plaintiffs are confident in the merits of their claims, a legitimate controversy
14 exists as to each cause of action. Plaintiffs also recognize that proving the amount of wages due
15 to each Class Member would be an expensive, time-consuming, and uncertain proposition.

16 31. This Settlement avoids the risks and the accompanying expense of further litigation.
17 Although the Parties had engaged in a significant amount of investigation, informal discovery, and
18 class-wide data analysis, the Parties had not yet completed briefing the motion for class
19 certification. Defendant would have likely gathered declarations from putative class members to
20 oppose the motion for class certification, and Plaintiffs would have likely deposed these declarants.
21 Moreover, preparation for class certification and a trial remained for the Parties, as well as the
22 prospect of appeals in the wake of a disputed class certification ruling for Plaintiffs and/or adverse
23 summary judgment ruling. Had the Court certified any claims, Defendant could move to decertify
24

25 ² See, e.g., *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* (E.D. Cal. Aug. 21, 2019) 2019
26 WL 3943859 at *8 (granting preliminary approval where the proposed allocation to settle class
27 claims was between 9.53 percent of Plaintiffs' maximum recovery); *Bravo v. Gale Triangle, Inc.*
28 (C.D. Cal. Feb 16, 2017) 2017 WL 708766 at * 10 (finding that "a settlement for fourteen percent
recovery of Plaintiffs' maximum recovery is reasonable"); *In re Omnivision Techs., Inc.* (N.D. Cal.
2008) 559 F.Supp.2d 1036, 1042 (approving settlement amount that "is just over 9% of the
maximum potential recovery asserted by either party.").

1 the claims or compel to arbitration class members that purportedly signed arbitration agreements.
2 As a result, the Parties would incur considerably more attorneys' fees and costs through trial.

3 32. The Net Settlement Amount available for Class Member settlement payments is
4 estimated to be \$388,750 for a class of 1,492 persons.³ As a result, each Settlement Class Member
5 is eligible to receive an **average net benefit of approximately \$260.56**.

6 33. The proposed Settlement of \$750,000.00, therefore, represents a substantial
7 recovery when compared to Plaintiffs' reasonably forecasted recovery. When considering the risks
8 of litigation, the uncertainties involved in achieving class certification, the burdens of proof
9 necessary to establish liability, the probability of appeal of a favorable judgment, and the limited
10 class period due to a prior class action settlement, it is clear that the settlement amount of
11 \$750,000.00 is within the "ballpark" of reasonableness, and preliminary settlement approval is
12 appropriate.

13 ENHANCEMENT AWARD FOR PLAINTIFF IS REASONABLE

14 34. Class Counsel represent that Plaintiffs devoted a great deal of time and work
15 assisting counsel in the case, communicated with counsel very frequently for litigation and to
16 prepare for mediation, and was frequently in contact with Class Counsel during the mediation.
17 Plaintiffs' requested service award is reasonable particularly in light of the substantial benefits
18 Plaintiffs generated for all class members.

19 35. Throughout this Litigation, Plaintiffs, who are former employees of Defendant, have
20 cooperated immensely with my office and have taken many actions to protect the interests of the
21 class. Plaintiffs provided valuable information regarding the "off-the-clock," meal period, and rest
22 period claims. Plaintiffs also informed my office of developments and information relevant to this
23 action, participated in decisions concerning this action, made themselves available to answer
24 questions during the mediation, and provided my office with the names and contact information of
25 potential witnesses in this action. Before we filed this case, Plaintiff Hernandez provided my office

26
27 ³ The Net Settlement Amount is: \$750,000.00 minus \$250,000.00 for Class Counsel's
28 attorneys' fees, minus \$50,000.00 for Class Counsel's litigation expenses, minus \$20,000.00 in
administration costs, minus \$18,750.00 for the PAGA payment portion to the LWDA, and minus
\$22,500.00 for the class representative service awards to Plaintiffs.

1 with documents regarding the claims alleged in this action. Additionally, Plaintiff Hernandez made
2 herself available to prepare for and be deposed and assisted with the filing of the motion for class
3 certification. Plaintiffs, including Plaintiff Rivera and Plaintiff Pourmanafy, also assisted with
4 resolving the case at mediation, including providing additional information about the claims. The
5 information and documentation provided by all Plaintiffs were instrumental in establishing the
6 alleged wage and hour violations in this action, and the recovery provided for in the Settlement
7 Agreement would have been impossible to obtain without Plaintiffs' participation.

8 36. At the same time, Plaintiffs faced many risks in adding themselves as the class
9 representative in this matter. Plaintiffs faced actual risks with his future employment, as putting
10 themselves on public record in an employment lawsuit could also very well affect their likelihood
11 for future employment. Furthermore, as part of this Settlement, Plaintiffs are executing a general
12 release of all claims against Defendant.

13 37. In turn, class members will now have the opportunity to participate in a settlement,
14 reimbursing them for alleged wage violations they may have never known about on their own or
15 been willing to pursue on their own. If these class members would have each tried to pursue their
16 legal remedies on their own, that would have resulted in each having to expend a significant amount
17 of their own monetary resources and time, which were obviated by Plaintiffs putting themselves
18 on the line on behalf of these other class members.

19 38. In the final analysis, this class action would not have been possible without the aid
20 of Plaintiffs, who put their own time and effort into this Litigation, sacrificed the value of their
21 own individual claims, and placed themselves at risk for the sake of the class members. The
22 requested service award for Plaintiffs for their service as the class representatives and for their
23 general release of all individual claims is a relatively small amount of money when the time and
24 effort put into the Litigation are considered and in comparison to enhancements granted in other
25 class actions. The requested incentive award is therefore reasonable to compensate Plaintiffs for
26 their active participation in this lawsuit. Indeed, in *Karl Adams, III, et al. v. MarketStar*
27 *Corporation*, et al., No. 2:14-cv-02509-TLN-DB, a wage and hour class action alleging that class
28 members were misclassified as exempt outside salespersons, I was co-lead Class Counsel and

1 helped negotiate a \$2.5 million class action settlement for 339 class members, and the court
2 approved a \$25,000.00 class representative incentive award for each named plaintiff.

3 THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

4 39. The Settlement provides for attorneys' fees payable to Class Counsel in an amount
5 up to 33.33% of the Settlement Amount or up to \$250,000.00, plus actual costs and expenses not
6 to exceed \$50,000.00. The proposed award of attorneys' fees to Class Counsel in this case can be
7 justified under either method – lodestar or percentage recovery. Class Counsel, however, intend
8 to base the proposed award of fees, costs and expenses on the percentage method as many of the
9 entries in the time records will have to be redacted to preserve attorney-client and attorney work
10 product privileges.

11 40. I am informed and believe that the fee and costs provision is reasonable. The fee
12 percentage requested is less than that charged by my office for most employment cases. My office
13 invested significant time and resources into the case, with payment deferred to the end of the case,
14 and then, of course, contingent on the outcome.

15 41. It is further estimated that my office will need to expend at least another 50 to 100
16 hours to monitor the process leading up to the final approval and payments made to the class. My
17 office also bears the risk of taking whatever actions are necessary if Defendant fails to pay.

18 42. The risk to my office has been very significant, particularly if we would not be
19 successful in pursuing this class action. In that case, we would have been left with no compensation
20 for all the time taken in litigating this case. Indeed, I have taken on a number of class action cases
21 that have resulted in thousands of attorney hours being expended and ultimately having
22 certification denied or the defendant company going bankrupt. The contingent risk in these types
23 of cases is very real and they do occur regularly. Furthermore, we were precluded from focusing
24 on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain.

25 43. Because most individuals cannot afford to pay for representation in litigation on an
26 hourly basis, Wilshire Law Firm, PLC represents virtually all of its employment law clients on a
27 contingency fee basis. Pursuant to this arrangement, we are not compensated for our time unless
28 we prevail at trial or successfully settle our clients' cases. Because Wilshire Law Firm, PLC is

1 taking the risk that we will not be reimbursed for our time unless our client settles or wins his or
2 her case, we cannot afford to represent an individual employee on a contingency basis if, at the
3 end of our representation, all we are to receive is our regular hourly rate for services. It is essential
4 that we recover more than our regular hourly rate when we win if we are to remain in practice so
5 as to be able to continue representing other individuals in civil rights employment disputes.

6 MY EXPERIENCE AND QUALIFICATIONS

7 44. Wilshire Law Firm, PLC was selected by Best Lawyers and U.S. News & World
8 Report as one of the nation's Best Law Firms since 2020 and is comprised of over 55 attorneys
9 and over 400 employees. Wilshire Law Firm, PLC is actively and continuously practicing in
10 employment litigation, representing employees in both individual and class actions in both state
11 and federal courts throughout California.

12 45. Wilshire Law Firm, PLC is qualified to handle this Litigation because its attorneys
13 are experienced in litigating Labor Code violations in both individual, class action, and
14 representative action cases. Wilshire Law Firm, PLC has handled, and is currently handling,
15 numerous wage and hour class action lawsuits, as well as class actions involving consumer rights
16 and data privacy litigation.

17 46. I graduated from the University of California, Los Angeles's College Honors
18 Program in 2004 with Bachelor of Arts degrees in History and Japanese, magna cum laude and Phi
19 Beta Kappa. As an undergraduate, I also received a scholarship to study abroad for one year at
20 Tokyo University in Tokyo, Japan. I received my Juris Doctor from Notre Dame Law School in
21 2008.

22 47. My practice is focused on advocating for the rights of consumers and employees in
23 class action litigation and appellate litigation. I am currently the primary attorney in charge of
24 litigating several class action cases in state and federal courts across the United States.

25 48. I have received numerous awards for my legal work. From 2017 to 2020, Super
26 Lawyers selected me as a "Southern California Rising Star," and in 2022 and 2023, I was selected
27 as a "Southern California Super Lawyer." I was selected as one of the "Best Lawyers in America"
28 in 2023. In 2016 and 2017, the National Trial Lawyers selected me as a "Top 40 Under 40"

1 attorney. I am also rated 10.0 (“Superb”) by Avvo.com.

2 49. I am on the California Employment Lawyers Association (“CELA”)’s Wage and
3 Hour Committee and Mentor Committee, and I was selected to speak at CELA’s 2019 Advanced
4 Wage & Hour Seminar on the topic of manageability of class actions. Since 2013, I have actively
5 mentored young attorneys through CELA’s mentorship program.

6 50. I am also a past member of the Consumer Attorneys of California (“CAOC”). In
7 2020, I was selected for a position on CAOC’s Board of Directors. I am also a past member of
8 CAOC’s Diversity Committee, and I helped assist the CAOC in defeating bills that harm
9 employees. Indeed, I recently helped assist Jacqueline Serna, Esq., Legislative Counsel for CAOC,
10 in defeating AB 443, which proposed legislation that sought to limit the enforceability of California
11 Labor Code § 226.

12 51. As the attorney responsible for day-to-day management of this matter at the
13 Wilshire Law Firm, PLC, I have over thirteen years of experience with litigating wage and hour
14 class actions. Over the last thirteen years, I have managed and assisted with the litigation and
15 settlement of several wage and hour class actions. In those class actions, I performed similar tasks
16 as those performed in the course of prosecuting this action. My litigation experience includes:

- 17 a. I served as lead or co-lead in negotiating class action settlements worth over \$10
18 million in gross recovery to class members for each year since 2020, including over
19 \$37.5 million in 2022 and over \$45 million in 2023.
- 20 b. I was part of the team of attorneys that prevailed in *Moore v. Centrelake Medical*
21 *Group, Inc.* (2022) 83 Cal.App.5th 515, the first California appellate decision in a
22 data breach class action holding that consumer plaintiffs adequately alleged injury
23 in fact under the benefit of the bargain theory and monitoring-costs theory.
- 24 c. In 2022, Top Verdict recognized Wilshire Law Firm and myself for having one case
25 in the Top 20 Labor & Employment Settlements (including number 19 for the \$1.6
26 million settlement in *Moreno v. Pretium Packaging, L.L.C.*) and four additional
27 cases in the Top 50 Labor & Employment Settlements (numbers 27, 30, 33, and 37).
- 28 d. To my knowledge, I am the only attorney to appear on each of the following Top

Verdict lists for 2018 in California: Top 20 Civil Rights Violation Verdicts, Top 20 Labor & Employment Settlements, and Top 50 Class Action Settlements.

- e. As lead counsel, on April 29, 2021, I prevailed against CVS Pharmacy, Inc. by winning class certification on behalf of hundreds of thousands of consumers for misleading advertising claims in *Joseph Mier v. CVS Pharmacy, Inc.*, U.S. Dist. Ct. C.D. Cal. no. SA CV 20-1979-DOC-(ADSx).
- f. As lead counsel, I prevailed against Bank of America by: winning class certification on behalf of thousands of employees for California Labor Code violations; defeating appellate review of the court’s order certifying the class; defeating summary judgment; and defeating a motion to dismiss. (*Frausto v. Bank of America, N.A.* (N.D. Cal. 2019) 334 F.R.D. 192, 2020 WL 1290302 (9th Cir. Feb. 27, 2020), 2019 WL 5626640 (N.D. Cal. Oct. 31, 2019), 2018 W.L. 3659251 (N.D. Cal. Aug. 2, 2018).). The decision certifying the class in *Frausto* is also discussed in *Class Certification Under Fed. R. Civ. P. 23 in Action by Information Technology or Call Center Employees for Violation of State Law Wage and Hour Rules*, 35 A.L.R. Fed. 3d Art. 8.
- g. I was the primary author of the class certification and expert briefs in *ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, a wage and hour class action for over 40,000 class members for off-the-clock, meal period, split shift, and reimbursement claims. *ABM Industries Overtime Cases* is the first published California appellate authority to hold that an employer’s “auto-deduct policy for meal breaks in light of the recordkeeping requirements for California employers is also an issue amenable to classwide resolution.” (*Id.* at p. 310.)⁴ Notably, the Court of Appeal also held that expert analysis of timekeeping records can also support the predominance requirement for class certification. (*Id.* at p. 310-11.) In 2021, the

⁴ As a California district court observed before the *ABM Industries Overtime* decision, “[t]he case law regarding certification of auto-deduct classes is mixed.” (*Wilson v. TE Connectivity Networks, Inc.* (N.D. Cal. Feb. 9, 2017) No. 14-CV-04872-EDL, 2017 WL 1758048, *7.)

case settled for \$140 million, making it one of the largest ever wage and hour class action settlements for hourly-paid employees in California.

- h. I briefed, argued, and won *Yocupicio v. PAE Group, LLC* (9th Cir. 2015) 795 F.3d 1057. The Ninth Circuit ruled in my client’s favor and held that non-class claims under the PAGA cannot be used to calculate the amount in controversy under the Class Action Fairness Act (“CAFA”). This case is cited in several leading treatises such as *Wright & Miller’s Federal Practice & Procedure*, and *Newberg on Class Actions*. In October 2016, the U.S. Supreme Court denied review of a case that primarily concerned *Yocupicio*. That effort was led by Theodore J. Boutrous, who brought the cert petition, with amicus support from a brief authored by Andrew J. Pincus.⁵ Considering that leading Supreme Court practitioners from the class action defense bar were very motivated in undermining *Yocupicio* case, but failed, this demonstrates the national importance of the *Yocupicio* decision.
- i. On December 13, 2018, the United States District Court granted final approval of the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global Services, LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 in which I served as lead counsel. In doing so, the Court found: “Class Counsel’s declarations show that the attorneys are experienced and successful litigators.” (*Id.* at p. *10.)
- j. *Gasio v. Target Corp.* (C.D. Cal. Sep. 12, 2014) 2014 U.S. Dist. LEXIS 129852, a reported decision permitting class-wide discovery even though the employer has a lawful policy because “[t]he fact that a company has a policy of not violating the law does not mean that the employees follow it, which is the issue here.” The court also ordered defendant to pay for the cost of *Belaire-West* notice.
- k. In 2013, I represented a whistleblower that reported that his former employer was defrauding the State of California with the help of bribes to public employees. The

⁵ <http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro>.

case, a false claims (*qui tam*) action, resulted in the arrest and criminal prosecution of State of California employees by the California Attorney General’s Office.

1. In 2013, I was part of a team of attorneys that obtained conditional certification for over 2,000,000 class members in a federal labor law case for misclassification of independent contractors that did crowdsourced work on the Internet, *Otey v. CrowdFlower, Inc.*, N.D. Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the following pro-plaintiff reported decisions:

i. 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013) (holding that an unaccepted Rule 68 offer doesn’t moot plaintiff’s claims, and granting plaintiff’s motion to strike defendant’s affirmative defenses based on *Twombly/Iqbal*).

ii. 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013) (order granting conditional collective certification).

iii. 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013) (affirming the magistrate judge’s discovery ruling which held that “evidence of other sources of income is irrelevant to the question of whether a plaintiff is an employee within the meaning of the FLSA”).

iv. 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013) (granting broad discovery because “an FLSA plaintiff is entitled to discovery from locations where he never worked if he can provide some evidence to indicate company-wide violations”).

m. From 2012 to 2013, I was part of a team of attorneys that obtained class certification for over 60,000 class members for off-the-clock claims, *Linares v. Securitas Security Services USA, Inc.*, Los Angeles Superior Court. Case No. BC416555. We also successfully opposed subsequent appeals to the California Court of Appeal and California Supreme Court.

52. Benjamin H. Haber is a seventh-year Associate Attorney at Wilshire Law Firm. His current hourly rate is \$650. He graduated from the University of California, Los Angeles, with a

1 Bachelor of Arts in Political Science, and received his Juris Doctor from the University of
2 California, Hastings College of the Law in 2016. During law school, he was a member of the
3 executive board for the Hastings Law Journal and student mediator at the San Francisco Superior
4 Court, Small Claims Division. He was admitted to practice law in the State of California in 2017.
5 Since graduating from law school, he has focused his legal work primarily on wage-and-hour
6 litigation and has helped obtain dozens of settlements on behalf of tens of thousands of workers in
7 California.

8 53. Daniel J. Kramer is a seventh-year Associate Attorney at Wilshire Law Firm,
9 PLC. His current contingent billing rate for this case is \$600 per hour, which is consistent with his
10 level of experience. He was admitted to practice law in the State of California and the Central,
11 Eastern, and Northern Districts of California. He graduated from Stanford University with a
12 Bachelor of Arts in History and Political Science, and received his Juris Doctor from Loyola Law
13 School, Los Angeles in 2016. During law school, he was a research editor for the Loyola of Los
14 Angeles International and Comparative Law Review. Before joining Wilshire Law Firm, he
15 practiced briefly at a firm that focused on municipal law and code enforcement and then moved to
16 a respected plaintiff-side firm to practice wage and hour class action litigation. He has several
17 years of work experience litigating wage and hour class actions.

18 54. My current contingent billing rate of \$850.00 per hour is consistent with my practice
19 area, lead appellate experience in the Ninth Circuit Court of Appeals, numerous awards received,
20 legal market and accepted hourly rates:

- 21 a. In the December 8, 2008 article “Billable Hours Aren’t the Only Game in Town
22 Anymore,” NATIONAL LAW JOURNAL, the following hourly billing rates were
23 reported by Sheppard, Mullin, Richter & Hampton, a leading firm in the defense of
24 wage and hour class actions that I opposed when litigating wage and hour class
25 actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year - \$310, 3rd
26 Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435,
27 8th Year - \$455. I am a 14th year attorney and Senior Partner, with most of my
28 experience in class action litigation as a primary practice area. Having successfully

1 briefed and argued a published appeal in the Ninth Circuit Court of Appeals
2 involving CAFA and PAGA, having experience certifying large class actions
3 (including *ABM Industries Overtime Cases*, which was decided on appeal), and
4 having received numerous awards for my legal work, my hourly rate should be
5 adjusted upward.

- 6 b. On May 6, 2022 the Hon. Jay A. Garcia-Gregory of the United States District Court
7 in Puerto Rico approved my \$850 hourly rate when he granted final approval of the
8 class action settlement in *Serrano v. Inmediata Corp.*, No. 3:19-cv-01811-JAG, Dkt.
9 57 (U.S. Dist. Ct. P.R. May 6, 2022).
- 10 c. On September 9, 2021, the Hon. Peter Wilson of the Orange County Superior Court
11 approved my \$800 hourly rate when he granted final approval of the class action
12 settlement in *Ricardo Campos Hernandez v. Adams Iron Co., Inc.*, Case No. 30-
13 2019-01066522-CU-OE-CXC.
- 14 d. On August 6, 2021, the Hon. Stanley Blumenfeld, Jr. of the United States District
15 Court granted final approval of the \$1,600,000 class action settlement in *Carlos*
16 *Moreno v. Pretium Packaging, Inc.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-
17 SB-DFM, 2021 WL 3673845 in which I served as lead counsel. In doing so, the
18 Court approved my then \$750 hourly rate after finding it was “reasonable, given the
19 qualifications of the attorneys who worked on this matter.” (*Id.* at p. *3.)
- 20 e. On January 19, 2021, the Hon. Elihu M. Berle of the Los Angeles County Superior
21 Court approved my \$750 hourly rate when he granted final approval of the class
22 action settlement in *Faye Zhang v. Richemont North America, Inc.*, Case No.
23 19STCV32396.

24 I declare under penalty of perjury under the laws of the State of California and the United
25 States that the foregoing is true and correct.

26 Executed on August 4, 2023, at Los Angeles, California.

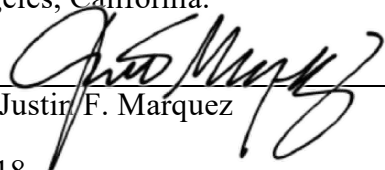
27
28 
Justin F. Marquez

Exhibit 1

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Fax: (213) 381-9989
www.wilshirelawfirm.com



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Ilyas Akbari, Esq.	Thiago Coelho, Esq.
Gail Richardson, Esq.	Benjamin H. Haber, Esq.
Justin F. Marquez, Esq.	Tae Kim, Esq.
Robert Dart, Esq.	Peter Cho, Esq.
Jon Teller, Esq.	Gregory Stuck, Esq.
Sutton A. Shapiro, Esq.	Malalai Anbari, Esq.
Daniel B. Miller, Esq.	Kristen Tojo, Esq.
Hazel Chang, Esq.	Derek Monzon, Esq.
Erik Harper, Esq.	Ryan Medler, Esq.
Johnny Ogata, Esq.	April Yang, Esq.
Daniel DeSantis, Esq.	Rachel J. Vinson, Esq.

November 19, 2020

LWDA

Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
(Via Online Submission)

Facey Medical Foundation
15451 San Fernando Mission Blvd., Suite 300
Mission Hills, CA 91345
(Via Certified Mail, Return Receipt Requested)
#7019 2970 0001 1889 8019

Business Filings Incorporated
Agent for Service of Process for
Facey Medical Foundation
818 West Seventh Street, Suite 930
Los Angeles, CA 90017
(Via Certified Mail, Return Receipt Requested)
#7019 2970 0001 1889 8002

Re: ***Lauren Fletcher Hernandez v. Facey Medical Foundation***
Notice of Labor Code Violations and PAGA Penalties

To Whom It May Concern:

Please be advised that my office has been retained by Lauren Fletcher Hernandez ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against her former employer, Facey Medical Foundation ("Defendant"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant's Aggrieved Employees.

Plaintiff wishes to pursue this action on behalf of herself as an aggrieved employee, on behalf of the State of California, as well as on behalf of all other persons who worked for Defendant in California as a non-exempt or hourly-paid employee at any time within the applicable statutory

period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees suffered the Labor Code violations described below.

Plaintiff’s Employment with Defendant

Defendant own/owned and operate/operated an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiff Lauren Fletcher Hernandez worked for Defendant at various locations in California, including but not limited to Defendant’s location in Mission Hills, California, from approximately July 2006 to approximately September 2020. During Plaintiff’s employment for Defendant, Defendant paid Plaintiff an hourly wage and classified her as nonexempt from overtime. Defendant typically scheduled Plaintiff to work at least 5 days in a workweek and at least 8 hours per day, but Plaintiff mostly worked more than 8 hours in a workday and more than 40 hours in a workweek.

Throughout Plaintiff’s employment, Defendant failed to pay for all hours worked (including minimum wage, straight time, and overtime wages), failed to provide Plaintiff with meal periods, failed to authorize and permit Plaintiff to take rest periods, failed to pay timely pay all final wages to Plaintiff when Defendant terminated her employment, failed to furnish accurate wage statements to Plaintiff, and failed to indemnify Plaintiff for expenditures. As discussed below, Plaintiff’s experience working for Defendant was typical and illustrative.

Defendant Failed to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages

Under California law, an employer must pay for all hours worked by an employee. “Hours worked” is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the statutory period, Defendant maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including minimum wages, straight time wages, and overtime wages. Defendant frequently paid Plaintiff and the Aggrieved Employees less than all their work time. Much of this unpaid work should have been paid at the overtime rate. In failing to pay for all hours worked, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including minimum, straight time, and overtime wages.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly, but not always, required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, uninterrupted, and duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Instead, Defendant continued to assert control over Plaintiff and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying Plaintiff and the Aggrieved Employees permission to take a meal period. Defendant also never informed Plaintiff of her right to, nor permitted her to take, a second meal period when Plaintiff worked at least 10 hours of work in a workday. Accordingly, Defendant's policy and practice was not to provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Throughout the statutory period, Defendant have wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take legally compliant rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Instead, Defendant continued to assert control over Plaintiff and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods, or by denying Plaintiff and the Aggrieved Employees permission to take a rest period. Accordingly, Defendant's policy and practice was to not authorize and permit Plaintiff and the Aggrieved Employees to take rest periods in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not

authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owe employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the California Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the California Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other

Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the relevant time period, Defendant failed, and continue to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employment. These unpaid wages include wages for unpaid work time (including minimum, straight time, and overtime wages), missed meal period premium wages, and missed rest period premium wages.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." (Lab. Code § 226(e)(1).)

Throughout the statutory period, Defendant failed to furnish Plaintiff and the Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to take in accordance with California law).

Because Defendant violated Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights. Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Reimburse and Indemnify Business Expenses

Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant have wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant. Plaintiff and the Aggrieved Employees regularly paid out-of-pocket for necessary expenses, including, without limitation, work attire and work equipment. Plaintiff and the Aggrieved Employees incurred substantial expenses as a direct result of performing their job duties for Defendant, but Defendant failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages, and overtime wages;
2. Labor Code § 226.7 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 204 by failing to pay all earned wages two times per month;
5. California Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;

LWDA

Notice of Labor Code Violations and PAGA

November 19, 2020

Page 8 of 8

6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements; and
8. Labor Code § 2802 and applicable Wage Orders for failing to indemnify employees for expenditures.

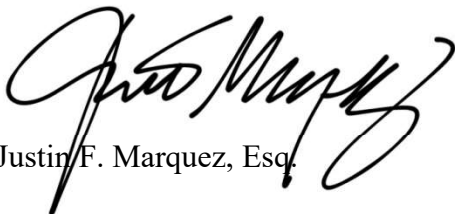
Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

WILSHIRE LAW FIRM

A handwritten signature in black ink, appearing to read "Justin Marquez", written over the printed name.

Justin F. Marquez, Esq.

Ashley Narinyans

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Thursday, November 19, 2020 12:06 PM
To: Min Jee Kim
Subject: Thank you for submission of your PAGA Case.

11/19/2020

LWDA Case No. LWDA-CM-813074-20
Law Firm : Wilshire Law Firm, PLC
Plaintiff Name : Lauren Fletcher Hernandez
Employer: Facey Medical Foundation
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:

https://nam12.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=04%7C01%7Cminjee%40wilshirelawfirm.com%7Cfff7a8aa4ab540fc978708d88cc68f65%7C9ada260a4f194da187b814d372333753%7C1%7C0%7C637414131728535388%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C1000&data=oqEftT10Wa1bpBTgYNcSwvJbug%2BvfSI%2FBUZdkQ9609c%3D&reserved=0

Min Jee Kim

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Thursday, November 19, 2020 12:06 PM
To: Min Jee Kim
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-813074-20

Order Number: ORD-000088705

Total:\$75.00

Card Type: Master Card

Date: 11/19/2020

Billing Information

Name: Bobby Saadian

Email: minjee@wilshirelawfirm.com

Billing Address:

3055 Wilshire Blvd., 12th Floor

Los Angeles, California

90010

Exhibit 2

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
Including Professional Corporations
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

LAUREN FLETCHER HERNANDEZ,
individually, and on behalf of all others
similarly situated,

Plaintiff,

v.

FACEY MEDICAL FOUNDATION, a
corporation; FACEY MEDICAL GROUP, a
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 20STCV41624
Assigned For All-Purposes To:
Hon. Carolyn B. Kuhl, Dept. 12

**STIPULATION AND SETTLEMENT OF
CLASS ACTION AND PRIVATE
ATTORNEYS GENERAL ACT
REPRESENTATIVE CLAIMS**

Complaint filed: October 30, 2020
FAC filed: May 7, 2021
Trial date: Not set

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiff Lauren Fletcher Hernandez (“Plaintiff”) and defendant Facey Medical
3 Foundation (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as
4 “Parties,” or individually as “Party.”

5 **I. Definitions.**

6 The following definitions are applicable to this Settlement Agreement. Definitions
7 contained elsewhere in this Settlement Agreement will also be effective:

8 1.1. “Action” means the Plaintiffs’ lawsuit alleging wage and hour violations
9 against Defendant captioned Lauren Fletcher Hernandez v. Facey Medical Foundation et al.,
10 LASC Case No. 20STCV41624, initiated on October 30, 2020 and pending in Superior Court of
11 the State of California, County of Los Angeles.

12 1.2. “Administrator” means Apex Class Action, the neutral entity the Parties have
13 agreed to appoint to administer the Settlement.

14 1.3. “Administration Expenses Payment” means the amount the Administrator will
15 be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
16 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with
17 Preliminary Approval of the Settlement.

18 1.4. “Aggrieved Employee” means a person employed in California by Defendant
19 as hourly non-exempt employees during the PAGA Period.

20 1.5. “Class” means all persons employed by Defendant in California as hourly non-
21 exempt employees during the Class Period.

22 1.6. “Class Counsel” means Justin F. Marquez, Benjamin H. Haber, Daniel J.
23 Kramer, and Arrash T. Fattahi of Wilshire Law Firm.

24 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses
25 Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable
26 attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

27 1.8. “Class Data” means Class Member identifying information in Defendant’s
28 possession including the Class Member’s name, last-known mailing address, Social Security

1 number, and number of Class Period Workweeks and PAGA Pay Periods.

2 1.9. "Class Member" or "Settlement Class Member" means a member of the Class,
3 as either a Participating Class Member or Non-Participating Class Member (including a Non-
4 Participating Class Member who qualifies as an Aggrieved Employee).

5 1.10. "Class Member Address Search" means the Administrator's investigation and
6 search for current Class Member mailing addresses using all reasonably available sources,
7 methods and means including, but not limited to, the National Change of Address database, skip
8 traces, and direct contact by the Administrator with Class Members.

9 1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS
10 ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be
11 mailed to Class Members in English in the form, without material variation, attached as Exhibit A
12 and incorporated by reference into this Agreement.

13 1.12. "Class Period" means the period from January 16, 2019 to end on the date of
14 Preliminary Approval, or April 10, 2023, whichever occurs first.

15 1.13. "Class Representatives" means the named Plaintiffs in the operative
16 complaint in the Action seeking Court approval to serve as Class Representatives.

17 1.14. "Class Representative Service Payment" means the payment to the Class
18 Representatives for initiating the Action and providing services in support of the Action.

19 1.15. "Court" means the Superior Court of California, County of Los Angeles.

20 1.16. "Defense Counsel" means Derek Havel, Matthew Tobias, Tyler Johnson, and
21 Chenxi "Abby" Lu of Sheppard, Mullin, Richter & Hampton LLP.

22 1.17. "Effective Date" means the date by when both of the following have
23 occurred:

24 (a) the Court enters a Judgment on its Order Granting Final Approval of the
25 Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following
26 occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court
27 enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day
28 after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the

1 Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

2 1.18. "Final Approval" means the Court's order granting final approval of the
3 Settlement.

4 1.19. "Final Approval Hearing" means the Court's hearing on the Motion for Final
5 Approval of the Settlement.

6 1.20. "Final Judgment" means the Judgment Entered by the Court upon Granting
7 Final Approval of the Settlement.

8 1.21. "Gross Settlement Amount" means \$ \$750,000.00 which is the total amount
9 Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The
10 Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA
11 Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class
12 Representative Service Payment and the Administrator's Expenses.

13 1.22. "Individual Class Payment" means the Participating Class Member's pro rata
14 share of the Net Settlement Amount calculated according to the number of Workweeks worked
15 during the Class Period.

16 1.23. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share
17 of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked
18 during the PAGA Period.

19 1.24. "Judgment" means the judgment entered by the Court based upon the Final
20 Approval.

21 1.25. "LWDA" means the California Labor and Workforce Development Agency,
22 the agency entitled, under Labor Code section 2699, subd. (i).

23 1.26. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the
24 LWDA under Labor Code section 2699, subd. (i).

25 1.27. "Net Settlement Amount" means the Gross Settlement Amount, less the
26 following payments in the amounts approved by the Court: Individual PAGA Payments, the
27 LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment,
28 Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The

1 remainder is to be paid to Participating Class Members as Individual Class Payments.

2 1.28. “Non-Participating Class Member” means any Class Member who opts out of
3 the Settlement by sending the Administrator a valid and timely Request for Exclusion.

4 1.29. “PAGA Pay Period” means any Pay Period during which an Aggrieved
5 Employee worked for Defendant for at least one day during the PAGA Period.

6 1.30. “PAGA Period” means the period from October 30, 2019 to Preliminary
7 Approval, or April 10, 2023, whichever occurs first.

8 1.31. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et
9 seq.).

10 1.32. “PAGA Notice” means Plaintiff’s November 19, 2020 letter to Defendant and
11 the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

12 1.33. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid
13 from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$6,250.00) and
14 the 75% to LWDA (\$18,750.00) in settlement of PAGA.

15 1.34. “Participating Class Member” means a Class Member who does not submit a
16 valid and timely Request for Exclusion from the Settlement.

17 1.35. “Plaintiffs” means Lauren Fletcher Hernandez, Amanda Rivera, and Ilbret
18 Pourmanafy, the named plaintiffs in the Action.

19 1.36. “Preliminary Approval” means the Court’s Order Granting Preliminary
20 Approval of the Settlement.

21 1.37. “Preliminary Approval Order” means the proposed Order Granting
22 Preliminary Approval and Approval of PAGA Settlement.

23 1.38. “Released Class Claims” means the claims being released as described in
24 Paragraph 5.2 below.

25 1.39. “Released PAGA Claims” means the claims being released as described in
26 Paragraph 6.1 below.

27 1.40. “Released Parties” means: Defendant and each of its past, present and future
28 agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders,

1 stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations
2 and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, service
3 providers, joint venturers, joint employers, co-employers, dual employers, alleged joint employers,
4 alleged co-employers, alleged dual employers, affiliates, alter-egos, and affiliated organizations,
5 and all of their respective past, present and future employees, directors, officers, agents, attorneys,
6 stockholders, fiduciaries, parents, subsidiaries, and assigns.

7 1.41. "Request for Exclusion" means a Class Member's submission of a written
8 request to be excluded from the Class Settlement signed by the Class Member.

9 1.42. "Response Deadline" means 45 days after the Administrator mails Notice to
10 Class Members and Aggrieved Employees, and shall be the last date on which Class Members
11 may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail
12 his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after
13 having been returned undeliverable to the Administrator shall have an additional 14 calendar days
14 beyond the Response Deadline has expired.

15 1.43. "Settlement" means the disposition of the Action effected by this Agreement
16 and the Judgment.

17 1.44. "Workweek" means any week during which a Class Member worked for
18 Defendant for at least one day, during the Class Period.

19 **2. RECITALS.**

20 2.1. On October 30, 2020, Plaintiff Lauren Fletcher Hernandez commenced this
21 Action by filing a Complaint alleging causes of action against Defendant. On May 7, 2021,
22 Plaintiff Lauren Fletcher Hernandez filed a First Amended Complaint ("FAC"), which modified
23 the class period to January 16, 2019, to the present. Plaintiff's FAC asserts the following causes
24 of action against Defendant: (1) failure to pay minimum and straight time wages; (2) failure to
25 pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest
26 periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate
27 itemized wage statements; (7) failure to indemnify employees for expenditures; (8) unfair business
28 practices; and (9) civil penalties under the PAGA. In conjunction with this Settlement, Plaintiffs

1 will seek leave to file and file a Second Amended Complaint (“SAC”) to add Amanda Rivera and
2 Ilbret Pourmanafy as named class representatives. The SAC Complaint will be the operative
3 complaint in the Action (the “Operative Complaint” Complaint.”). Defendant denies the
4 allegations in the Operative Complaint, denies any failure to comply with the laws identified in in
5 the Operative Complaint and denies any and all liability for the causes of action alleged.

6 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff Lauren Fletcher
7 Hernandez gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.

8 2.3. On January 9, 2023, the Parties participated in an all-day mediation presided
9 over by David Phillips, Esq., which led to this Agreement to settle the Action

10 2.4. Prior to mediation, Plaintiffs obtained, through formal discovery, Defendant’s
11 policies, and class members’ time and pay records. Plaintiff’s investigation was sufficient to
12 satisfy the criteria for court approval set forth in Dunk v. Foot Locker Retail, Inc. (1996) 48
13 Cal.App.4th 1794, 1801 and Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 129-
14 130 (“Dunk/Kullar”).

15 2.5. The Court has not granted class certification.

16 **3. MONETARY TERMS.**

17 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9
18 below, Defendant promises to pay \$750,000.00 and no more as the Gross Settlement Amount and
19 to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual
20 Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll
21 taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will
22 disburse the entire Gross Settlement Amount without asking or requiring Participating Class
23 Members or Aggrieved Employees to submit any claim as a condition of payment. None of the
24 Gross Settlement Amount will revert to Defendant.

25 3.2. Payments from the Gross Settlement Amount. The Administrator will make
26 and deduct the following payments from the Gross Settlement Amount, in the amounts specified
27 by the Court in the Final Approval:

28 3.2.1. To Plaintiffs: Class Representative Service Payments to the Class

1 Representatives of not more than \$12,500.00 to Lauren Fletcher Hernandez and not more than
2 \$5,000.00 to Amanda Rivera and Ilbret Pourmanafy (in addition to any Individual Class Payment
3 and any Individual PAGA Payment the Class Representative is entitled to receive as a
4 Participating Class Member). Defendant will not oppose Plaintiffs' request for a Class
5 Representative Service Payments that does not exceed this amount. As part of the motion for
6 Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court
7 approval for any Class Representative Service Payments no later than 16 court days prior to the
8 Final Approval Hearing. If the Court approves Class Representative Service Payments less than
9 the amount requested, the Administrator will retain the remainder in the Net Settlement Amount.
10 The Administrator will pay the Class Representative Service Payments using IRS Form 1099.
11 Plaintiffs assume full responsibility and liability for employee taxes owed on the Class
12 Representative Service Payments.

13 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33 1/3%,
14 which is currently estimated to be \$250,000.00 and a Class Counsel Litigation Expenses Payment
15 of not more than \$50,000.00. Defendant will not oppose requests for these payments provided
16 that do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class
17 Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to
18 the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class
19 Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will
20 allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to
21 Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any Class
22 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will
23 pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS
24 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class
25 Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant
26 harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or
27 sharing of any of these Payments.

28 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed

1 \$20,000 except for a showing of good cause and as approved by the Court. To the extent the
2 Administration Expenses are less or the Court approves payment less than \$20,000, the
3 Administrator will retain the remainder in the Net Settlement Amount.

4 3.2.4. To Each Participating Class Member: An Individual Class Payment
5 calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked
6 by all Participating Class Members during the Class Period and (b) multiplying the result by each
7 Participating Class Member's Workweeks.

8 3.2.4.1. Tax Allocation of Individual Class Payments. 33% of each Participating
9 Class Member's Individual Class Payment will be allocated to settlement of wage claims (the
10 "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an
11 IRS W-2 Form. The remaining 67% of each Participating Class Member's Individual Class
12 Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage
13 Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on
14 IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any
15 employee taxes owed on their Individual Class Payment.

16 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual
17 Class Payments. Non-Participating Class Members will not receive any Individual Class
18 Payments. The Administrator will retain amounts equal to their Individual Class Payments in the
19 Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

20 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
21 \$25,000.00 will be paid from the Gross Settlement Amount, with 75% (\$18,750.00) allocated to
22 the LWDA PAGA Payment and 25% (\$6,250.00) allocated to the Individual PAGA Payments.

23 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a)
24 dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$6,250.00) by
25 the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the
26 PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay
27 Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their
28 Individual PAGA Payment.

1 3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested,
2 the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator
3 will report the Individual PAGA Payments on IRS 1099 Forms.

4 **4. SETTLEMENT FUNDING AND PAYMENTS.**

5 4.1. Class Workweeks. Based on a review of its records to date, Defendant
6 estimates Class Members collectively worked a total of 194,000 Workweeks from January 16,
7 2019 through January 9, 2023.

8 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval
9 of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a
10 Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must
11 maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and
12 for no other purpose, and restrict access to the Class Data to Administrator employees who need
13 access to the Class Data to effect and perform under this Agreement. Defendant has a continuing
14 duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member
15 identifying information and to provide corrected or updated Class Data as soon as reasonably
16 feasible. The Parties and their counsel will expeditiously use best efforts, in good faith, to
17 reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

18 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross
19 Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll
20 taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date.

21 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant
22 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class
23 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
24 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
25 Payment, and the Class Representative Service Payments. Disbursement of the Class Counsel
26 Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative
27 Service Payments shall not precede disbursement of Individual Class Payments and Individual
28 PAGA Payments.

1 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or
2 Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail,
3 postage prepaid. The face of each check shall prominently state the date (not less than 180 days
4 after the date of mailing) when the check will be voided. The Administrator will cancel all checks
5 not cashed by the void date. The Administrator will send checks for Individual Settlement
6 Payments to all Participating Class Members (including those for whom Class Notice was returned
7 undelivered). The Administrator will send checks for Individual PAGA Payments to all
8 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
9 Employees (including those for whom Class Notice was returned undelivered). The Administrator
10 may send Participating Class Members a single check combining the Individual Class Payment
11 and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator
12 must update the recipients' mailing addresses using the National Change of Address Database.

13 4.4.2. The Administrator must conduct a Class Member Address Search for all
14 other Class Members whose checks are returned undelivered without USPS forwarding address.
15 Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS
16 forwarding address provided or to an address ascertained through the Class Member Address
17 Search. The Administrator need not take further steps to deliver checks to Class Members whose
18 re-mailed checks are returned as undelivered. The Administrator shall promptly send a
19 replacement check to any Class Member whose original check was lost or misplaced, requested by
20 the Class Member prior to the void date.

21 4.4.3. For any Class Member whose Individual Class Payment check or Individual
22 PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall
23 transmit the funds represented by such checks to the California Controller's Unclaimed Property
24 Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the
25 requirements of California Code of Civil Procedure Section 384, subd. (b).

26 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments
27 shall not obligate Defendant to confer any additional benefits or make any additional payments to
28 Class Members (such as 401(k) contributions or bonuses) beyond those specified in this

1 Agreement.

2 **5. RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross
3 Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the
4 Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims
5 against all Released Parties as follows:

6 5.1 Plaintiffs' Release. Plaintiffs fully and finally release the Released Parties from
7 any and all claims, known and unknown, under federal, state and/or local law, statute, ordinance,
8 regulation, common law, or other source of law, including but not limited to claims arising from or
9 related to her employment with Defendant and her compensation while an employee of Defendant
10 ("Plaintiffs' Released Claims"). Plaintiffs' Released Claims include, but are not limited to, all
11 claims arising from or related to the Action. Plaintiffs' Released Claims include all claims for
12 unpaid wages, including, but not limited to, failure to pay minimum wages, straight time
13 compensation, overtime compensation, double-time compensation, and interest; the calculation of
14 the regular rate of pay; missed meal period and rest-period premiums, including failure to pay
15 premiums at the regular rate of compensation; reimbursement for all necessary business expenses;
16 payment for all hours worked, including off-the-clock work; wage statements; deductions; failure
17 to keep accurate records; unfair business practices; penalties, including, but not limited to, civil
18 penalties, statutory penalties, recordkeeping penalties, wage statement penalties, minimum-wage
19 penalties, and waiting-time penalties; and attorneys' fees and costs. Plaintiffs' Released Claims
20 include all claims arising under the California Labor Code (including, but not limited to, sections
21 90.5, 201, 202, 203, 204, 213, 218.5, 221, 223, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174,
22 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 et seq., 2699 et seq., 2699.3, 2800,
23 and 2802); all claims arising under: the Wage Orders of the California Industrial Welfare
24 Commission; the PAGA; California Business and Professions Code section 17200, et seq.; the
25 California Civil Code, to include but not limited to, sections 3287, 3336 and 3294; California
26 Code of Civil Procedure § 1021.5; the California common law of contract; the FLSA, 29 U.S.C. §
27 201, et seq.; federal common law; and the Employee Retirement Income Security Act, 29 U.S.C. §
28 1001, et seq. ("ERISA"). Plaintiffs' Released Claims also include all claims for lost wages and

1 benefits, emotional distress, retaliation, punitive damages, and attorneys' fees and costs arising
2 under federal, state, or local laws for discrimination, harassment, retaliation, and wrongful
3 termination, such as, by way of example only, (as amended) 42 U.S.C. section 1981, Title VII of
4 the Civil Rights Act of 1964, the Americans With Disabilities Act, the Age Discrimination in
5 Employment Act, and the California Fair Employment and Housing Act; and the law of contract
6 and tort. This release excludes the release of claims not permitted by law.

7 Plaintiffs' Released Claims include all claims, whether known or unknown. Even
8 if Plaintiffs discover facts in addition to or different from those that they now know or believe to
9 be true with respect to the subject matter of Plaintiffs' Released Claims, those claims will remain
10 released and forever barred. Thus, Plaintiffs expressly waive and relinquish the provisions, rights
11 and benefits of section 1542 of the California Civil Code, which reads:

12 A general release does not extend to claims that the creditor or releasing party does
13 not know or suspect to exist in his or her favor at the time of executing the release and that, if
14 known by him or her, would have materially affected his or her settlement with the debtor or
15 released party.

16 Plaintiffs' Release does not extend to any claims or actions to enforce this
17 Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social
18 security benefits, workers' compensation benefits that arose at any time, or based on occurrences
19 outside the Class Period.

20 5.2 Release by Participating Class Members:

21 All Participating Class Members, on behalf of themselves and their respective
22 former and present representatives, agents, attorneys, heirs, administrators, successors, and
23 assigns, release Released Parties from all claims asserted in the Action, arising from or related to
24 the facts and claims alleged in the Action, or that could have been raised in the Action based on
25 the facts and claims alleged, as amended. The Class Released Claims include all claims for unpaid
26 wages, including, failure to pay minimum wages, straight time compensation, overtime
27 compensation, double-time compensation, and interest; the calculation of the regular rate of pay;
28 missed meal period and rest-period premiums, including failure to pay premiums at the regular

1 rate of compensation; reimbursement for all necessary business expenses; payment for all hours
2 worked, including off-the-clock work; wage statements; deductions; failure to keep accurate
3 records; unfair business practices; penalties, including, but not limited to, civil penalties, statutory
4 penalties, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and
5 waiting-time penalties; and attorneys' fees and costs; all claims related to the Released Claims
6 which are asserted in the Complaint or which could have been asserted based on the factual
7 allegations pled in the Complaint arising under: the California Labor Code (including, but not
8 limited to, sections 201, 202, 203, 204, 218.5, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174,
9 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802), the Wage Order 5-2001 of the California
10 Industrial Welfare Commission; the PAGA; California Business and Professions Code
11 section 17200 based on the foregoing, *et seq.* Except as set forth in Section 5.1 of this Agreement,
12 Participating Class Members do not release any other claims, including claims for vested benefits,
13 wrongful termination, violation of the Fair Employment and Housing Act, unemployment
14 insurance, disability, social security, workers' compensation, or claims based on facts occurring
15 outside the Class Period.

16 5.3 Release by Non-Participating Class Members Who Are Aggrieved Employees:

17 All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on
18 behalf of themselves and their respective former and present representatives, agents, attorneys,
19 heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA
20 penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the
21 Operative Complaint, the PAGA Notice and ascertained in the course of the Action, including,
22 e.g., (a) any and all claims unpaid wages, including, failure to pay minimum wages, straight time
23 compensation, overtime compensation, double-time compensation, and interest; the calculation of
24 the regular rate of pay; missed meal period and rest-period premiums, including failure to pay
25 premiums at the regular rate of compensation; reimbursement for all necessary business expenses;
26 payment for all hours worked, including off-the-clock work; wage statements; deductions; failure
27 to keep accurate records; unfair business practices; penalties, including, but not limited to, civil
28 penalties, statutory penalties, recordkeeping penalties, wage statement penalties, minimum-wage

1 penalties, and waiting-time penalties; and attorneys' fees and costs.

2 **6. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file
3 a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the
4 Court's current checklist for Preliminary Approvals.

5 6.1. Plaintiffs' Responsibilities. Plaintiffs will prepare and deliver to Defense
6 Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the
7 notice, and memorandum in support, of the Motion for Preliminary Approval that includes an
8 analysis of the Settlement under Dunk/Kullar and a request for approval of the PAGA Settlement
9 under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary
10 Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed
11 declaration from the Administrator attaching its "not to exceed" bid for administering the
12 Settlement and attesting to its willingness to serve; competency; operative procedures for
13 protecting the security of Class Data; amounts of insurance coverage for any data breach,
14 defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of
15 interest with Class Members; and the nature and extent of any financial relationship with
16 Plaintiffs, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiffs confirming
17 willingness and competency to serve and disclosing all facts relevant to any actual or potential
18 conflicts of interest with Class Members, and/or the Administrator; (vi) a signed declaration from
19 Class Counsel attesting to their competency to represent the Class Members; its timely
20 transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor
21 Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this
22 Agreement (Labor Code section 2699, subd. (l)(2)); (vii) a redlined version of the parties'
23 Agreement showing all modifications made to the Model Agreement ready for filing with the
24 Court; and (viii) all facts relevant to any actual or potential conflict of interest with Class Members
25 and/or the Administrator.

26 6.2. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly
27 responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later
28 than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the

1 Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion
2 for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary
3 Approval to the Administrator.

4 6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed
5 Motion for Preliminary Approval and/or the supporting declarations and documents, Class
6 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting
7 in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not
8 grant Preliminary Approval or conditions Preliminary Approval on any material change to this
9 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the
10 Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and
11 otherwise satisfy the Court's concerns.

12 **7. SETTLEMENT ADMINISTRATION.**

13 7.1. Selection of Administrator. The Parties have jointly selected Apex Class
14 Action to serve as the Administrator and verified that, as a condition of appointment Apex Class
15 Action agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in
16 this Agreement in exchange for payment of Administration Expenses. The Parties and their
17 Counsel represent that they have no interest or relationship, financial or otherwise, with the
18 Administrator other than a professional relationship arising out of prior experiences administering
19 settlements.

20 7.2. Employer Identification Number. The Administrator shall have and use its
21 own Employer Identification Number for purposes of calculating and remitting Employee Paid
22 Taxes to the state and federal tax authorities.

23 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement
24 fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury
25 Regulation section 468B-1.

26 7.4. Notice to Class Members.

27 7.4.1 No later than three (3) business days after receipt of the Class Data, the
28 Administrator shall notify Class Counsel that the list has been received and state the number of

1 Class Members, Aggrieved Employees, Workweeks, and PAGA Pay Periods in the Class Data.

2 7.4.2 Using best efforts to perform as soon as possible, and in no event later than
3 14 days after receiving the Class Data, the Administrator will send to all Class Members identified
4 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice,
5 substantially in the form attached to this Agreement as Exhibit A. The first page of the Class
6 Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or
7 Individual PAGA Payment payable to the Class Member, and the number of Workweeks and
8 PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices,
9 the Administrator shall update Class Member addresses using the National Change of Address
10 database.

11 7.4.3 Not later than 3 business days after the Administrator’s receipt of any Class
12 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice
13 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding
14 address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class
15 Notice to the most current address obtained. The Administrator has no obligation to make further
16 attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the
17 USPS a second time.

18 7.4.4 The deadlines for Class Members’ written objections, Challenges to
19 Workweeks and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional
20 14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose
21 notice is re-mailed. The Administrator will inform the Class Member of the extended deadline
22 with the re-mailed Class Notice.

23 7.4.5 If the Administrator, Defendant or Class Counsel is contacted by or
24 otherwise discovers any persons who believe they should have been included in the Class Data
25 and should have received Class Notice, the Parties will expeditiously meet and confer in person or
26 by telephone, and in good faith, in an effort to agree on whether to include them as Class
27 Members. If the Parties agree, such persons will be Class Members entitled to the same rights as
28 other Class Members, and the Administrator will send, via email or overnight delivery, a Class

1 Notice requiring them to exercise options under this Agreement not later than 14 days after receipt
2 of Class Notice, or the deadline dates in the Class Notice, which ever are later.

3 7.5. Requests for Exclusion (Opt-Outs).

4 7.5.1 Class Members who wish to exclude themselves from (opt-out of) the Class
5 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
6 Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional
7 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter
8 from a Class Member or his/her representative that reasonably communicates the Class Member's
9 election to be excluded from the Settlement and includes the Class Member's name, address, and
10 email address or telephone number. To be valid, a Request for Exclusion must be timely faxed,
11 emailed, or postmarked by the Response Deadline.

12 7.5.2 The Administrator may not reject a Request for Exclusion as invalid
13 because it fails to contain all the information specified in the Class Notice. The Administrator
14 shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the
15 identity of the person as a Class Member and the Class Member's desire to be excluded. The
16 Administrator's determination shall be final and not appealable or otherwise susceptible to
17 challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion,
18 the Administrator may demand additional proof of the Class Member's identity. The
19 Administrator's determination of authenticity shall be final and not appealable or otherwise
20 susceptible to challenge.

21 7.5.3 Every Class Member who does not submit a timely and valid Request for
22 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
23 benefits and bound by all terms and conditions of the Settlement, including the releases under
24 Paragraphs 5.2 and 5.3 of this Agreement, regardless whether the Participating Class Member
25 actually receives the Class Notice or objects to the Settlement.

26 7.5.4 Every Class Member who submits a valid and timely Request for Exclusion
27 is a Non-Participating Class Member and shall not receive an Individual Class Payment or have
28 the right to object to the class action components of the Settlement. Because PAGA claims are

1 subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are
2 Aggrieved Employees are deemed to release the Released PAGA Claims identified in Paragraph
3 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

4 7.6. Challenges to Calculation of Workweeks and/or PAGA Pay Periods. Each
5 Class Member shall have 45 days after the Administrator mails the Class Notice (plus an
6 additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number
7 of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class
8 Notice. The Class Member may challenge the allocation by communicating with the
9 Administrator via fax, email, or mail. The Administrator must encourage the challenging Class
10 Member to submit supporting documentation. In the absence of any contrary documentation, the
11 Administrator is entitled to presume that the Workweeks and PAGA Pay Periods contained in the
12 Class Notice are correct so long as they are consistent with the Class Data. The Administrator's
13 determination of each Class Member's allocation of Workweeks and/or PAGA Pay Periods shall
14 be final and not appealable or otherwise susceptible to challenge. The Administrator shall
15 promptly provide copies of all challenges to calculation of Workweeks and/or PAGA Pay Periods
16 to Defense Counsel and Class Counsel and the Administrator's determination of the challenges.

17 7.7. Objections to Settlement.

18 7.7.1 Only Participating Class Members may object to the class action
19 components of the Settlement and/or this Agreement, including contesting the fairness of the
20 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
21 Litigation Expenses Payment and/or Class Representative Service Payments.

22 7.7.2 Participating Class Members may send written objections to the
23 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear
24 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
25 Hearing. A Participating Class Member who elects to send a written objection to the
26 Administrator must do so not later than 45 days after the Administrator's mailing of the Class
27 Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

28 7.7.3 Non-Participating Class Members have no right to object to any of the class

1 action components of the Settlement.

2 7.8. Administrator Duties. The Administrator has a duty to perform or observe
3 all tasks to be performed or observed by the Administrator contained in this Agreement or
4 otherwise.

5 7.8.1 Website, Email Address and Toll-Free Number. The Administrator will
6 establish and maintain and use an internet website to post information of interest to Class
7 Members including the date, time, and location for the Final Approval Hearing and copies of the
8 Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class
9 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class
10 Counsel Litigation Expenses Payment, and Class Representative Service Payments, the Final
11 Approval, and the Judgment. The Administrator will also maintain and monitor an email address
12 and a toll-free telephone number to receive Class Member calls, faxes, and emails.

13 7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator
14 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later
15 than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the
16 Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names
17 and other identifying information of Class Members who have timely submitted valid Requests for
18 Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members
19 who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion
20 submitted (whether valid or invalid).

21 7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide
22 written reports to Class Counsel and Defense Counsel that, among other things, tally the number
23 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion
24 (whether valid or invalid) received, objections received, challenges to Workweeks and/or PAGA
25 Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and
26 Individual PAGA Payments (“Weekly Report”). The Weekly Reports must provide the
27 Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all
28 Requests for Exclusion and objections received.

1 7.8.4 Workweek and/or PAGA Pay Period Challenges. The Administrator has
2 the authority to address and make final decisions consistent with the terms of this Agreement on
3 all Class Member challenges over the calculation of Workweeks and/or PAGA Pay Periods. The
4 Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.

5 7.8.5 Administrator's Declaration. Not later than 14 days before the date by
6 which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the
7 Administrator will provide to Class Counsel and Defense Counsel a signed declaration suitable for
8 filing in Court attesting to its due diligence and compliance with all of its obligations under this
9 Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as
10 undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number
11 of Requests for Exclusion it received (both valid or invalid), the number of written objections it
12 received, the number of challenges to calculation of Workweeks and/or PAGA Pay Periods it
13 received and the outcome of the challenges, and attach the Exclusion List, copies of all Requests
14 for Exclusion it received (both valid and invalid), and copies of all written objections it received.
15 The Administrator will supplement its declaration as needed or requested by the Parties and/or the
16 Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

17 7.8.6 Final Report by Settlement Administrator. Within 10 days after the
18 Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide
19 Class Counsel and Defense Counsel with a final report detailing its disbursements by employee
20 identification number only of all payments made under this Agreement. At least 15 days before
21 any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and
22 Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of
23 all payments required under this Agreement. Class Counsel is responsible for filing the
24 Administrator's declaration in Court.

25 **8. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on its records, Defendant
26 estimates that there are 194,000 Total Workweeks from January 16, 2019 through January 9,
27 2023. In the event the number of Workweeks worked by the Class Members in the Settlement
28 Class Period increases by more than 10%, or 19,400, then the Gross Settlement Amount shall be

1 increased proportionally by the Workweeks worked in excess of 110% of the Workweeks
2 estimate, or 213,400, multiplied by the per Workweek value. The Workweek value shall be
3 calculated by dividing the Gross Settlement Amount by 194,000 Workweeks. The Parties agree
4 that the Workweek value is \$3.87 (\$750,000.00 / 194,000 workweeks). Thus, for example, should
5 there be 230,000 Workweeks in the Settlement Class Period, then the Maximum Settlement
6 Amount shall be increased by \$64,242.00 ((230,000 Workweeks – 213,400 Workweeks) x
7 (\$3.87/Workweek)). Alternatively, Defendant may opt to end the Settlement Class Period on the
8 date on which the total of 213,400 Workweeks is met.

9 **9. DEFENDANT’S RIGHT TO WITHDRAW.** If the number of valid Requests for
10 Exclusion identified in the Exclusion List exceeds 5.0% of the total of all Class Members,
11 Defendant may, but is not obligated to, elect to withdraw from the Settlement. The Parties agree
12 that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect
13 whatsoever, and that neither Party will have any further obligation to perform under this
14 Agreement; provided, however, Defendant will remain responsible for paying all Administrator
15 Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election
16 to withdraw not later than seven days after the Administrator sends the final Exclusion List to
17 Defense Counsel; late elections will have no effect.

18 **10. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared
19 Final Approval Hearing, Plaintiffs will file in Court a motion for final approval of the Settlement
20 that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd.
21 (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final
22 Approval”). Plaintiffs shall provide drafts of these documents to Defense Counsel not later than
23 three days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will
24 expeditiously meet and confer in person or by telephone, and in good faith, to resolve any
25 disagreements concerning the Motion for Final Approval.

26 10.1. Response to Objections. Each Party retains the right to respond to any
27 objection raised by a Participating Class Member, including the right to file responsive documents
28 in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered

1 or accepted by the Court.

2 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions
3 Final Approval on any material change to the Settlement (including, but not limited to, the scope
4 of release to be granted by Class Members), the Parties will expeditiously work together in good
5 faith to address the Court's concerns by revising the Agreement as necessary to obtain Final
6 Approval. The Court's decision to award less than the amounts requested for the Class
7 Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation
8 Expenses Payment and/or Administration Expenses Payment shall not constitute a material
9 modification to the Agreement within the meaning of this paragraph.

10 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of
11 Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
12 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
13 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

14 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the
15 terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment
16 and Class Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their
17 respective counsel, and all Participating Class Members who did not object to the Settlement as
18 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
19 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for
20 new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of
21 the right to oppose such motions, writs, or appeals. If an objector appeals the Judgment, the
22 Parties' obligations to perform under this Agreement will be suspended until such time as the
23 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
24 the amount of the Net Settlement Amount.

25 10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment.
26 If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
27 material modification of this Agreement (including, but not limited to, the scope of release to be
28 granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless

1 expeditiously work together in good faith to address the appellate court's concerns and to obtain
2 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administrator
3 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
4 the Court's award of the Class Representative Service Payments or any payments to Class Counsel
5 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
6 as long as the Gross Settlement Amount remains unchanged.

7 **11. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil
8 Procedure section 384, the Parties will work together in good faith to jointly submit a proposed
9 amended judgment.

10 **12. ADDITIONAL PROVISIONS.**

11 12.1. No Admission of Liability, Class Certification or Representative
12 Manageability for Other Purposes. This Agreement represents a compromise and settlement of
13 highly disputed claims. Nothing in this Agreement is intended or should be construed as an
14 admission by Defendant that any of the allegations in the Operative Complaint have merit or that
15 Defendant has any liability for any claims asserted; nor should it be intended or construed as an
16 admission by Plaintiffs that Defendant's defenses in the Action have merit. The Parties agree that
17 class certification and representative treatment is for purposes of this Settlement only. If, for any
18 reason, the Court does not grant Preliminary Approval, Final Approval, or enter Judgment,
19 Defendant reserves its right to oppose any attempt to certify any of the claims in the Action as a
20 class action claims, and Defendant otherwise reserves all available defenses to the claims in the
21 Action. Plaintiffs also reserve the right to contest Defendant's defenses. The Settlement, this
22 Agreement, and the Parties' willingness to settle the Action will have no bearing on, and will not
23 be admissible in connection with, any litigation (except for proceedings to enforce or effectuate
24 the Settlement and this Agreement).

25 12.2. Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel,
26 Defendant, and Defense Counsel separately agree that, until the Motion for Preliminary Approval
27 of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or
28 cause or permit another person to disclose, disseminate or publicize, any of the terms of the

1 Agreement directly or indirectly, specifically or generally, to any person, corporation, association,
2 government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses,
3 all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter;
4 (3) to the extent necessary to report income to appropriate taxing authorities; (4) to the extent
5 necessary to obtain a "not to exceed" bid and a declaration from the Administrator; (5) in response
6 to a court order or subpoena; or (6) in response to an inquiry or subpoena issued by a state or
7 federal government agency. Each Party agrees to immediately notify each other Party of any
8 judicial or agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel,
9 Defendant, and Defense Counsel separately agree not to, directly or indirectly, initiate any
10 conversation or other communication, before the filing of the Motion for Preliminary Approval,
11 with any third party regarding this Agreement or the matters giving rise to this Agreement except
12 to respond only that "the matter was resolved," or words to that effect. This paragraph does not
13 restrict Class Counsel's communications with Class Members in accordance with Class Counsel's
14 ethical obligations owed to Class Members. Plaintiffs and Class Counsel further agree not to use
15 the logos or trademarks of Released Parties for advertising purposes.

16 12.3. No Solicitation. The Parties separately agree that they and their respective
17 counsel and employees will not solicit any Class Member to opt out of or object to the Settlement,
18 or appeal from the Judgment. Class Counsel shall not at any time list or publicize the action or
19 settlement on its website or any advertising material. Nothing in this paragraph shall be construed
20 to restrict Class Counsel's ability to communicate with Class Members in accordance with Class
21 Counsel's ethical obligations owed to Class Members.

22 12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this
23 Agreement together with its attached exhibits shall constitute the entire agreement between the
24 Parties relating to the Settlement, superseding any and all oral representations, warranties,
25 covenants, or inducements made to or by any Party.

26 12.5. Attorney Authorization. Class Counsel and Defense Counsel separately
27 warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all
28 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to

1 effectuate its terms, and to execute any other documents reasonably required to effectuate the
2 terms of this Agreement including any amendments to this Agreement.

3 12.6. Cooperation. The Parties and their counsel will cooperate with each other
4 and use their best efforts, in good faith, to implement the Settlement by, among other things,
5 modifying the Settlement Agreement, submitting supplemental evidence and supplementing points
6 and authorities as requested by the Court. In the event the Parties are unable to agree upon the
7 form or content of any document necessary to implement the Settlement, or on any modification
8 of the Agreement that may become necessary to implement the Settlement, the Parties will seek
9 the assistance of a mediator and/or the Court for resolution.

10 12.7. No Prior Assignments. The Parties separately represent and warrant that
11 they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
12 transfer, or encumber, to any person or entity any portion of any liability, claim, demand, action,
13 cause of action, or right released and discharged by the Party in this Settlement.

14 12.8. No Tax Advice. Neither Plaintiffs, Class Counsel, Defendant, nor Defense
15 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
16 Settlement be relied upon as such within the meaning of United States Treasury Department
17 Circular 230 (31 CFR Part 10, as amended) or otherwise.

18 12.9. Modification of Agreement. This Agreement, and all parts of it, may be
19 amended, modified, changed, or waived only by an express written instrument signed by all
20 Parties or their representatives, and approved by the Court.

21 12.10. Agreement Binding on Successors. This Agreement will be binding upon,
22 and inure to the benefit of, the successors of each of the Parties.

23 12.11. Applicable Law. All terms and conditions of this Agreement and its
24 exhibits will be governed by and interpreted according to the internal laws of the state of
25 California, without regard to conflict of law principles.

26 12.12. Cooperation in Drafting. The Parties have cooperated in the drafting and
27 preparation of this Agreement. This Agreement will not be construed against any Party on the
28 basis that the Party was the drafter or participated in the drafting.

1 12.13. Confidentiality. To the extent permitted by law, all agreements made, and
2 orders entered during Action and in this Agreement relating to the confidentiality of information
3 shall survive the execution of this Agreement.

4 12.14. Use and Return of Class Data. Information provided to Class Counsel
5 pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to
6 Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in
7 connection with the Settlement, may be used only with respect to this Settlement, and no other
8 purpose, and may not be used in any way that violates any existing contractual agreement,
9 protective order, statute, or rule of court. Not later than 90 days after the date when the Court
10 discharges the Administrator's obligation to provide a Declaration confirming the final pay out of
11 all Settlement funds, Plaintiffs shall destroy all paper and electronic versions of Class Data and
12 discovery received from Defendant unless, prior to the Court's discharge of the Administrator's
13 obligation, Defendant makes a written request to Class Counsel for the return, rather than the
14 destruction of, Class Data.

15 12.15. Headings. The descriptive heading of any section or paragraph of this
16 Agreement is inserted for convenience of reference only and does not constitute a part of this
17 Agreement.

18 12.16. Calendar Days. Unless otherwise noted, all reference to "days" in this
19 Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement
20 falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day
21 thereafter.

22 12.17. Notice. All notices, demands, or other communications between the Parties
23 in connection with this Agreement will be in writing and deemed to have been duly given as of the
24 third business day after mailing by United States mail, or the day sent by email or messenger,
25 addressed as follows:

26 To Plaintiffs:

27 Justin F. Marquez (SBN 262417)
 justin@wilshirelawfirm.com
28 Benjamin H. Haber (SBN 315664)

benjamin@wilshirelawfirm.com
Daniel J. Kramer (SBN 314625)
dkramer@wilshirelawfirm.com
Arrash T. Fattahi (SBN 333676)
afattahi@wilshirelawfirm.com
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

To Defendant:

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
Including Professional Corporations
DEREK R. HAVEL, Cal. Bar No. 193464
dhavel@sheppardmullin.com
MATTHEW A. TOBIAS, Cal. Bar No. 271291
mtobias@sheppardmullin.com
TYLER J. JOHNSON, Cal. Bar No. 307386
tjjohnson@sheppardmullin.com
CHENXI LU, Cal. Bar No. 334250
ablu@sheppardmullin.com
333 South Hope Street, 43rd Floor
Los Angeles, California 90071-1422
Telephone: 213.620.1780
Facsimile: 213.620.1398

12.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement, pursuant to Code of Civil Procedure section 583.330(a), the time within which the Action must be brought to trial under Code of Civil Procedure section 583.310 shall be extended for the period between the filing of the motion for preliminary approval and the entry of Judgment. If the Court denies Preliminary Approval or Final Approval of the Settlement, the Parties agree that the time within which the Action must be

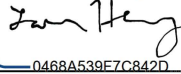
1 brought to trial under Code of Civil Procedure section 583.310 shall be extended to 30 days after
2 the date on which the Court issues an order denying the Motion for Preliminary Approval or the
3 Motion for Final Approval.

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5 *The Settlement Agreement consists of 29 pages and signatures on the following page.*
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Dated: 5/30/2023

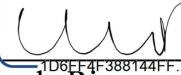
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Lauren Fletcher Hernandez

Dated: 5/30/2023

DocuSigned by:


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Amanda Rivera

Dated: 5/31/2023

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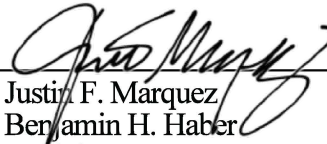
Dated: _____

Please Print Name of Authorized Signatory

APPROVED AS TO FORM

WILSHIRE LAW FIRM

Dated: May 31, 2023


Justin F. Marquez
Benjamin H. Haber
Daniel J. Kramer
Arrash T. Fattahi
Attorneys for Plaintiffs

**SHEPPARD, MULLIN, RICHTER & HAMPTON
LLP**

Dated: _____

DEREK R. HAVEL
MATTHEW A. TOBIAS
TYLER J. JOHNSON
CHENXI LU
Attorneys for Defendant

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Dated: _____

Lauren Fletcher Hernandez

Dated: _____

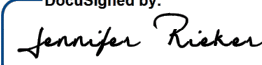
Amanda Rivera

Dated: _____

Ilbret Pourmanafy

Facey Medical Foundation

Dated: 6/15/2023

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Jennifer Rieker

Please Print Name of Authorized Signatory

APPROVED AS TO FORM

WILSHIRE LAW FIRM

Dated: _____

Justin F. Marquez
Benjamin H. Haber
Daniel J. Kramer
Arrash T. Fattahi
Attorneys for Plaintiffs

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**SHEPPARD, MULLIN, RICHTER & HAMPTON
LLP**

Dated: 6/15/2023

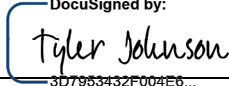
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DEREK R. HAVEL
MATTHEW A. TOBIAS
TYLER J. JOHNSON
Attorneys for Defendant

Exhibit 3

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

A Limited Liability Partnership
Including Professional Corporations

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dhavel@sheppardmullin.com

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8

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3035 Wilshire Blvd., 12th Floor

Los Angeles, California 90010

Telephone: (213) 381-9988

Facsimile: (213) 381-9989

15

Attorneys for Plaintiff

16

SUPERIOR COURT OF THE STATE OF CALIFORNIA

17

COUNTY OF LOS ANGELES

18

LAUREN FLETCHER HERNANDEZ,

individually, and on behalf of all others

similarly situated,

20

Plaintiff,

21

v.

22

FACEY MEDICAL FOUNDATION, a

corporation; FACEY MEDICAL GROUP, a

corporation; and DOES 1 through 10,

inclusive,

25

Defendants.

26

Case No.: 20STCV41624

Assigned For All-Purposes To:

Hon. Carolyn B. Kuhl, Dept. 12

STIPULATION AND SETTLEMENT OF
CLASS ACTION AND PRIVATE
ATTORNEYS GENERAL ACT
REPRESENTATIVE CLAIMS

Complaint filed: October 30, 2020

FAC filed: May 7, 2021

Trial date: Not set

27

-1-

28 4873-9933-6807.2

STIPULATION AND SETTLEMENT OF CLASS
AND PAGA ACTION

**~~[FORM] CLASS ACTION AND PAGA SETTLEMENT
AGREEMENT AND CLASS NOTICE~~**

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Lauren Fletcher Hernandez~~[name]~~ (“Plaintiff”) and defendant Facey Medical Foundation (“Defendant”).~~XYZ [name] (“XYZ”)~~. The Agreement refers to Plaintiff and ~~Defendant~~~~XYZ~~ collectively as “Parties,” or individually as “Party.”

I. ~~9~~ Definitions.

10 The following definitions are applicable to this Settlement Agreement.
11 Definitions contained elsewhere in this Settlement Agreement will also be effective:

12 **1. ~~12~~ DEFINITIONS.**

13
14 ~~1.1.~~ “Action” means the Plaintiffs~~Plaintiff~~~~s~~ lawsuit alleging wage and hour violations against Defendant~~XYZ~~ captioned Lauren Fletcher Hernandez v. Facey Medical Foundation et al., LASC Case No. 20STCV41624~~[caption and case number]~~ initiated on October 30, 2020~~[filing date]~~ and pending in Superior Court of the State of California, County of Los Angeles.

19 ~~1.2.~~
20 ~~1.2.~~ “Administrator” means Apex Class Action~~[name]~~, the neutral entity the Parties have agreed to appoint to administer the Settlement.

23 ~~1.3.~~
24 ~~1.3.~~ “Administration Expenses Payment” means the amount the Administrator ~~will be paid~~ from the Gross Settlement Amount to reimburse its reasonable fees and expenses in

accordance with the Administrator's "not to exceed" bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.4.

1.4. "Aggrieved Employee" means ~~[e.g., a person employed by XYZ in California by Defendant and classified as hourly non-exempt employeesa _____ who worked for XYZ during the PAGA Period.]~~

1.5.

1.5. "Class" means ~~[define class e.g., all persons employed by Defendant XYZ in California and classified as hourly non-exempt employees _____ who worked for XYZ during the Class Period.]~~

1.6.

1.6. "Class Counsel" means Justin F. Marquez, Benjamin H. Haber, Daniel J. Kramer, and Arrash T. Fattahi of Wilshire Law Firm.~~[name]~~

1.7.

1.7. "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment" mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

1.8.

1.8. "Class Data" means Class Member identifying information in Defendant's XYZ's possession including the Class Member's name, last-known mailing address, Social Security number, ~~and~~ and number of Class Period Workweeks and PAGA Pay Periods.

1.9.

26

27

28

1 ~~1.9.~~ “Class Member” or “Settlement Class Member” means a member of the
2 Class, as either a Participating Class Member or Non-Participating Class Member (including a
3 Non-Participating Class Member who qualifies as an Aggrieved Employee).

4
5 ~~1.10.~~
6 ~~1.10.~~ “Class Member Address Search” means the Administrator’s investigation
7 and search for current Class Member mailing addresses using all reasonably available sources,
8 methods and means including, but not limited to, the National Change of Address database, skip
9 traces, and direct contact by the Administrator with Class Members.

10 ~~1.11.~~
11 ~~1.11.~~ “Class Notice” means the COURT APPROVED NOTICE OF CLASS
12 ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be
13 mailed to Class Members in English ~~[with a Spanish translation, if applicable]~~ in the form,
14 without material variation, attached as Exhibit A and incorporated by reference into this
15 Agreement.

16
17
18 ~~1.12.~~ “Class Period” means the period from ~~January 16, 2019~~~~[date]~~ to ~~end on~~
19 ~~the date of Preliminary Approval, or April 10, 2023, whichever occurs first.~~~~[date].~~ⁱⁱ

20
21 ~~1.13.~~ “Class ~~Representatives~~~~Representative~~” means the named ~~Plaintiffs~~~~Plaintiff~~
22 in the operative complaint in the Action seeking Court approval to serve as ~~a~~ Class
23 ~~Representatives.~~~~Representative.~~

24
25 ~~1.14.~~

1 ~~1.14.~~ “Class Representative Service Payment” means the payment to the Class
2 ~~Representatives~~~~Representative~~ for initiating the Action and providing services in support of the
3 Action.

4
5 ~~1.15.~~

6 ~~1.15.~~ “Court” means the Superior Court of California, County of Los Angeles.
7

8 ~~1.16.~~ ~~1.16.~~ “XYZ” means named Defendant [name].
9

10 ~~1.17.~~ “Defense Counsel” means ~~Derek Havel, Matthew Tobias, and Tyler~~
11 ~~Johnson of Sheppard, Mullin, Richter & Hampton LLP.~~~~[name].~~

12 ~~1.17.~~

13 “Effective Date” means the date by when both of the following have occurred:
14

15 ~~1.18.~~ –(a) the Court enters a Judgment on its Order Granting Final Approval of
16 the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the
17 following occurrences: (a) if no Participating Class Member objects to the Settlement, the day
18 the Court enters Judgment; (b) if one or more Participating Class Members objects to the
19 Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a
20 timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment
21 and issues a remittitur.

22 ~~1.18.~~

23 ~~1.19.~~ “Final Approval” means the Court’s order granting final approval of the
24 Settlement.

25
26 ~~1.19.~~
27

1 ~~1.20.~~ “Final Approval Hearing” means the Court’s hearing on the Motion for
2 Final Approval of the Settlement.

3
4 ~~1.20.~~

5 ~~1.21.~~ “Final Judgment” means the Judgment Entered by the Court upon
6 Granting Final Approval of the Settlement.

7 ~~1.21.~~

8 ~~1.22.~~ “Gross Settlement Amount” means ~~\$ \$750,000.00~~~~[amount]~~ which is the
9 total amount ~~DefendantXYZ~~ agrees to pay under the Settlement except as provided in Paragraph
10 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments,
11 Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel
12 Expenses, Class Representative Service Payment and the Administrator’s Expenses.

13
14 ~~1.22.~~

15 ~~1.23.~~ “Individual Class Payment” means the Participating Class Member’s pro
16 rata share of the Net Settlement Amount calculated according to the number of Workweeks
17 worked during the Class Period.

18
19 ~~1.23.~~

20 ~~1.24.~~ “Individual PAGA Payment” means the Aggrieved Employee’s pro rata
21 share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay
22 ~~Periods~~Workweeks worked during the PAGA Period.

23
24 ~~1.24.~~

25 ~~1.25.~~ “Judgment” means the judgment entered by the Court based upon the
26 Final Approval.

27 ~~1.25.~~
28

1 ~~1.26.~~ “LWDA” means the California Labor and Workforce Development
2 Agency, the agency entitled, under Labor Code section 2699, subd. (i).

3
4 ~~1.26.~~
5 ~~1.27.~~ “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to
6 the LWDA under Labor Code section 2699, subd. (i).

7 ~~1.27.~~
8 ~~1.28.~~ “Net Settlement Amount” means the Gross Settlement Amount, less the
9 following payments in the amounts approved by the Court: ~~Individual PAGA Payments, the~~
10 ~~LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment,~~
11 ~~Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The~~
12 ~~remainder is to be paid to Participating Class Members as Individual Class Payments.~~

13
14 ~~1.28.~~
15 ~~1.29.~~ “Non-Participating Class Member” means any Class Member who opts
16 out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

17
18 ~~1.30.~~ ~~1.29.~~ “PAGA Pay Period” means any Pay Period during which an
19 Aggrieved Employee worked for Defendant XYZ for at least one day during the PAGA Period.

20
21 ~~1.30.~~
22 ~~1.31.~~ “PAGA Period” means the period from October 30, 2019~~[date]~~ to
23 Preliminary Approval, or April 10, 2023, whichever occurs first.~~[date]~~.ⁱⁱⁱ

24
25 ~~1.32.~~ “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698.
26 et seq.).

1.32.

1.33. "PAGA Notice" means Plaintiff's November 19, 2020[date] letter to Defendant XYZ and the LWDA [and Plaintiff's [date] letter to XYZ and the LWDA] providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.33.

1.34. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$~~8,250.00~~)([insert amount]) and the 75% to LWDA (\$18,750.00)([insert amount]) in settlement of PAGA ~~claims~~.

1.34.

1.35. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.35. "Plaintiffs

1.36. "Plaintiff" means Lauren Fletcher Hernandez, Amanda Rivera, and Ilbret Pourmanafy,[name], the named ~~plaintiffs~~plaintiff in the Action.

1.36.

1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.

1.37. "

1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.

1.38.

1 ~~1.39.~~ “Released Class Claims” means the claims being released as described in
2 Paragraph ~~5~~6.2 below.

3
4 ~~1.39.~~

5 ~~1.40.~~ “Released PAGA Claims” means the claims being released as described in
6 Paragraph 6.~~12~~ below.

7 ~~1.40.~~
8 ~~1.41.~~ “Released Parties” means: ~~Defendant XYZ~~ and each of its ~~past, former and~~
9 present ~~and future agents, employees, servants, officers,~~ directors, ~~partners, trustees,~~
10 ~~representatives, officers,~~ shareholders, ~~stockholders, owners, [members],~~ attorneys, ~~parents,~~
11 ~~subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions,~~
12 ~~assigns, insurers,~~ predecessors, successors, ~~insurers, consultants, service providers, joint~~
13 ~~venturers, joint employers, co-employers, dual employers, alleged joint employers, alleged co-~~
14 ~~employers, alleged dual employers, assigns [subsidiaries] [affiliates, alter-egos, and affiliated~~
15 ~~organizations, and all of their respective past, present and future employees, directors, officers,~~
16 ~~agents, attorneys, stockholders, fiduciaries, parents, subsidiaries, and assigns.]~~

17
18 ~~1.41.~~

19 ~~1.42.~~ “Request for Exclusion” means a Class Member’s submission of a written
20 request to be excluded from the Class Settlement signed by the Class Member.

21
22 ~~1.42.~~ “

23 ~~1.43.~~ “Response Deadline” means ~~45[e.g., 60]~~ days after the Administrator
24 mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which
25 Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b)
26 fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice
27

Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

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1.43
4

5 1.44. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
6

7 1.44.
8

9 1.45. “Workweek” means any week during which a Class Member worked for Defendant XYZ for at least one day, during the Class Period.^{iv}
10

11 2.
2 11 **RECITALS.**

12 2.1. ——— On October 30, 2020,[date], Plaintiff Lauren Fletcher Hernandez
13 commenced this Action by filing a Complaint alleging causes of action against Defendant. XYZ
14 for [specify causes of action]. [The Complaint is the operative complaint in the Action (the
15 “Operative Complaint.”)] [On May 7, 2021,[date], Plaintiff Lauren Fletcher Hernandez filed a
16 [e.g., First Amended Complaint (“FAC”), which modified the class period to January 16, 2019,
17 to the present. Plaintiff’s FAC asserts the following] alleging causes of action against
18 Defendant: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime
19 wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5)
20 failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage
21 statements; (7) failure to indemnify employees for expenditures;(8) unfair business practices; and
22 (9) civil penalties under the PAGA. In conjunction with this Settlement, Plaintiffs will seek
23 leave to file and file a Second XYZ for [specify causes of action]. The [e.g., First Amended]
24 Complaint (“SAC”) to add Amanda Rivera and Ilbret Pourmanafy as named class
25 representatives. The SAC Complaint will be the operative complaint in the Action (the
26 “Operative Complaint” Complaint.”). Defendant.”)] XYZ denies the allegations in the
27

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1 Operative Complaint, denies any failure to comply with the laws identified in in the Operative
2 Complaint and denies any and all liability for the causes of action alleged.

4 ~~2.2.~~ 2.2. — Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff Lauren
Fletcher Hernandez gave timely written notice to Defendant XYZ and the LWDA by sending the
PAGA Notice.

8 2.3.
9 2.3. ——— On January 9, 2023, [date[s], [the Parties participated in an all-day
10 mediation presided over by David Phillips, Esq., ~~[mediator's name]~~ which led to this Agreement
to settle the Action ~~for describe alternative means of negotiation].~~

2.4. ——— Prior to [mediation, Plaintiffs] [~~negotiating the Settlement~~], Plaintiff obtained, through [formal][~~informal~~] discovery, Defendant's policies, [~~identify documents, testimony and class members' time and pay records~~].

Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in Dunk v. Foot Locker Retail, Inc. (1996) 48 Cal.App.4th 1794, 1801 and Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 129-130 ("Dunk/Kullar").

20 2.5.

21 2.5. ——— The Court ~~[has]~~[has not] granted class certification. ~~[Insert details~~

~~as needed.]~~

~~23246. 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
24 affected by the Settlement.~~

3. MONETARY TERMS.

26 | 3.1.

3.1. ~~_____~~ Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant XYZ promises to pay \$750,000.00 ~~[\$amount]~~ and no more as the Gross Settlement Amount ~~[and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments.~~ Defendant.] XYZ has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph ~~4.36.1~~ of this Agreement. ^v The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant XYZ.

11 ~~3.2.~~ 3.2. ——— Payments from the Gross Settlement Amount. The Administrator
12 will make and deduct the following payments from the Gross Settlement Amount, in the amounts
13 specified by the Court in the Final Approval:

3.2.1. ——— To Plaintiffs~~Plaintiff~~: Class Representative Service
Payments~~Payment~~ to the Class Representatives ~~Representative~~ of not more than \$12,500.00 to
Lauren Fletcher Hernandez and not more than \$5,000.00 to Amanda Rivera and Ilbret
Pourmanafy~~[\$amount]~~ (in addition to any Individual Class Payment [~~and any Individual PAGA~~
Payment~~]~~ the Class Representative is entitled to receive as a Participating Class Member).
Defendant XYZ will not oppose Plaintiffs'~~Plaintiff's~~ request for a Class Representative Service
Payments~~Payment~~ that does not exceed this amount. As part of the motion for Class Counsel
Fees Payment and Class Litigation Expenses Payment, Plaintiffs~~Plaintiff~~ will seek Court
approval for any Class Representative Service Payments no later than ~~[16 court]~~ days prior to the
Final Approval Hearing. If the Court approves a Class Representative Service
Payments~~Payment~~ less than the amount requested, the Administrator will retain the remainder in

the Net Settlement Amount. The Administrator will pay the Class Representative Service ~~Payments~~ Payment using IRS Form 1099. ~~Plaintiffs assume~~ Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service ~~Payments.~~ Payment.

3.2.2.

~~3.2.2.~~ ——— To Class Counsel: A Class Counsel Fees Payment of not more than ~~33 1/3%, —%~~, which is currently estimated to be ~~\$250,000.00~~ \$[amount] and a Class Counsel Litigation Expenses Payment of not more than ~~\$50,000.00.~~ Defendant \$[amount]. XYZ will not oppose requests for these payments provided that do not exceed these amounts. ~~Plaintiffs~~ Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than ~~[16 court]~~ days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other ~~Plaintiffs'~~ Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant XYZ harmless, and indemnifies Defendant XYZ, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3.

~~3.2.3.~~ ——— To the Administrator: An Administrator Expenses Payment not to exceed ~~\$20,000~~ \$[amount] except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than ~~\$20,000.~~ \$[amount], the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4.

3.2.4. ——— To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1.

3.2.4.1. ——— Tax Allocation of Individual Class Payments. 33%~~[Specify percentage]~~ of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining 67%~~[specify percentage]~~ of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for ~~[e.g., interest and penalties]~~ (the "Non-Wage Portion").^{vi} The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2.

3.2.4.2. ——— Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5.

3.2.5. ——— To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$25,000.00 ~~will~~~~to~~ be paid from the Gross Settlement Amount, with 75% (\$18,750.00~~amount~~) allocated to the LWDA PAGA Payment and 25% (\$6,250.00~~amount~~) allocated to the Individual PAGA Payments.

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perform under this Agreement. Defendant XYZ has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. ~~The Without any extension of the deadline by which XYZ must send the Class Data to the Administrator, 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 Data.

7
4.3.
8
9 4.3. ——— Funding of Gross Settlement Amount. Defendant XYZ shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's XYZ's share of payroll taxes by transmitting the funds to the Administrator no later than ~~[14]~~ days after the Effective Date.

13 4.4.
14 4.4. ——— Payments from the Gross Settlement Amount. Within ~~[14]~~ days after Defendant XYZ funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service ~~Payments~~ Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service ~~Payments~~ Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

22 4.4.1.
23 4.4.1. ——— The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. 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. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice 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.

11

4.4.2.

12

4.4.2. — The Administrator must conduct a Class Member Address Search

13

for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

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4.4.3.

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4.4.3. — For any Class Member whose Individual Class Payment check or

Individual PAGA Payment check is uncashed and cancelled after the void date, the

Administrator shall transmit the funds represented by such checks to the California

Controller's Unclaimed Property Fund in the name of the Class Member thereby

leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure

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STIPULATION AND SETTLEMENT OF CLASS
AND PAGA ACTION

Section 384, subd. (b).] [or to a Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b) (“Cy Pres Recipient”) [adding name]]. The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.

4.4.4.

4.4.4. — The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant XYZ to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

RELEASES OF CLAIMS. Effective on the date when Defendant XYZ fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1 Plaintiffs’ Release. Plaintiffs fully and finally release the Released Parties from any and all claims, known and unknown, under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, including but not limited to claims arising from or related to her employment with Defendant and her compensation while an employee of Defendant (“Plaintiffs’ Released Claims”). Plaintiffs’ Released Claims include, but are not limited to, all claims arising from or related to the Action. Plaintiffs’ Released Claims include all claims for unpaid wages, including, but not limited to, failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; missed meal period and rest-period premiums, including failure to pay premiums at the regular rate of compensation; reimbursement for all necessary business expenses; payment for all hours worked, including off-the-clock work; wage statements; deductions; failure to keep accurate records; unfair business practices; penalties,

including, but not limited to, civil penalties, statutory penalties, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs. Plaintiffs' Released Claims include all claims arising under the California Labor Code (including, but not limited to, sections 90.5, 201, 202, 203, 204, 213, 218.5, 221, 223, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 et seq., 2699 et seq., 2699.3, 2800, and 2802); all claims arising under: the Wage Orders of the California Industrial Welfare Commission; the PAGA; California Business and Professions Code section 17200, et seq.; the California Civil Code, to include but not limited to, sections 3287, 3396 and 3294; California Code of Civil Procedure § 1021.5; the California common law of contract; the FLSA, 29 U.S.C. § 201, et seq.; federal common law; and the Employee Retirement Income Security Act, 29 U.S.C. § 1001, et seq. ("ERISA"). Plaintiffs' Released Claims also include all claims for lost wages and benefits, emotional distress, retaliation, punitive damages, and attorneys' fees and costs arising under federal, state, or local laws for discrimination, harassment, retaliation, and wrongful termination, such as, by way of example only, (as amended) 42 U.S.C. section 1981, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the Age Discrimination in Employment Act, and the California Fair Employment and Housing Act; and the law of contract and tort. This release excludes the release of claims not permitted by law.

Plaintiffs' Released Claims include all claims, whether known or unknown. Even if Plaintiffs discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of Plaintiffs' Released Claims, those claims will remain released and forever barred. Thus, Plaintiffs expressly waive and relinquish the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

——— Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences [that occurred during the Class Period], including, but not limited to: (a) all claims that were, or

~~reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, [or ascertained during the Action and released under 6.2, below]. ("Plaintiff's Release.") Plaintiff's~~

5 A general release does not extend to claims that the creditor or releasing party
6 does not know or suspect to exist in his or her favor at the time of executing the release and that,
7 if known by him or her, would have materially affected his or her settlement with the debtor or
8 released party.

9 6-1 Plaintiffs' Release does not extend to any claims or actions to enforce this
10 Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits,
11 social security benefits, workers' compensation benefits that arose at any time, or based on
12 occurrences outside the Class Period. ~~Plaintiff acknowledges that Plaintiff may discover facts or~~
~~13 different from, or in addition to, the facts or law that Plaintiff now knows or believes to be~~
~~14 true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects,~~
~~15 notwithstanding such different or additional facts or Plaintiff's discovery of them.~~

~~6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542.~~
For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the
provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,
which reads:

~~A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.~~

25 ~~Release~~ by Participating Class Members:

1 6.2 ~~Who Are Not Aggrieved Employees:~~ All Participating Class Members,
on behalf of themselves and their respective former and present representatives, agents,
attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims
asserted in the Action, arising from or related to the facts and claims alleged in the Action, or
that could have been raised in the Action based on the facts and claims alleged, as amended. The
Class Released Claims include all claims for unpaid wages, including, failure to pay minimum
wages, straight time compensation, overtime compensation, double-time compensation, and
interest; the calculation of the regular rate of pay; missed meal period and rest-period premiums,
including failure to pay premiums at the regular rate of compensation; reimbursement for all
necessary business expenses; payment for all hours worked, including off-the-clock work; wage
statements; deductions; failure to keep accurate records; unfair business practices; penalties,
including, but not limited to, civil penalties, statutory penalties, recordkeeping penalties, wage
statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees
and costs; all claims related to the Released Claims which are asserted in the Complaint or which
could have been asserted based on the factual allegations pled in the Complaint arising under:
the California Labor Code (including, but not limited to, sections 201, 202, 203, 204, 218.5, 226,
226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802),
the Wage Order 5-2001 of the California Industrial Welfare Commission; the PAGA; California
Business and Professions Code section 17200 based on the foregoing, et seq. Except as set forth
in Section 5.1(i) all claims that were alleged, or reasonably could have been alleged, based on the
Class Period facts stated in the Operative Complaint [and ascertained in the course of the Action]
[including, e.g., "(a) any and all claims involving any alleged failure to pay minimum wage;
except] Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not
release any other claims, including claims for vested benefits, wrongful termination, violation of
the Fair Employment and Housing Act, unemployment insurance, disability, social security,
workers' compensation, or claims based on facts occurring outside the Class Period.

1 6.3 — Release by Non-Participating Class Members Who Are Aggrieved
2 Employees: All Non-Participating Class Members who are Aggrieved Employees are deemed to
3 release, on behalf of themselves and their respective former and present representatives, agents,
4 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for
5 PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA
6 Perfected facts stated in the Operative Complaint, [,] [and] the PAGA Notice [and ascertained in the
7 course of the Action, [including, e.g., (“(a) any and all claims unpaid wages, including, involving
8 and alleged failure to pay minimum wages, straight time compensation, overtime compensation,
9 double-time compensation, and interest; the calculation of the regular rate of pay; missed meal
10 period and rest-period premiums, including failure to pay premiums at the regular rate of
11 compensation; reimbursement for all necessary business expenses; payment for all hours worked,
12 including off-the-clock work; wage statements; deductions; failure to keep accurate records;
13 unfair business practices; penalties, including, but not limited to, civil penalties, statutory
14 penalties, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and
15 wrongful-time penalties; and attorneys’ fees and costs.; etc.].

16 6.
17 **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare
18 and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies
19 with the Court’s current checklist for Preliminary Approvals.

20 6.1. Plaintiffs’

21 7.1 — XYZ’s Declaration in Support of Preliminary Approval. Within [] days of the
22 full execution of this Agreement, XYZ will prepare and deliver to Class Counsel a
23 signed Declaration from XYZ and Defense Counsel disclosing all facts relevant to any
24 actual or potential conflicts of interest with the Administrator and Cy Pres Recipient. In
25 their Declarations, Defense Counsel and XYZ shall aver that they are not aware of any
26 other pending matter or action asserting claims that will be extinguished or adversely
27 affected by the Settlement.

28 7.2 — Plaintiff’s Responsibilities. Plaintiffs ~~Plaintiff~~ will prepare and
deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval,

including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under Dunk/Kullar and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; ~~and/or the proposed Cy Pres~~; and the nature and extent of any financial relationship with Plaintiffs/Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiffs/Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, ~~and/or~~ the Administrator; ~~(vi and/or the proposed Cy Pres)~~; ~~(v)~~ a signed declaration from ~~each~~ Class Counsel ~~firm~~ attesting to ~~their~~its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vii) a redlined version of the parties’ Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (viii) and all facts relevant to any actual or potential conflict of interest with Class Members and/or, the Administrator ~~and/or the Cy Pres Recipient. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.~~

6.2.

7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than ~~[30]~~ days after the full execution of this Agreement; obtaining a prompt

hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

6.3.

7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

8.13 SETTLEMENT ADMINISTRATION.

8.1 Selection of Administrator. The Parties have jointly selected Apex Class Action[name] to serve as the Administrator and verified that, as a condition of appointment Apex Class Action,[name] agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll-tax withholdings and remitting Employee Paid Taxes to the providing reports state and federal tax authorities.

6.3.

27

1 ~~8.3~~ Qualified Settlement Fund. The Administrator shall establish a
2 settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US
3 Treasury Regulation section 468B-1.

4 7.4.

5 ~~8.4~~ Notice to Class Members.

6 7.4.1

7 ~~8.4.1~~ No later than three (3) business days after receipt of the Class
8 Data, the Administrator shall notify Class Counsel that the list has been received and state the
9 number of Class Members, ~~Aggrieved Employees~~~~PAGA Members~~, Workweeks, and PAGA Pay
10 Periods in the Class Data.

11 ~~8.4.2~~ 7.4.2 Using best efforts to perform as soon as possible, and in no event
12 later than ~~[14]~~ days after receiving the Class Data, the Administrator will send to all Class
13 Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail,
14 the Class Notice, ~~[with Spanish translation, if applicable]~~ substantially in the form attached to
15 this Agreement as Exhibit A.---. The first page of the Class Notice shall prominently estimate
16 the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable
17 to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used
18 to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class
19 Member addresses using the National Change of Address database.

20 7.4.3

21 ~~8.4.3~~ Not later than ~~[3]~~ business days after the Administrator’s receipt of
22 any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class
23 Notice using any forwarding address provided by the USPS. If the USPS does not provide a
24 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-
25 mail the Class Notice to the most current address obtained. The Administrator has no obligation

to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

7.4.4
3

8.4.4 The deadlines for Class Members' written objections, Challenges to Workweeks and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional [14] days beyond the 45[60] days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

8
7.4.5

9 8.4.5 If the Administrator, DefendantXYZ or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than [14] days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

17
7.5

18 8.5 Requests for Exclusion (Opt-Outs).

19
7.5.1

19 8.5.1 Class Members who wish to exclude themselves from (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45[60] days after the Administrator mails the Class Notice (plus an additional [14] days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address, and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

27
28

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7.5.2

1
2 8.5.2 The Administrator may not reject a Request for Exclusion as
3 invalid because it fails to contain all the information specified in the Class Notice. The
4 Administrator shall accept any Request for Exclusion as valid if the Administrator can
5 reasonably ascertain the identity of the person as a Class Member and the Class Member's desire
6 to be excluded. The Administrator's determination shall be final and not appealable or otherwise
7 susceptible to challenge. If the Administrator has reason to question the authenticity of a
8 Request for Exclusion, the Administrator may demand additional proof of the Class Member's
9 identity. The Administrator's determination of authenticity shall be final and not appealable or
10 otherwise susceptible to challenge.

7.5.3

11 8.5.3 Every Class Member who does not submit a timely and valid
12 Request for Exclusion is deemed to be a Participating Class Member under this Agreement,
13 entitled to all benefits and bound by all terms and conditions of the Settlement, including the
14 ~~releases~~ Participating Class Members' Releases under Paragraphs 56.2 and 56.3 of this
15 Agreement, regardless whether the Participating Class Member actually receives the Class
16 Notice or objects to the Settlement.

7.5.4

17 8.5.4 Every Class Member who submits a valid and timely Request for
18 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class
19 Payment or have the right to object to the class action components of the Settlement. -Because
20 ~~future~~ Released ~~PAGA claims~~ are subject to claim preclusion upon entry of the Judgment, Non-
21 Participating Class Members who are Aggrieved Employees are deemed to release the Released
22 PAGA Claims ~~claims~~ identified in Paragraph 5.36.4 of this Agreement and are eligible for an
23 Individual PAGA Payment.

7.6.

24 8.6 Challenges to Calculation of Workweeks and/or PAGA Pay
25 Periods.- Each Class Member shall have 45[60] days after the Administrator mails the Class
26

Notice (plus an additional [14] days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email, or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks and PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination of the challenges.

7.7.
13

8.7

Objections to Settlement.

14

7.7.1

15

8.7.1

Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payments. ~~Payment.~~

19

7.7.2

20

8.7.2

Participating Class Members may send written objections to the Administrator, by fax, email, or mail. 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. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45~~[60]~~ days after the Administrator's mailing of the Class Notice (plus an additional [14] days for Class Members whose Class Notice was re-mailed).

26

7.7.3

27

-28-

28

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STIPULATION AND SETTLEMENT OF CLASS
AND PAGA ACTION

1 8.7.3 Non-Participating Class Members have no right to object to any of
the class action components of the Settlement.

2
3 7.8.3
4 8.8 Administrator Duties. The Administrator has a duty to perform or
observe all tasks to be performed or observed by the Administrator contained in this Agreement
or otherwise.

5
6 7.8.1
7 8.8.1 Website, Email Address and Toll-Free Number. The
Administrator will establish and maintain and use an internet website to post information of
interest to Class Members including the date, time, and location for the Final Approval Hearing
and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary
Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees
Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service
Payments Payment, the Final Approval, and the Judgment. The Administrator will also maintain
and monitor an email address and a toll-free telephone number to receive Class Member calls,
faxes, and emails.

15
16 7.8.2
17 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The
Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their
validity. Not later than [5] days after the expiration of the deadline for submitting Requests for
Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing
(a) the names and other identifying information of Class Members who have timely submitted
valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information
of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests
for Exclusion ~~from Settlement~~ submitted (whether valid or invalid).

24 7.8.3
25 8.8.3 Weekly Reports. The Administrator must, on a weekly basis,
provide written reports to Class Counsel and Defense Counsel that, among other things, tally the

number of: -Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or PAGA Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must ~~include~~ provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

7.8.4

8.8.4 Workweek and/or PAGA Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or PAGA Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

7.8.5

8.8.5 Administrator’s Declaration. Not later than ~~[14]~~ days before the date by which ~~Plaintiffs are~~ Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion ~~from Settlement~~ it received (both valid or invalid), the number of written objections it received, the number of challenges to calculation of Workweeks and/or PAGA Pay Periods it received and the outcome of the challenges, and attach the Exclusion List, copies of all Requests for Exclusion it received (both valid and invalid), and copies of all written objections it received. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

7.8.6

8. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE. Based on its records, Defendant estimates that there are 194,000 Total Workweeks from January 16, 2019 through January 9, 2023. In the event the number of Workweeks worked by the Class Members in the Settlement Class Period increases by more than 10%, or 19,400, then the Gross Settlement Amount shall be increased proportionally by the Workweeks worked in excess of 110% of the Workweeks estimate, or 213,400, multiplied by the per Workweek value. The Workweek value shall be calculated by dividing the Gross Settlement Amount by 194,000 Workweeks. The Parties agree that the Workweek value is \$3.87 ($\$750,000.00 / 194,000$ workweeks). Thus, for example, should there be 230,000 Workweeks in the Settlement Class Period, then the Maximum Settlement Amount shall be increased by \$64,242.00 ($(230,000 \text{ Workweeks} - 213,400 \text{ Workweeks}) \times (\$3.87/\text{Workweek})$). Alternatively, Defendant may opt to end the Settlement Class Period on the date on which the total of 213,400 Workweeks is met.

~~9-21 CLASS SIZE ESTIMATES [and ESCALATOR CLAUSE] Based on its records, XYZ~~
~~22 estimates that, as of the date of this Settlement Agreement, (1) there are [number] Class~~
~~23 [number] Members and [number] Total Workweeks during the Class period and (2) there were~~
~~[number] Aggrieved Employees who worked [number] Pay Periods during the PAGA~~
~~Period.^{vii}~~

-31-

Members, DefendantXYZ may, but is not obligated to, elect to withdraw from the Settlement. The Parties agree that, if DefendantXYZ withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, DefendantXYZ will remain responsible for paying all AdministratorSettlement Administration Expenses incurred to that point. DefendantXYZ must notify Class Counsel and the Court of its election to withdraw not later than [seven] days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10.

11. **MOTION FOR FINAL APPROVAL.** Not later than [16] court days before the calendared Final Approval Hearing, PlaintiffsPlaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). PlaintiffsPlaintiff shall provide drafts of these documents to Defense Counsel not later than three[seven] days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

11.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than that [five] court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2.

11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work

together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service ~~Payments~~Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or ~~Administration~~Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

10.3.

6 ~~11.3~~ Continuing Jurisdiction of the Court. The Parties agree that, after
7 entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement
8 solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
9 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10 10.4.

11 ~~11.4~~ Waiver of Right to Appeal. Provided the Judgment is consistent
12 with the terms and conditions of this Agreement, specifically including the Class Counsel Fees
13 Payment and Class Counsel Litigation Expenses Payment ~~reflected~~ set forth in this Settlement,
14 the Parties, their respective counsel, and all Participating Class Members who did not object to
15 the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment,
16 including all rights to post-judgment and appellate proceedings, the right to file motions to
17 vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal
18 does not include any waiver of the right to oppose such motions, writs, or appeals. If an objector
19 appeals the Judgment, the Parties' obligations to perform under this Agreement will be
20 suspended until such time as the appeal is finally resolved and the Judgment becomes final,
21 except as to matters that do not affect the amount of the Net Settlement Amount.

22 10.5.

23 ~~11.5~~ Appellate Court Orders to Vacate, Reverse, or Materially Modify
24 Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that
25 requires a material modification of this Agreement (including, but not limited to, the scope of
26 release to be granted by Class Members), this Agreement shall be null and void. The Parties

shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional ~~Administrator~~ ~~Administration~~ Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service ~~Payments~~ ~~Payment~~ or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. _____

12. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit ~~and~~ a proposed amended judgment.

12. _____

13. ADDITIONAL PROVISIONS.

13.1. _____

~~13.1~~ No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by ~~Defendant XYZ~~ that any of the allegations in the Operative Complaint have merit or that ~~Defendant XYZ~~ has any liability for any claims asserted; nor should it be intended or construed as an admission by ~~Plaintiffs~~ ~~Plaintiff~~ that ~~Defendant's XYZ's~~ defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason, the Court does not grant Preliminary Approval, Final Approval, or enter Judgment, ~~Defendant XYZ~~ reserves ~~its~~ the right to ~~oppose~~ contest ~~certification~~ of any attempt to certify any of the claims in the Action as a class action claims for any reasons, and ~~Defendant otherwise XYZ~~ reserves all available defenses to the claims in the Action. ~~Plaintiffs also reserve, and Plaintiff reserves~~ the right to ~~move for class certification on any grounds available and to~~ contest ~~Defendant's XYZ's~~ defenses. The Settlement, this Agreement,

and ~~the Parties'~~ ~~Parties'~~ willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2.

13.2

Confidentiality Prior to Preliminary Approval. ~~Plaintiffs~~ ~~Plaintiff~~,

~~Class~~ Counsel, ~~Defendant~~, XYZ and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: -(1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) to the extent necessary to obtain a "not to exceed" bid and a declaration from the Administrator; (5) in response to a court order or subpoena; or (6) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. ~~Plaintiffs~~ ~~Plaintiff~~, Class Counsel, ~~Defendant~~, XYZ and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, ~~any~~ with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members. Plaintiffs and Class Counsel further agree not to use the logos or trademarks of Released Parties for advertising purposes.

12.3.

13.3

No Solicitation. The Parties separately agree that they and their

respective counsel and employees will not solicit any Class Member to opt out of or object to the

Settlement, or appeal from the Judgment. Class Counsel shall not at any time list or publicize the action or settlement on its website or any advertising material. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

12.4.

13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

12.5.

13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs ~~Plaintiff~~ and ~~Defendant~~ XYZ, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

12.6.

13.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

12.7.

13.7 No Prior Assignments. The Parties separately represent 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~~and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

12.8.

13.8 No Tax Advice. Neither ~~Plaintiffs~~Plaintiff, Class Counsel, ~~Defendant, XYZ~~ nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

12.9.

13.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

12.10.

13.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

12.11.

13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

12.12.

13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

12.13.

13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

12.14.

13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to

Class Counsel by DefendantXYZ in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, protective order, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, PlaintiffsPlaintiff shall destroy, all paper and electronic versions of Class Data and discovery received from DefendantXYZ unless, prior to the Court's discharge of the Administrator's obligation, DefendantXYZ makes a written request to Class Counsel for the return, rather than the destructiondestructions, of, Class Data.

10
11 ~~13.15~~ 12.15. Headings. The descriptive heading of any section or paragraph of ~~this~~ Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

12 12.16.
13 ~~13.16~~ Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

14 12.17.
15 ~~13.17~~ Notice. All notices, demands, or other communications between the Parties in connection with 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, or the day sent by email or messenger, addressed as follows:

16
17
18
19 To PlaintiffsPlaintiff:
20 Justin F. Marquez (SBN 262417)
21 justin@wilshirelawfirm.com
22 Benjamin H. Haber (SBN 315664)
23 benjamin@wilshirelawfirm.com

24 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000

Daniel J. Kramer (SBN 314625)
dkramer@wilshirelawfirm.com
Arrash T. Fattahi (SBN 333676)
afattahi@wilshirelawfirm.com
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988

Facsimile: (213) 381-9989

To DefendantXYZ:

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
Including Professional Corporations
DEREK R. HAVEL, Cal. Bar No. 193464
dhavel@sheppardmullin.com
MATTHEW A. TOBIAS, Cal. Bar No. 271291
mtobias@sheppardmullin.com
TYLER J. JOHNSON, Cal. Bar No. 307386
tjjohnson@sheppardmullin.com
333 South Hope Street, 43rd Floor
Los Angeles, California 90071-1422
Telephone: 213.620.1780

Facsimile: 213.620.1398

12.18.

~~13.18~~ Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

~~13.19~~ 12.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement.

The Parties further agree that upon the signing of this Agreement, ~~that~~ pursuant to Code of Civil Procedure ~~CCP~~ section 583.330 ~~(to extend the date to bring a)~~, the time within which the Action ~~must be brought~~ ~~ease~~ to trial under Code of Civil Procedure ~~CCP~~ section 583.310 ~~shall be extended~~ for the ~~entire~~ period ~~between the filing of the motion for preliminary approval and the entry of Judgment~~. If the Court denies Preliminary Approval or Final Approval of the Settlement, the Parties agree that the time within which the Action must be brought to trial under Code of Civil Procedure section 583.310 shall be extended to 30 days after the date on which the Court issues an order denying the Motion for Preliminary Approval or the Motion for Final Approval of this settlement process.

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11

12 [Signature] [Signature]
13 [name] For Plaintiff [name and title] For XYZ

14

15

16 [Signature] [Signature]
17 [name] Counsel for Plaintiff [name] Counsel for XYZ

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20

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Exhibit 4



Quotation For:

Justin F. Marquez, Esq.
Wilshire Law Firm, PLC
Justin@wilshirelawfirm.com
213.381.9988

Prepared by:

Sean Hartranft
Apex Class Action LLC
Sean@apexclassaction.com
949.878.3676

Case Name: Hernandez v. Facey Medical Foundation

Date: 4/7/23
RFP Number: 99880001

Settlement Specifications

Estimated Class Size:	1,700
Certified Language Translation:	Yes
Basic Settlement Website:	Yes
Percentage of Undeliverable Mail:	20%

Comments or Special Instructions

None

Service	Unit	Rate	Volume	Amount
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Data Analytics and Standardization

Import and Standardize Data*	Per Hour	\$125.00	3	\$375.00
Data Analyst	Per Hour	\$150.00	3	\$450.00
*Data provided must be in a workable format. Apex can standardized provided data at an additional cost of \$150/hr.				
Sub Total:				\$825.00

Mailing of Class Notice

Form Set-Up (Formatting for Review and Approval)	Per Hour	\$120.00	2	\$240.00
Print & Mailing of Class Notice	Per Piece	\$1.25	1,700	\$2,125.00
USPS First Class Postage	Per Piece	\$0.58	1,700	\$986.00
Remail Notice to Updated Address (Skip Trace)	Per Piece	\$2.00	340	\$680.00
Receive and Process Undeliverable Mail	Per Hour	\$75.00	2	\$150.00
Process Class Member Correspondence via mail, e-mail & fax	Per Hour	\$75.00	3	\$225.00
NCOA Address Update	Static Rate	\$140.00	1	\$140.00
Certified Spanish Translation	Static Rate	\$1,200.00	1	\$1,200.00
Sub Total:				\$5,746.00

Project Management

Project Management	Per Hour	\$150.00	2	\$300.00
Project Coordinator	Per Hour	\$90.00	3	\$270.00
Data Analyst and Reporting	Per Hour	\$140.00	3	\$420.00
Sub Total:				\$990.00

APEX

Class action settlement administration



Service	Unit	Rate	Volume	Amount
Toll-Free Contact Center, Website & Reporting				
Toll-Free Contact Center	Static Rate	\$218.00	1	\$218.00
Website: Static	Static Rate	\$500.00	1	\$500.00
Status Reports	Static Rate	\$750.00	1	Waived
Sub Total:				\$718.00

Distribution & Fund Management				
Settlement Calculations	Per Hour	\$140.00	4	\$560.00
Account Management and Reconciliation	Per Hour	\$140.00	4	\$560.00
Print & Mailing Distribution Settlement Check	Per Piece	\$1.50	1,700	\$2,550.00
USPS First Class Postage	Per Hour	\$0.58	1,700	\$986.00
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$2.00	170	\$340.00
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	12	\$1,200.00
QSF Income Tax Reporting (per calendar year)	Per Year	\$1,250.00	1	\$1,250.00
Unclaimed Funds: CA State Controller's Unclaimed Property Fund	Static Rate	\$700.00	1	\$700.00
Sub Total:				\$8,146.00

Post Distribution Reconciliation				
Bank Account Reconciliation	Per Hour	\$135.00	3	\$405.00
Project Management Reconciliation	Per Hour	\$100.00	3	\$300.00
Declarations	Per Hour	\$120.00	3	\$360.00
Sub Total:				\$1,065.00

TOTAL ESTIMATED PROJECT COST: \$17,490.00

Thank you for your business!

Sean at 949.878.3676

Terms & Conditions

The following Terms and Conditions govern the provision of all AI services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. **Services:** Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").
2. **Payment Terms:** As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.
3. **Incurred Expenses:** In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.
4. **Invoicing:** Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In case of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.
5. **Case Duration:** The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.
6. **Termination of Services:** Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.
7. **Independent Contractor:** As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.
8. **Apex warrants that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services. It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's rerunning, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.**
9. **Limitation of Liability:** The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.
10. **Indemnification:** The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. **Confidentiality:** Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of these terms may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the parties concerning confidentiality. These terms may only be amended in writing and signed by both parties.
12. **Ownership of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex. It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.**
13. **Upon the completion of the administration and unless retention instructions are ordered by the court, Apex will notify the client that it will destroy and/or return all confidential information and property within 90 days upon the client's written request. Alternatively, the material may be stored for one year at a monthly fee of \$1.50 per storage box for paper documents and \$0.01 per image for electronic copies over a period of three years, which compensates Apex for its electronic and hard-copy storage costs. Apex will not be liable for any damages, liability, or expenses incurred in connection with any delay in delivery of, or damage to disks, magnetic tapes, or any input data provided by the client or its representatives unless Apex has agreed in writing to assume such responsibility.**
14. **COMPLETE AGREEMENT.** These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.
15. **This provision outlines the requirements for providing notice or other communication under this agreement. All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.**
16. **Force Majeure:** In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.
17. **The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions. No choice of law or conflict of laws provisions shall affect this governing law provision.**
18. **Severability:** This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.
19. **Nonwaiver:** This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.

PROOF OF SERVICE

Hernandez v. Facey Medical Foundation, et al.
20STCV41624

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Ashley Narinyans, am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is 3055 Wilshire Blvd., 12th Fl., Los Angeles, California 90010. My electronic service address is anarinyans@wilshirelawfirm.com.

On August 4, 2023, I served the foregoing **DECLARATION OF JUSTIN F. MARQUEZ IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

Derek R. Havel
dhavel@sheppardmullin.com
Matthew A. Tobias
mtobias@sheppardmullin.com
Tyler J. Johnson
tjohnson@sheppardmullin.com
**SHEPPARD, MULLIN, RICHTER
& HAMPTON LLP**
333 South Hope Street, 43rd Floor
Los Angeles, California 90071-1422
Telephone: 213.620.1780
Facsimile: 213.620.1398

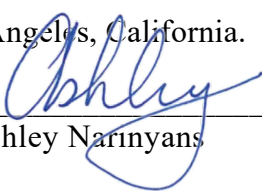
Attorneys for Defendant
Facey Medical Foundation

(X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.

(X) **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service **CASEANYWHERE**.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this **August 4, 2023**, at Los Angeles, California.



Ashley Narinyans