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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

ELIZABETH MORENO, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

J.J. KANE ASSOCIATES, INC., a New
Jersey Corporation; and DOES 1 through 10,
inclusive;

Defendants.

Case No.: CVRI2101236
*[Assigned to Hon. Judge Craig Riemer, Dept
1, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing

Date: January 31, 2022
Time: 8:30 a.m.
Dept. 1

Reservation #: 780017211930

Complaint filed: 3/9/21

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. Within our firm, I am a partner and manage the employment practice. I represent Plaintiff Elizabeth Moreno in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's

1 Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could
2 and would competently testify thereto.

3 **COUNSEL'S EXPERIENCE**

4 2. I have been a member, in good standing, of the State Bar of California since 2001.
5 I am admitted to practice in the United States District Courts for the Central and Southern
6 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
7 courts in California.

8 3. I have handled approximately 500 employee vs. employer litigation matters
9 during my 20 years in practice. Over the last 15 years, my practice has almost entirely consisted
10 of representing employees, the majority of which has included class action and representative
11 action wage and hour matters. In total, I have handled approximately 250 class action and
12 representative action wage/hour cases, and have been appointed by the court as class counsel and
13 have received final court approval and judgment in over half of those actions to date, and
14 anticipate receiving final approval in many more of those in the future.

15 4. As part of these settlements and judgments, I have recovered in excess of \$250
16 million in damages for my clients and the class members (who often work as nurses, ambulance
17 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
18 countless other trades). My team and I once held the record for the largest known PAGA-only
19 case in California's history as of the end of 2018 - a \$12.5 million-dollar court approved
20 settlement, which followed extensive litigation, summary adjudication and writs to the CA
21 Supreme Court against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior
22 Court).

23 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
24 2018, I was lead counsel in a PAGA case that my firm tried to the bench in the Orange County
25 Superior Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action
26 case against Walmart that we tried to the jury in District Court, wherein the jury awarded
27 Plaintiff over \$6 million. Both cases were appealed.

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1 6. Over the last few years, I have been consecutively selected by my peers as a
2 “Super Lawyer” in Employment Litigation.

3 **BRIEF SUMMARY OF THE SETTLEMENT**

4 7. Through a contested but productive mediation, Plaintiff and Defendant J.J. Kane
5 Associates, Inc., (collectively, the “Parties”) entered into a Class Action Settlement Agreement
6 resolving the wage and hour claims of the putative class (the “Settlement Agreement” or “S.A.”).
7 A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit A** and is
8 incorporated herein by reference.

9 8. The Settlement Agreement seeks to fully release and discharge Defendant from
10 the claims brought against it in this matter in exchange for Defendant’s agreement to pay
11 \$235,000 on a non-reversionary, non-claims made basis (each Class Member will receive his/her
12 share of the Net Settlement Amount without having to submit a claim form or taking action,
13 except for those who opt-out).

14 9. Plaintiff seeks to represent the “Class” or “Class Members” defined as “all hourly
15 paid employees employed by Defendant in California at any time during the Class Period.” The
16 Class Period is defined as any time during the period of November 1, 2018, through January 7,
17 2022.

18 10. Under the terms of the Settlement Agreement, Defendant will not oppose
19 Plaintiff’s Counsel’s application for a reasonable award of attorney’s fees not to exceed one-third
20 of the Settlement Amount (\$78,333.33), litigation expenses not to exceed \$15,000, Settlement
21 Administrator costs not to exceed \$5,000, PAGA penalties of \$20,000 (with 75% to the LWDA
22 and 25% to the “Aggrieved Employees”), and a Service Payment not to exceed \$5,000 for
23 Plaintiff. After all these deductions from the Settlement Amount, it is estimated that
24 \$111,666.67 will be available to pay the Individual Settlement Amounts of the Class Members
25 who do not opt-out of the settlement, as follows:

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	Total Amount
<i>Gross Settlement Amount</i>	\$ 235,000.00
Attorneys' Fees (1/3)	\$ 78,333.33
Litigation Costs	\$ 15,000.00
Administrator Costs	\$ 5,000.00
PAGA Penalties	\$ 20,000.00
Class Representative Service Award	\$ 5,000.00
<i>Net Settlement Amount</i>	\$ 111,666.67

11. The Net Settlement Amount will be paid to the Settlement Class Members on a pro rata basis based on their relative number of weeks worked as compared to the Class. And each Class Member will receive the Class Notice, explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of weeks he/she is credited with working during the Class and PAGA Periods. True and correct copies of the Class Notice, Request for Exclusion Form, Objection Form and Dispute Form are attached hereto as **Exhibits B, C, D and E**, respectively.

PROCEDURAL BACKGROUND

12. My office has performed considerable work and diligently investigated and prosecuted this case to a successful conclusion. Our work has resulted in the creation of a significant settlement fund for the benefit of the Class. We efficiently communicated and exchanged information informally with Defense counsel which enabled the parties to successfully settle the case at mediation. Because of the risks involved in litigating the case and the contested legal and factual issues, Plaintiff's Counsel believe this settlement to be fair, reasonable, and adequate.

13. After being retained by Plaintiff, we submitted a letter on November 2, 2020, to the California Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act and concurrently sent a letter to Defendant requesting the production of Plaintiff's records to further evaluate the wage and hour claims.

14. Then, on March 9, 2021, Plaintiff filed a putative class action and representative complaint in the Court on behalf of the Class Members, alleging causes of action for: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods,

1 (d) failure to provide rest breaks, (e) failure to timely pay vested vacation upon separation of
2 employment, (f) failure to failure to timely pay wages each period and upon separation of
3 employment, (g) failure to provide accurate itemized wage statements, and (h) unfair and
4 unlawful competition, and (i) related claims under PAGA.

5 15. Defendant retained counsel and fully denied the allegations. In the Parties' initial
6 status conference statement, Defendant disagreed with Plaintiff's version of the facts and claims
7 and further noted "Defendant denies the material allegations of the Complaint and denies that it
8 has violated any law with respect to Plaintiff, putative class members or putative aggrieved
9 employees." Thereafter, the Parties continued to debate the merits of the claims and defenses
10 before ultimately agreeing to attend an early mediation in order to avoid significant costs and
11 fees associated with a class certification hearing.

12 16. In preparation for mediation, the Parties agreed to an informal discovery process
13 where information was exchanged relating to the applicable policies and procedures, payroll and
14 time keeping records, size of the class, and potential value of the case. The exchange included
15 Defendant's policies and procedures relating to the claims at issues, meal period waiver forms, a
16 sampling of timekeeping and payroll records, information relating to the size of the class. The
17 robust exchange allowed Plaintiff and her expert to take a deep dive into the claims by evaluating
18 over 5,000 individual shifts and over 1,100 work weeks. As such, Plaintiff and her counsel were
19 essentially given a roadmap to analyze, research, and investigate the potential claims of all
20 similarly situated employees.

21 17. On November 8, 2021, the Parties participated in a full day mediation with Todd
22 Smith, a highly regarded and well-respected employment mediator. At the conclusion of
23 mediation, the Parties reached this class-wide settlement for \$235,000 and later memorialized the
24 terms of the settlement in the long-form Settlement Agreement attached hereto.

25 **SUMMARY OF THE CLAIMS AND DEFENSES**

26 18. Plaintiff alleged numerous wage and hour violations on behalf of the Class.
27 However, Defendants vigorously contested and denied each of Plaintiff's material allegations on
28 the merits and as to the propriety of a class action or PAGA representative action, as discussed

1 herein.

2 19. First, Plaintiff claimed that Defendant utilized a time rounding policy that shaved
3 off minutes of time from the recorded punch in and out times when totaled. Plaintiff alleged that
4 the timekeeping data revealed that the rounding policy routinely and systemically failed to pay
5 the Class for all hours worked. Defendant argued that its rounding practice was facially neutral
6 and the wage claims could not be certified due to their individualized nature.

7 20. Second, Plaintiff alleged that the unpaid wage claims trigger various penalties,
8 including 30-days of pay as a waiting time penalty for each former employee under Labor Code
9 § 203.

10 21. Third, Plaintiff claimed that Defendant violated Labor Code § 204 from the
11 beginning of the statutory period through approximately early 2021 where they paid the
12 employees 11 days after the close of each biweekly pay period..

13 22. Fourth, Plaintiff alleged that Defendant's meal period policy failed to comply
14 with California law. In this regard, Plaintiff alleges that Defendant routinely failed to (1) comply
15 with California's requirement regarding the timing of meal periods, (2) provide first meal periods
16 for shifts less than 8 hours, and (3) provide second meal periods for shifts in excess of 10 hours.
17 Moreover, Plaintiff alleged that the payroll and timekeeping records confirm that Class Members
18 were subjected to these violations on numerous shifts worked with frequent instances of late first
19 meals, short meal periods, and no mandated first or second meal periods for shifts over 6 hours
20 or 12 hours, respectively. Plaintiff also alleged rest period violations due to Class Members not
21 being provided with 10-minute rest breaks for every work period of four hours or major fraction
22 thereof. Defendant did not schedule rest breaks for the Class Members and, therefore, Plaintiff
23 and the Class members could only take a rest break if such a break could be accommodated by
24 their workload. However, as the Class Members were constantly overwhelmed by the hectic
25 workload, Plaintiff argued that Defendant did not authorize or permit them to take rest breaks.
26 Defendant contested the claims arguing that its written meal and rest policies were compliant
27 with California law and that there was nothing inherent in the duties of the Class Members that
28 would prevent them from taking compliant meal and rest periods and that any non-compliant

breaks were as a result of individual choice. Further, in 2021, Defendant changed its timekeeping system by requiring Class Members to attest that they had taken their meal breaks. Lastly, Defendant argues that these violations require individualized testimony and proof and are not certifiable for class treatment because common issues do not predominate.

23. Finally, Plaintiff claimed that directly contrary to the requirements of Labor Code § 226(a), Defendant provided its employees with uniform wage statements that failed to accurately state total hours worked (due to rounding violations). Moreover, due to the failure to pay mandated meal/rest break premiums, the wage statements also failed to accurately state gross/net wages earned and all deductions.

24. Despite that each of the claims were disputed, the Parties concluded that further litigation of the Action would be protracted and expensive, and that it is desirable that the Action be fully and finally settled in order to limit further risk, expense and protracted litigation.

CMO COMPLIANCE

25. In accordance with CMO ¶ H, this section of my declaration will specifically identify and address each CMO requirement, which was compiled with the assistance of Misty Lauby, who was responsible for preparing the pre-mediation data and calculations, and primarily assisted in the preparation of the Kullar analysis. As such, the following is based largely on information and belief, as it was largely prepared with Ms. Lauby's assistance.

CMO ¶ H(3)(a)(i)

26. We estimate that there are between 43 and 45 individuals that fall within the defined Class, along with approximately 40 individuals that are Aggrieved Employees (*i.e.*, Class Members during the PAGA Period).

CMO ¶ H(3)(a)(ii), CMO ¶ H(3)(a)(iii), and CMO ¶ H(9)(b)

27. The following paragraphs provide the total and risk-adjusted values for each claim, including on a class and PAGA basis, as required by the CMO.

Failure to Pay Wages

28. Plaintiff alleges that Defendant employed a policy and practice that rounded hours worked resulting in minutes shaved off the employees' compensated time and that the policy was

1 not neutral in its application. In fact, when extrapolated to the class, Plaintiff's analysis revealed
2 that there was an underpayment of 211 hours due to the rounding versus 6 hours of overpayment
3 resulting in \$7,162 in unpaid wages. Based on the information obtained prior to mediation,
4 Plaintiff estimated that the maximum potential value of this claim was class damages in the
5 amount of \$14,324 including interest and liquidated damages.

6 29. At mediation, Defendant argued that this claim could not be certified due to the
7 individualized nature of the proof and that its rounding practice was facially neutral.

8 30. Nevertheless, based on Plaintiff's argument that the application of the policy was
9 not neutral, Plaintiff merely assigned a 15% discount to these claims for a risk adjusted valuation
10 of \$12,175.40.

11 31. Plaintiff also pursued PAGA claims based on the same theory of liability and
12 calculated the maximum potential penalty liability at \$46,200 (462 pay periods x \$100 per
13 violation). The risk adjusted total is for these claims is \$39,270.

14 **Failure to Timely Pay Wages Upon Separation of Employment**

15 32. Additionally, Plaintiff alleged that Defendant failed to timely pay all wages owed
16 to the Class Members upon separation of employment. Based on this theory of liability, Plaintiff
17 calculated the maximum waiting time penalties to be \$67,768 pursuant to Labor Code section
18 203. Plaintiff did not apply any risk adjustment to these claims. Furthermore, because the related
19 PAGA penalties assumes only one violation for each former employee multiplied by \$100, the
20 value of the PAGA penalties was estimated at \$1,200.

21 **Failure to Pay Wages Timely Each Pay Period Claims**

22 33. Plaintiff also alleged that Defendant violated Labor Code § 204 each pay period
23 when it consistently paid the Class Members 11 days after the close of the pay period from the
24 beginning of the statutory period through 2021 when the issue was corrected. This issue affected
25 682 pay periods for a maximum \$68,200 PAGA penalty value.

26 **Meal and Rest Break Claims**

27 34. Plaintiff also alleged meal and rest break claims against Defendant. Utilizing data
28 provided by the Defendant, Plaintiff's consultant calculated a unique violation rate for meal

1 periods of 49.8% resulting in a maximum theoretical value of \$314,833. For rest break claims,
2 Plaintiff estimated a liberal 50% violation rate resulting in a maximum theoretical value of
3 \$298,330 stemming from an estimated 13,312 shifts with rest break violations.

4 35. However, this violation rate does not account for various risks and defenses. For
5 instance, Defendant strongly disputed that Plaintiff could obtain class certification, arguing a
6 lack of commonality of the legal claims and injuries. Defendant further argued that it complied
7 with the applicable law and that any purported deviations therefrom were individualized in
8 nature, thereby limiting Plaintiff's ability to certify the class. While Plaintiff asserts that this is a
9 suitable case for certification, we realize that there is always a significant risk associated with
10 class certification proceedings, which could significantly limit the claims that we could pursue
11 on a class basis.

12 36. Considering the risks and defenses to these claims, Plaintiff assigned a 50%
13 discount to the meal claims, placing the risk-adjusted value at \$157,416.50. The maximum
14 PAGA penalties related to the meal claim were calculated at \$105,733 (1,456 pay periods x \$100
15 x 72.6% unique violation rate). But based on the same risk factors, Plaintiff estimated the risk-
16 adjusted value of the related PAGA claims at \$52,866.50.

17 37. Likewise, considering the same risks to the rest break claims in addition to not
18 having objective records related to such claims, Plaintiff applies a 75% reduction and estimates
19 that the risk-adjusted value to be \$74,582.50. The maximum PAGA penalty on this claim was
20 estimate by Plaintiff to be \$145,600 assuming at least one violation during each pay period
21 (1,456 pay periods x 100). However, due to the various risks and defenses, Plaintiff estimated a
22 risk adjusted PAGA penalty value for rest claims is estimated to be \$36,400 with a 75%
23 reduction.

24 **Wage Statement Claims**

25 38. Plaintiff also argued that Defendant failed to provide accurate itemized wage
26 statements in compliance with Labor Code § 226. Plaintiff calculated the maximum potential
27 value of this claim as \$143,700 based on 1,456 violative wage statements, at \$50 for the initial
28 violation per employee and \$100 for each subsequent violation.

39. However, Defendants argued that, even if Plaintiff succeeded on the wage claims, that statutory penalties under Labor Code § 226(e) would not apply because their actions were not “knowing and intentional.” Based on these factors, Plaintiff assigned 50% risk at various stages of litigation, and arrived at a risk-adjusted value of \$71,850.

40. Plaintiff also pursued PAGA claims on the same theory of liability. Given the approximately 1,456 pay periods, the maximum potential PAGA penalties for this claim equals \$364,000 (1,456 x \$250). But this figure again fails to account for the many risks and defenses of the claims. Additionally, given the uncertainty of these claims, Plaintiff assumed that the Court would exercise its discretion to reduce the penalty amount because of the maximum assessment would be “unjust, arbitrary and oppressive, or confiscatory” in light of the “facts and circumstances of [this] particular case.” Labor Code § 2699(h). Moreover, if the Court awarded statutory penalties under Labor Code § 226(e), Plaintiff believed that the Court would again use its discretionary power to reduce the PAGA penalties. As such, Plaintiff set the risk-adjusted value of the PAGA wage statement claims at \$91,000.

Collective Totals of Maximum and Risk-Adjusted Class/PAGA Damages and Penalties

41. Based on the foregoing, Plaintiff calculated the maximum collective class damages/penalties as \$838,955, with a risk-adjusted value of \$383,792.40.

42. Similarly, Plaintiff calculated the maximum collective PAGA penalties as \$730,933, with a risk-adjusted value of \$288,936.50. [CMO ¶ G(9)(iii) and (iv)]

CMO ¶ H(3)(a)(iv)

43. Defendant provided preliminary data showing that 43 individuals collectively worked 3,889 workweeks through November 1, 2021 (prior to the end of the Class Period). Assuming this could increase to 45 Class Members and 4,000 total work weeks for the full Class Period, then it is estimated that: (1) the average payment will be \$2,481, (2) the value per pay period worked will be \$28.71, (3) the high payment will be approximately \$4,880 (based on an estimated 170 weeks worked), and (4) the low payment will be approximately \$172.26 (based on an estimated 6 weeks worked).

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1 CMO ¶ H(3)(a)(v)

2 44. Please see paragraph 16, above, regarding the discovery and investigation
3 conducted to determine the size of the class and strength of claims.

4 CMO ¶ H(3)(a)(vi)

5 45. After making reasonable inquiry of members of other members of my firm (there
6 are no associated law firms), my team has informed me that there are no other pending cases that
7 asserts claims similar to those asserted in this action on behalf of a putative class of individuals
8 that appear to fall within the defined Class here.

9 SUPPORT FOR ASSESSMENT OF PAGA PENALTIES

10 46. The sections above provide most of the information required by CMO ¶ H(9)(b).
11 The following paragraphs provide the remainder.

12 47. The proposed Settlement allocates \$20,000 of the gross settlement amount to
13 PAGA claims, of which 75% (or \$15,000) will be paid to the California LWDA and 25% (or
14 \$5,000) will be allocated to the Aggrieved Employees as payment of the settlement. This
15 allocation is inherently reasonable given similar settlements.

16 48. There are also other facts that tend to suggest that the Court could utilize its
17 discretion to reduce any potential PAGA penalties awarded at trial. During negotiations,
18 Defendants raised arguments that the assessment of significant PAGA penalties would be
19 “unjust, arbitrary and oppressive, or confiscatory” in light of “the facts and circumstances of
20 [this] case.” See Labor Code § 2699(h). Under a potentially-similar “mistake of law” fact
21 pattern, the *Cotter* court approved a 97.5% reduction in PAGA penalties as “appropriate” based
22 on the “unjust, arbitrary and oppressive, or confiscatory” factors because (i) the employer did not
23 “deliberately evad[e] a clear obligation to provide legally required pay and benefits to
24 employees,” (ii) the employer did not “negligently fail to learn about its obligations under the
25 wage and hour laws,” and (iii) the employer’s obligations were “genuinely unclear” because
26 “there is no straight answer to the question.” *Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d
27 1030, 1037.

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1 49. Under this same theory, Defendant would likely argue that significant PAGA
2 penalties would be unjust, arbitrary, oppressive, and confiscatory because it believed that its
3 practices are in compliance with all applicable requirements, and also believed that its system
4 correctly paid employees for all hours worked. As such, Defendant would likely argue they did
5 not “deliberately evade” any legal obligations. Furthermore, Defendant would likely argue that
6 it did not “fail to learn about its obligations” because it believed its practices are compliant, and
7 that it also created and implemented policies and practices to ensure compliance.

8 50. Also, while a PAGA claim for violation of Labor Code § 226 does not require a
9 showing of knowledge or willfulness (*Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th
10 773), Defendant would likely argue that its good faith belief in the legality of its practices shows
11 that it did not evade or fail to learn of its obligations. Additionally, Defendant would likely
12 argue that it would be “unjust” to impose significant penalties for the alleged violations because
13 the class members did not suffer any injury in relation to certain claims (such as wage statement
14 violations).

15 51. Finally, the parties only reached settlement and the agreed-upon PAGA penalties
16 after extensive informal discovery and arms-length negotiation between the parties and through
17 an experienced mediator. Notably, Defendant raised many defenses which, if accepted by the
18 Court, could result in a significant reduction of penalties, or the elimination of penalties
19 altogether through dispositive motions. As such, an assessment of penalties greater than those
20 agreed-upon would be unjust at this stage because this settlement reflects an informed,
21 fundamentally fair, and reasonable settlement of the PAGA claims herein based on the unique
22 facts, defenses, and risks in this case.

23 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

24 52. The settlement was the product of extensive arm’s length negotiations, facilitated
25 by an experienced mediator. Though cordial and professional, the settlement negotiations were
26 adversarial and non-collusive in nature. The settlement reached is the product of substantial
27 effort by the parties and their counsel. Although we believed that there was a possibility of
28 certifying the claims, we recognized the potential risk, expense, and complexity posed by

1 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
2 on the damages awarded, and/or on an appeal that can take several more years to litigate.

3 53. The settlement will result in a fair payment to each class member based on the
4 number of Weeks Worked by each Class Member. As set forth hereinabove, we have diligently
5 investigated the claims and defenses on behalf of the class members and worked to achieve a
6 resolution of the claims to maximize the recovery by avoiding further expenditure of attorneys'
7 fees and costs. After evaluating the significant risks attendant with further litigation described
8 above and weighing them against the benefits of a known compromise and settlement as set forth
9 in the Settlement Agreement, settlement on the terms agreed to is believed to be in the best
10 interest of Plaintiff and the Class, and is a fair and reasonable resolution of the claims alleged.

11 54. Based on my experience in other cases, including wage and hour matters, I
12 believe I am qualified to evaluate the class claims and viability of defenses in this class action. In
13 this case, the recovery for each class member is reasonable, fair, and adequate, and a settlement
14 at this time is in the best interests of the class. The settlement provides each class member with
15 compensation for the alleged violations when viewed in relation to the costs and risks inherent in
16 obtaining class certification and proceeding to trial.

17 55. My office, as well as Defendant's counsel, fully endorse the terms and conditions
18 of the settlement as set forth in the abovementioned Settlement Agreement.

19 56. Of course, the settlement amount represents a compromise figure, taking into
20 account the various risks surrounding class certification and the merits of Defendant's asserted
21 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
22 members, with no reversion to Defendants.

23 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENTS**

24 57. We seek an enhancement payment of \$5,000 for Plaintiff for her service to the
25 Class, and I believe this requested amount is fair and appropriate. Plaintiff came forward and
26 brought this class action despite risk to herself and, in doing so, put the interests of the Class
27 ahead of her own. She each assumed significant risk in bringing this litigation—namely, had she
28 lost, she would have been ordered to pay Defendant's costs.

58. Plaintiff provided invaluable assistance to my office and the Class in this case, including providing factual background for the pleadings; reviewing the litigation documents; providing information and documents about Defendants' policies and practices; participating in phone calls to discuss litigation and settlement strategy; making herself available throughout the litigation to assist with analyzing the claims and defenses; helping Class Counsel prepare for the mediation; making herself available for a full-day mediation, and reviewing the settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal benefit.

59. Moreover, Plaintiff elected to pursue the class action claims on behalf of other employees while delaying her separate individual claims of wrongful termination and discrimination. As part of the negotiations, the parties ultimately reached a settlement of the class claims and Plaintiff's separate individual claims, but the requested service award is also reasonable and appropriate given that Plaintiff agreed to put the interests of the class ahead of her interests and performed work on behalf of the class while entering into a general release as part of these settlements (whereas the Class will only release the claims alleged).

60. At final approval and in accordance with the CMO, Plaintiff will submit a comprehensive declaration setting forth all of the reasons why she believes that the service award should be approved.

**ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE
REQUESTED FEES AND COSTS**

61. As set forth above, I have handled approximately 250 class and representative actions, have been appointed as class counsel and have successfully resolved over half of those class actions, and many others remain pending and will successfully resolve in the future.

62. When this case was taken on a contingency fee basis, with my firm agreeing to assume responsibility for all litigation costs, the ultimate result was far from certain. In the course of this litigation, my firm paid all costs including filing fees, court costs, research fees, and mediation costs. There was never a guarantee that my firm would recoup those expenditures.

63. It is my experience that attorney fee awards of one-third of a common fund settlement is the standard in California. In this case, Plaintiff's counsel agreed to seek one-third

1 of the Settlement Amount for attorneys' fees. Defendant does not oppose this fee request. The
2 fee is further warranted because it is within the range of reasonableness typically awarded in
3 class actions. My firm's costs are reasonably capped at \$15,000 and will be based on the actual
4 amount of costs incurred at the time of final approval.

5 **SETTLEMENT ADMINISTRATOR**

6 64. The parties propose that the Court appoint Phoenix to serve as the Settlement
7 Administrator. In accordance with **CMO H(3)(d)(i)**, we requested bids from 5 different
8 settlement administrators, after which time the Parties mutually agreed to retain Phoenix as the
9 Settlement Administrator based on its low bid. Phoenix provided an all-in (fixed) fee of \$5,000
10 to administer the settlement, as required by the Court and the Settlement Agreement. *See*
11 Declaration of Mike Moore of Phoenix, filed concurrently herewith.

12 **SUBMISSION TO THE LWDA**

13 65. Plaintiff has concurrently submitted the settlement to the LWDA in accordance
14 with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit G**.

15 **EXHIBITS AND CONCLUSION**

16 66. The signed Settlement Agreement is attached hereto as **Exhibit A**.

17 67. The proposed Class Notice is attached as **Exhibit B**.

18 68. The proposed Request for Exclusion Form is attached as **Exhibit C**.

19 69. The proposed Objection Form is attached as **Exhibit D**.

20 70. The proposed Dispute Form is attached as **Exhibit E**.

21 71. A true and correct copy of the notice letter we submitted to the LWDA on
22 November 2, 2020, is attached as **Exhibit F**.

23 72. The Compliance Chart is attached as **Exhibit G** and provides references to the
24 document, page, and line number where each CMO requirement is satisfied.

25 73. The LWDA's confirmation of receipt of this Motion and Declaration is attached
26 hereto as **Exhibit H**.

27 74. Counsel has carefully reviewed both the terms and the terminology of the order
28 and the accompanying forms (notice, objection form, exclusion form) to confirm that the various

1 documents are internally consistent, consistent with each other, and consistent with the
2 settlement agreement.

3 75. For the foregoing reasons, it is respectfully requested that the Court grant
4 preliminary approval of the settlement as being fair, reasonable, and in the best interests of the
5 class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement
6 payment to the Class Representative.

7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct. Executed on January 6, 2022, at Riverside, California.

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10 By: 
11 Brian J. Mankin, Esq.
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EXHIBIT “A”

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

ELIZABETH MORENO, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

J.J. KANE ASSOCIATES, INC., a New
Jersey Corporation; and DOES 1 through 10,
inclusive;

Defendants.

Case No.: CVRI2101236
*[Assigned to Hon. Judge Craig Riemer, Dept
1, for all purposes]*

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE OF
CLAIMS**

1 This Class Action Settlement Agreement and Release of Claims is entered into by and
2 between Plaintiff Elizabeth Moreno, individually, and on behalf of all others similarly situated,
3 and on behalf of the State of California, and Defendant J.J. Kane Associates, Inc., and is
4 approved by their respective counsel of record, subject to the terms and conditions hereof and the
5 Court's approval.

6 **A. Definitions**

7 1. "Action" or "Lawsuit" means and refers to the case entitled *Moreno v. J.J. Kane*
8 *Associates, Inc., et al.*, Riverside County Superior Court, Case No. CVRI2101236.

9 2. "Aggrieved Employee(s)" means all current and former all current and former
10 nonexempt (hourly paid) employees employed by Defendant in the State of California at any
11 time during the PAGA Period.

12 3. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Class
13 Action Settlement Agreement and Release of Claims.

14 4. "Class Counsel" refers to Brian Mankin and Misty Lauby of Lauby, Mankin &
15 Lauby LLP.

16 5. "Class Data" means a complete list that Defendant will diligently and in good
17 faith compile from their records and provide to the Settlement Administrator on one spreadsheet
18 which shall include, for each Settlement Class Member, the individual's full name; last known
19 address; Social Security Number; total Weeks Worked during the PAGA Period and the Class
20 Period.

21 6. "Class Period" is deemed to be any time during the period of November 1, 2018,
22 through January 7, 2022.

23 7. "Class Representative" or "Plaintiff" means and refers to Plaintiff Elizabeth
24 Moreno.

25 8. "Complaint" refers to the class action and representative action complaint filed in
26 the Riverside Superior Court on March 9, 2021.

27 9. "Court" (or "Judge") means the California Superior Court, County of Riverside.

28 10. "Defendant" means and refers to J.J. Kane Associates, Inc.

1 11. “Defendant’s Counsel” or “Defense Counsel” means and refers to Hill, Farrer &
2 Burrill LLP.

3 12. “Effective Date” means the latest of the following dates: (i) if no Settlement
4 Class Member timely and properly intervenes, or files a motion to vacate the judgment
5 approving the Settlement Agreement under Code of Civil Procedure § 663, then the date of the
6 Court’s Notice of Entry of Order regarding Final Approval of the Settlement; (ii) if a Class
7 Member intervenes, or files a motion to vacate the judgment approving the Settlement
8 Agreement, then sixty-one (61) calendar days following the date the Court enters an order
9 granting Final Approval, assuming no appeal is filed; or (iii) if a timely appeal is filed, the date
10 of final resolution of that appeal (including any requests for rehearing and/or petitions for
11 *certiorari*), resulting in final judicial approval of the Settlement.

12 13. “Final Approval” refers to the order of the Court granting final approval of this
13 Settlement Agreement and entering a judgment approving this Agreement on substantially the
14 terms provided herein or as may be modified by subsequent agreement of the Parties.

15 14. “Final Settlement Class” means, collectively, all Settlement Class Members who
16 have not opted out of the Settlement Class by submitting timely Requests for Exclusion.

17 15. “Individual Settlement Payment” shall have the meaning ascribed to it in
18 Paragraph 47(c) below.

19 16. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 47(b)
20 below.

21 17. “Notice” means the notice of proposed class settlement that will be sent to the
22 Settlement Class Members and which will advise each Settlement Class Member of the
23 settlement and his or her estimated “Individual Settlement Amount” and will further advise of
24 the setting of a Final Approval Hearing.

25 18. “Notice Packet” means the Notice, Request for Exclusion Form, the Objection
26 Form and the Dispute Form to be sent to all Settlement Class Members.

27 19. “Notice Response Deadline” is 45 calendar days from the date the Notice is
28 mailed to the Settlement Class Members.

1 20. “Objecting Settlement Class Member” means a Settlement Class Member, other
2 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement, pursuant
3 to Paragraph 67(c) below.

4 21. “PAGA Penalties” means the amount that the Parties have agreed to pay to the
5 Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor
6 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well
7 as the individual PAGA payment allocated to each Aggrieved Employee.

8 22. “PAGA Period” is deemed to be any time during the period of November 1, 2019,
9 through January 7, 2022.

10 23. “PAGA Released Claims” by Plaintiff and the Aggrieved Employees upon Final
11 Approval of the Settlement means any and all PAGA claims that Plaintiff alleged against the
12 Released Parties, on behalf of Aggrieved Employees and State of California, based on the facts
13 stated in the operative Complaint in the Action and in the LWDA notice letter(s), including all
14 PAGA claims seeking civil penalties that premised upon (a) failure to pay minimum wages, (b)
15 failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest
16 breaks, (e) failure to timely pay wages each period, (f) failure to timely pay final wages, (g)
17 failure to provide accurate itemized wage statements, and (h) all other claims for civil penalties
18 recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* that were
19 stated in the Complaint and based upon the facts alleged in the Complaint and the notice sent by
20 Plaintiff to the LWDA on November 2, 2020. The time period governing the PAGA Released
21 Claims shall be any time during the PAGA Period.

22 24. “Participating Class Member” means any and all Settlement Class Members who
23 are deemed to participate and receive an Individual Settlement Payment and do not opt-out by
24 submitting timely valid Requests for Exclusion.

25 25. “Parties” or “Settling Parties” mean Plaintiff, the Settlement Class and Defendant,
26 collectively.

27 26. “Preliminary Approval Date” means the date the Court approves the Settlement
28 Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

1 27. “Preliminary Approval Order” means the judicial Order to be entered by the
2 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
3 and providing for the issuance of the Notice Packet to the Settlement Class, an opportunity to opt
4 out of the Settlement, an opportunity to submit timely objections to the Settlement, and setting a
5 final approval hearing on the fairness of the terms of Settlement, including approval of attorneys’
6 fees and costs. Provided that the motion is consistent with the terms herein, Defendant will not
7 object to Plaintiff’s motion for preliminary approval but will be provided with an opportunity to
8 review and comment upon the motion before it is filed.

9 28. “QSF” means the Qualified Settlement Fund set up by the Settlement
10 Administrator for the benefit of the Final Settlement Class, and from which the settlement
11 payments shall be made.

12 29. “Released Class Claims” or “Class Claims” by the Participating Class Members
13 upon Final Approval of the Settlement will include all claims stated in the operative Complaint
14 and those based solely upon the facts in the Complaint, including: (a) failure to pay minimum
15 wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to
16 provide rest breaks, (e) failure to timely pay vested vacation upon separation of employment, (f)
17 failure to failure to timely pay wages each pay period and upon separation of employment, (g)
18 failure to provide accurate itemized wage statements, and (h) unfair and unlawful competition,
19 and (i) all other claims for statutory penalties based on the facts or claims alleged in the
20 Complaint.

21 30. “Released Parties” means Defendant, and all of its past and present officers,
22 directors, and employees.

23 31. “Release Period” shall be the time period governing the Released Claims, which
24 shall be the same as the Class Period.

25 32. “Release” shall mean the release and discharge of the Released Claims by
26 Plaintiff and all Participating Class Members and their assignees.

27 33. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 67(a)
28 below.

1 34. “Service Payment” or “Service Award” means the amount approved by the Court
2 to be paid to Class Representative Elizabeth Moreno in addition to her Individual Settlement
3 Payment as a Participating Class Member and individual PAGA payment as an Aggrieved
4 Employee.

5 35. “Settlement Administrator” means and refers to Phoenix Class Action
6 Administration, the third-party class action settlement administrator agreed to by the Parties, that
7 will provide the Notice to the Class Members and distribute the settlement amounts as described
8 in this Agreement.

9 36. “Settlement Administration Costs” means the costs payable from the Settlement
10 Amount to the Settlement Administrator for administering this Settlement, including, but not
11 limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, and
12 deposit of the employee and employer share of payroll taxes, unclaimed property due diligence,
13 reporting and remittance obligations, distributing the Maximum Settlement Amount, and
14 providing necessary reports and declarations, as requested by the Parties. The Settlement
15 Administration Costs shall be paid from the Settlement Amount, including, if necessary, any
16 such costs in excess of the amount represented by the Settlement Administrator as being the
17 maximum costs necessary to administer the Settlement.

18 37. “Settlement Class” is defined all current and former all current and former
19 nonexempt (hourly paid) employees employed by Defendant in California at any time during the
20 Class Period.

21 38. “Settlement Class Member” or “Class Member(s)” refers to individual members
22 of the Settlement Class.

23 39. “Work Weeks” or “Weeks Worked” in the context of a Settlement Class Members
24 means any and all work weeks during the Class Period during which the Settlement Class
25 Member worked at least one day for Defendant. Likewise, in the context of Aggrieved
26 Employees, it means any and all weeks worked during the PAGA Period during which the
27 Aggrieved Employee worked at least one day for Defendant.
28

1 **B. General Terms**

2 40. Plaintiff filed her class action and representative complaint in the Court on March
3 9, 2021. The operative Complaint alleges Class Claims and representative PAGA Claims,
4 including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to
5 provide meal periods, (d) failure to provide rest breaks, (e) failure to timely pay vested vacation
6 upon separation of employment, (f) failure to failure to timely pay wages each period and upon
7 separation of employment, (g) failure to provide accurate itemized wage statements, and (h)
8 unfair and unlawful competition, and (i) related claims under PAGA.

9 41. Defendant denies Plaintiff's claims and allegations and contends that the Action is
10 not suitable for class certification.

11 42. The Class Representative believes she can proceed with the representative and
12 class claims, that the Action is meritorious, and that class certification is appropriate.

13 43. The Parties have conducted a thorough investigation into the facts of the Action.
14 This includes conducting an extensive exchange of informal discovery, including a sampling of
15 payroll and timekeeping records for Settlement Class Members. Class Counsel is both
16 knowledgeable about and has done extensive research with respect to the applicable law and
17 potential defenses to the claims of the Settlement Class. Class Counsel has diligently pursued an
18 investigation of the Class Members' claims against Defendant. Based on the foregoing data and
19 on their own independent investigation and evaluation, Class Counsel is of the opinion that the
20 settlement with Defendant for the consideration and on the terms set forth in this Settlement
21 Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in
22 light of all known facts and circumstances, including the risk of significant delay and uncertainty
23 associated with litigation, various defenses asserted by Defendant, and numerous potential
24 appellate issues.

25 44. On November 8, 2021, Plaintiff and Defendant participated in a full-day
26 mediation with Todd Smith, a highly regarded and well-respected employment mediator. At the
27 conclusion of mediation and extensive arms-length negotiations, the Parties reached this
28 Settlement.

1 45. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
2 to be performed or judgment to be entered pursuant to the terms of the Settlement and
3 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
4 any statute or law or liability on the claims or allegations in the Action.

5 46. Stipulation for Class Certification. For settlement purposes only, Defendant will
6 stipulate that the Settlement Class Members described herein who do not Request Exclusion
7 from the Settlement Class may be conditionally certified as a settlement class. This stipulation to
8 certification is in no way an admission that class action certification is proper and shall not be
9 admissible in this or in any other action except for the sole purposes of enforcing this
10 Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties'
11 stipulation to class certification as part of the Settlement shall become null and void ab initio and
12 shall have no bearing on, and shall not be admissible in connection with, the issue of whether
13 certification would be appropriate in a non-settlement context. Defendant expressly reserves its
14 rights and declares that it would continue to oppose class certification and the substantive merits
15 of the case should the Court fail to issue Final Approval. Plaintiff expressly reserves her rights
16 and declares that she will continue to pursue class certification and a trial should the Court fail to
17 issue Final Approval.

18 **C. Terms of Settlement**

19 47. The financial terms of the Settlement are as follows:

20 (a) Gross Settlement Amount: The Parties agree to settle this Action for two
21 hundred thirty-five thousand dollars and zero cents (\$235,000.00) (the "Settlement Amount").
22 The Settlement Amount is the maximum amount that will be paid, and includes Individual
23 Settlement Amounts, attorneys' fees of Class Counsel, costs and expenses, the Service Payment
24 to the Class Representative, all Settlement Administration Costs, and PAGA Penalties.
25 Defendant will separately pay its share of payroll taxes on the portion of the Individual
26 Settlement Amounts allocated to wages.

27 (b) Net Settlement Amount: The "Net Settlement Amount" is defined as the
28 Settlement Amount less the Attorneys' Fees and Costs Award, the Service Payment to the Class

1 Representative as awarded by the Court, the Settlement Administration Costs, and PAGA
2 Penalties. If the Court reduces the Attorneys' Fees and Costs Award, Service Award, or
3 Settlement Administrator Costs, or either increases or decreases the amount allocated to the
4 PAGA Penalties, the difference shall be placed in the Net Settlement Amount and allocated to
5 the Settlement Class.

6 (c) Individual Settlement Amounts for the Settlement Class: The Individual
7 Settlement Amount for each Settlement Class Member will be calculated by the Settlement
8 Administrator using the Class Data provided by Defendant as follows. Compensable workweeks
9 will be all Weeks Worked by the Settlement Class Members during the Class Period. The
10 dollars per compensable work week will be calculated by dividing the total Weeks Worked by
11 Settlement Class Members into the Net Settlement Amount to determine a per work week value
12 ("Workweek Value"). The Workweek Value will be multiplied by the number of Weeks
13 Worked by a Participating Class Member during the Class Period to determine the distribution
14 for a Participating Class Member. If there are any timely submitted Requests for Exclusion, the
15 Settlement Administrator shall proportionately increase the Individual Settlement Amounts for
16 each Participating Class Member so that the amount actually distributed to Participating Class
17 Members equals 100% of the Net Settlement Amount.

18 (d) Allocation of Individual Settlement Amounts: The Individual Settlement
19 Payments to Participating Class Members will be allocated as follows: One-third (33.33%) will
20 be allocated as wages subject to withholding of all applicable local, state and federal taxes; and
21 two thirds (66.67%) will be allocated for interest and statutory penalties (pursuant to, e.g.,
22 California Labor Code sections 203, 210, 226) from which no taxes will be withheld. The
23 Settlement Administrator will issue to each Participating Class Member an Internal Revenue
24 Service Form W-2 and comparable state forms with respect to the wage allocation and a Form
25 1099 with respect to the penalties and interest allocations.

26 (e) Service Payment to Class Representative: The amount, if any, awarded to
27 the Class Representative as a Service Payment will be set by the Court in its discretion, not to
28 exceed \$5,000, in exchange for the service that Plaintiff performed on behalf of the Class.

1 Defendant agrees not to oppose this request. The Service Payment to Plaintiff will be paid out of
2 the Settlement Amount. The Class Representative will be issued an IRS Form 1099 in
3 connection with this payment. Plaintiff shall be solely and legally responsible to pay any and all
4 applicable taxes on this payment. The Parties agree that any amount awarded as the Service
5 Payment to Plaintiff less than the requested amount shall not be a basis for Class Counsel to void
6 this Settlement Agreement. Should the Court approve a lesser amount for the Service Payment,
7 the difference shall be added to the Net Settlement Amount to be distributed to the Participating
8 Class Members.

9 (f) Attorneys' Fees and Costs Award: Defendant agrees to not oppose a
10 request by Class Counsel to the Court for an award of attorneys' fees of one-third of the
11 Settlement Amount (\$78,333.33), plus reasonable litigation costs not to exceed \$15,000
12 ("Attorney's Fees and Cost Award"). Defendant agrees not to oppose any contention by Class
13 Counsel that attorneys' fees should be based on the common fund theory. The Attorney's Fee
14 and Cost Award shall be paid from the Settlement Amount, and, except for this award,
15 Defendant shall have no further obligation to pay any attorneys' fees, costs or expenses to Class
16 Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the
17 difference shall be added to the Net Settlement Amount to be distributed to the Participating
18 Class Members. Any Court order awarding less than the amount sought by Class Counsel shall
19 not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. The
20 Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount
21 of attorneys' fees and costs awarded by the Court.

22 (g) Settlement Administration Costs: The fees and other charges of the
23 Settlement Administrator will be paid from the Settlement Amount, not to exceed \$5,000 unless
24 approved by all Parties and the Court.

25 (h) PAGA Penalties: The Parties agree that \$20,000 is allocated to PAGA
26 Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this
27 amount, \$15,000 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the
28 Private Attorney General Act of 2004 ("PAGA") and \$5,000 (25%) will be paid to the Aggrieved

1 Employees on a Work Week basis, which will be treated entirely as civil penalties and shall be
2 reported as required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA
3 of the Settlement.

4 (i) Tax Liability: Class Counsel and Defendant make no representations as to
5 the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiff and the
6 Settlement Class Members are not relying on any statement or representation by Class Counsel
7 or Defendant in this regard. Plaintiff, Participating Class Members, and Aggrieved Employees
8 understand and agree that they will be solely responsible for the payment of any taxes and
9 penalties assessed on their respective Settlement Amounts described herein. Forms 1099 will be
10 distributed in the manner required by the Internal Revenue Code of 1986 (the “Code”) and
11 consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other
12 applicable tax law, is changed after the date of this Agreement, the processes set forth in this
13 Section may be modified in a manner to bring Defendant into compliance with any such changes.
14 Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree that they
15 will be solely responsible for the payment of any taxes and penalties assessed on their respective
16 payments described herein.

17 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
18 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
19 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
20 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
21 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
22 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
23 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
24 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
25 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
26 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
27 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
28 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX

1 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
2 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
3 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
4 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
5 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
6 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
7 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
8 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
9 ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
10 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
11 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
12 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

13 (k) "Non-Reversionary" Settlement. This is a "non-reversionary" settlement.
14 Under no circumstances will any portion of the Settlement Amount revert to Defendant.
15 Participating Class Members and Aggrieved Employees will not have to make a claim in order to
16 receive an Individual Settlement Amount or a portion of the PAGA Penalties. Distributions, in
17 the form of Individual Settlement Amounts and the portion of the PAGA Penalties payable to the
18 Aggrieved Employees, will be made directly to each Participating Class Member and Aggrieved
19 Employee. The Settlement Administrator shall be responsible for accurately and timely
20 reporting and remittance obligations with respect to unclaimed funds as a result of a Participating
21 Class Member and/or Aggrieved Employee not cashing any checks delivered pursuant to the
22 Settlement by the check cashing deadline, as set forth herein.

23 (l) Class Counsel and Plaintiff believe that the Settlement is fair and
24 reasonable and will so represent same to the Court.

25 **D. Release by the Participating Class Members**

26 48. Upon entry of the Final Approval Order and Defendant funding of the Settlement
27 Amount, and except as to such rights or claims as may be created by this Agreement, Plaintiff
28 and the Participating Class Members will forever completely release and discharge the Released

Parties from the Released Class Claims for the Release Period.

49. Each Participating Class Member will be deemed to have made the foregoing Release as if by manually signing it.

50. Class Representative, on behalf of herself and the Settlement Class, acknowledges and agrees that the claims for unpaid wages and untimely payment of wages in the Action are disputed, and that the payments set forth herein constitute payment of all sums allegedly due to them. Class Representative, on behalf of herself and the Settlement Class, acknowledges and agrees that California Labor Code Section 206.5 is not applicable to the Parties or Settlement. Labor Code § 206.5 provides in pertinent part as follows: “An employer shall not require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.”

E. Release of PAGA Claims

51. Upon entry of the Final Approval Order and Defendant funding of the Settlement Amount, Plaintiff – in her individual capacity and on behalf of Aggrieved Employees and the State of California and LWDA - shall completely release and discharge the Released Parties from the PAGA Released Claims for the PAGA Period.

52. Regardless of submitting a valid Request for Exclusion, neither Plaintiff nor any Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from releasing the PAGA Released Claims.

53. It is the intent of the Parties that the Final Approval Order shall have full equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

F. Release by Plaintiff and Class Representative

54. Except for Plaintiff’s separate “Individual Claims” (which shall be released through a separate individual agreement), as a material inducement to Defendants to enter into this Settlement Agreement, Class Representative does hereby, for herself and for her respective spouses, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, and assigns forever and completely release and discharge the Released Parties from any and all charges, complaints, claims, liabilities,

obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever, from the beginning of time through the execution of this Stipulation, whether known or unknown, suspected or unsuspected, including but not limited to all claims arising out of, based upon, or relating to Class Representative's employment with Defendant or the remuneration for or termination of such employment (collectively, the "Class Representative's Claims").

55. Without limiting the generality of the foregoing, this general release by Plaintiff includes all federal, state and local statutory claims, federal and state common law claims (including but not limited to those for contract, tort and equity), including without limitation the Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964 (as amended), 42 USC sec. 1981, 42 USC sec. 1983, the Fair Labor Standards Act, the Employment Retirement Security Income Act of 1974, the California Constitution, the California Fair Employment and Housing Act, the California Unfair Competition Act (California Business and Professions Code section 17200 et seq.), and the California Labor Code, except for the Individual Claims.

56. Plaintiff agrees that there is a risk that any injury that she may have suffered by reason of the Released Parties' relationship with her might not now be known, and there is a further risk that said injuries, whether known or unknown at the date of this Settlement Agreement, might possibly become progressively worse, and that as a result thereof further damages may be sustained. Nevertheless, Plaintiff agrees to forever and fully release and discharge the Released Parties, and understands that by the execution of this Settlement Agreement no further claims for any such injuries that existed at the time of the execution of this Settlement Agreement may ever be asserted by Plaintiff with respect to claims arising in the time period from the beginning of time to the execution of this Settlement Agreement.

57. Plaintiff expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of the State of California and does so understanding and

1 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
2 of the State of California states:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
4 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
5 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
6 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
7 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
8 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
9 OR RELEASED PARTY.

10 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
11 full and complete release and discharge of all parties, Class Representative expressly
12 acknowledges that this Settlement Agreement is intended to include in its effect, without
13 limitation, all claims that Class Representative knew of, as well as all claims that she does not
14 know or suspect to exist in her favor against the Released Parties, or any of them, for the time
15 period from the beginning of time to the execution of this Settlement Agreement, and that this
16 Settlement Agreement contemplates the extinguishment of any such Class Representative's
17 claims. Notwithstanding the above, the general release by Class Representative shall not extend
18 to claims for workers' compensation benefits, claims for unemployment benefits, or other claims
19 that may not be released by law.

20 **G. Interim Stay of Proceedings**

21 58. Pending completion of all of the prerequisites necessary to effectuate this
22 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
23 except such as are necessary to effectuate the Settlement.

24 **H. Notice Process**

25 59. Appointment of Settlement Administrator. The Parties have agreed to the
26 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
27 including mailing the Notice Packet, using standard devices to obtain forwarding addresses,
28 independently reviewing and verifying documentation associated with any claims or opt-out
requests, resolving any disputes regarding the calculation or application of the formula for
determining the Individual Settlement Amounts, drafting and mailing the settlement checks to

1 Participating Class Members and Aggrieved Employees, issuing all necessary tax forms, and
2 performing such other tasks as set forth herein or as the Parties mutually agree or that the Court
3 orders.

4 60. Disputes Regarding Settlement Administration. Any and all disputes relating to
5 administration of the Settlement by the Settlement Administrator (except for disputes regarding
6 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
7 over the terms and conditions of this Agreement, until Plaintiff and Defendant notify the Court
8 that all payments and obligations contemplated by this Agreement have been fully carried out.
9 Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to
10 resolve the dispute without the necessity of Court intervention. The Settlement Administrator
11 shall also be responsible for issuing to Plaintiff, Participating Class Members, and Aggrieved
12 Employees, and Class Counsel any Tax Forms as may be required by law for all amounts paid
13 pursuant to this Agreement.

14 61. Class Data. Within fourteen (14) days after entry of the Preliminary Approval
15 Order, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement
16 Administrator will run a check of the Class Members' addresses against those on file with the
17 U.S. Postal Service's National Change of Address List. The Class Data provided to the
18 Settlement Administrator will remain confidential and will not be used or disclosed to anyone,
19 except as required by applicable tax authorities, pursuant to Defendant's express written consent,
20 or by order of the Court. Although Class Counsel will not be provided with the list of Class Data,
21 nothing herein shall prevent Class Counsel from communicating with Class Members regarding
22 the Action and Settlement.

23 62. Notice Packet. The Notice Packet, as approved by the Court, shall be sent by the
24 Settlement Administrator to the Settlement Class Members, by first class mail, in English, within
25 fourteen (14) calendar days following the Settlement Administrator's receipt of the Class Data.
26 For all Settlement Class Members, the Notice Packet will include the Notice, a Request for
27 Exclusion Form, an Objection Form and a Dispute Form. The Settlement Administrator shall use
28 standard devices, including a skip trace, to obtain forwarding addresses of Settlement Class

Members if any envelopes are returned.

63. Returned Notice Packets. The Settlement Administrator will take steps to ensure that the Notice Packet is received by all Settlement Class Members, including utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any Class Member for whom an updated address is located within ten (10) calendar days following both the Settlement Administrator learning of the failed mailing and its receipt of the updated address. The Notice Packet shall be identical to the original Notice Packet, except that it shall notify the Class Member that the exclusion (opt-out) request or objection must be returned by the later of the Notice Response Deadline or fifteen (15) days after the remailing of the Notice Packet.

64. Presumption Regarding Receipt of Notice Packet. It will be conclusively presumed that if an envelope has not been returned to Settlement Administrator by the Notice Response Deadline that the Settlement Class Member received the Notice Packet.

65. Disputes Regarding Class Data. Class Members are deemed to participate in the Settlement unless they opt-out, and Aggrieved Employees may not opt out of the PAGA Released Claims. The Notice will inform Class Members of his/her estimated Individual Settlement Amount and the number of weeks he/she worked during the Class Period and the PAGA Period. Class Members may dispute their Weeks Worked if they disagree they worked more weeks in the Class Period and/or PAGA Period in California than Defendant's records show by timely submitting evidence to the Settlement Administrator. Defendant's records will be presumed determinative absent reliable evidence to rebut Defendant's records, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's actual number of Work Weeks and estimated Individual Settlement Amount. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the Court to render a final decision. Class Members and Aggrieved Employees will have until the Notice Response Deadline to dispute Weeks Worked, object or opt out, unless extended by the Court.

1 66. Declaration of Due Diligence. The Settlement Administrator shall provide
2 counsel for the Parties, at least twenty-five (25) days prior to the final approval hearing, a
3 declaration of due diligence and proof of mailing with regard to the mailing of the Notice Packet.

4 67. Settlement Class Members' Rights. Each Settlement Class Member will be fully
5 advised of the Settlement, the ability to object to the settlement, and the ability to opt-out or
6 request exclusion from the Class Claims portion of the Settlement. The Notice Packet will
7 inform the Settlement Class Members of the Court-established deadlines for filing objections or
8 requesting exclusion from the Settlement in accordance with the following guidelines:

9 (a) Requests for Exclusion from Settlement Class. Any Settlement Class
10 Member, other than Plaintiff, may request to be excluded from the Settlement Class by
11 completing the Request for Exclusion Form provided within the Notice Packet. The Request for
12 Exclusion Form must be mailed to the Settlement Administrator and postmarked on or before the
13 Notice Response Deadline in order to be timely, unless the Parties otherwise agree in writing.
14 Any such Request must be made in accordance with the terms set forth in the Notice Packet.
15 The Settlement Administrator shall attach each Request for Exclusion to its declaration of due
16 diligence and file with the Court prior to the Final Approval Hearing. Any Settlement Class
17 Member who timely requests exclusion in compliance with these requirements: (i) will not have
18 any rights under this Agreement, including the right to object, appeal or comment on the
19 Settlement; (ii) will not be entitled to receive any payments under this Agreement; and (iii) will
20 not be bound by this Agreement, or the Judgment. Any Settlement Class Member who is an
21 Aggrieved Employee who requests timely exclusion will still be subject to the PAGA Released
22 Claims to the fullest extent permitted by law and receive a share of PAGA Penalties. All Parties
23 and their counsel, including Defendant's respective members, member managers, owners,
24 officers, and directors, shall not encourage or solicit opt-outs or objections, directly or indirectly,
25 through any means.

26 (b) Binding Effect on Final Settlement Class Members. Except for those
27 Settlement Class Members who exclude themselves in compliance with the procedures set forth
28 above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for

1 all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
2 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise
3 provided herein, will be deemed to have waived all objections and oppositions to the fairness,
4 reasonableness, and adequacy of the Settlement.

5 (c) Objections to Settlement. Any Settlement Class Member, other than
6 Plaintiff, who does not submit a valid and timely Request for Exclusion may object to the terms
7 of this Agreement by completing the Objection Form provided within the Notice Packet. Any
8 Settlement Class Member that intends to object must mail the Objection Form to the Settlement
9 Administrator. The Objection Form must be postmarked on or before the Notice Response
10 Deadline in order to be timely, unless the Parties otherwise agree in writing. Additionally, any
11 objection must be made in accordance with the terms set forth in the Notice Packet. The
12 Settlement Administrator shall provide any objections to Class Counsel and Defense Counsel
13 within three (3) days of receipt, and the Settlement Administrator shall attach the same to its
14 declaration of due diligence and file with the Court prior to the Final Approval Hearing. Any
15 Participating Class Member who files an objection remains eligible to receive monetary
16 compensation from the Settlement. Plaintiff and Defendant shall not be responsible for any fees,
17 costs, or expenses incurred by any Class Member and/or his or her counsel related to any
18 objections to the Settlement. Submitting an objection does not preserve the right to appeal a
19 final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely
20 and properly intervening or filing a motion to vacate the judgment under Code of Civil
21 Procedure § 663.

22 (d) Failure to Object. Any Settlement Class Member who does not timely and
23 properly become a party of record by intervening or filing a motion to vacate the judgment
24 waives any and all rights to appeal from the Judgment, including all rights to any post-judgment
25 proceeding and appellate proceeding, such as a motion to vacate judgment, motion for new trial,
26 a motion under California Code of Civil Procedure section 473, and extraordinary writs.

27 (e) Responses to Objections. Counsel for the Parties may file a response to
28 any objections submitted by Objecting Settlement Class Members at least five (5) court days

1 before the date of the Final Approval Hearing.

2 (f) Settlement Class Members will have until the Notice Response Deadline
3 to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The
4 Settlement Administrator shall disclose jointly to Class Counsel and Defense Counsel what
5 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the
6 request of Class Counsel or Defense Counsel.

7 68. Funding of the Settlement Amount. Defendant shall deposit the Gross Settlement
8 Amount with the Settlement Administrator within fifteen (15) days after the Effective Date.

9 69. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
10 Settlement Amount by Defendant, the Settlement Administrator shall mail the Individual
11 Settlement Payments to the Participating Class Members, the payment to Class Counsel for the
12 Attorneys' Fees and Costs Award, any Service Payment to the Class Representative, the payment
13 to the LWDA for PAGA Penalties, mail to the Aggrieved Employees their portion of the PAGA
14 Penalties, and will pay itself the Settlement Administration Costs.

15 70. Deadline for Cashing Settlement Checks. Participating Class Members and
16 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement
17 Administrator to cash their settlement checks. The release will be binding upon all Participating
18 Class Members who do not cash their checks within the 180-day period. In the event that any
19 settlement check is returned to the Settlement Administrator within 180 days of mailing, the
20 Settlement Administrator will, within five (5) business days of receipt of the returned settlement
21 check, perform a skip trace to locate the individual, and notify Defense Counsel and Class
22 Counsel of the results. If a new address is located by these means, the Administrator will have
23 ten (10) business days to re-issue the check. Neither Defendant, Defense Counsel, Class
24 Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen
25 settlement checks, forged signatures on settlement checks, or unauthorized negotiation of
26 settlement checks. Without limiting the foregoing, in the event a Participating Class Member
27 and/or Aggrieved Employee notifies the Settlement Administrator that he or she believes that a
28 settlement check has been lost or stolen, the Settlement Administrator shall immediately stop

1 payment on such check. If the check in question has not been negotiated prior to the stop
2 payment order, the Settlement Administrator will issue a replacement check.

3 a. If any Participating Class Member's check is not cashed within the time
4 periods noted above, the check will be void and a stop-payment will be issued,
5 and the Settlement Administrator shall issue the unclaimed funds to the California
6 State Controller's Office in the name of the Class Member.

7 b. If any Aggrieved Employee's check is not cashed within the time periods
8 noted above, the check will be void and a stop-payment will be issued, and the
9 Settlement Administrator shall issue the unclaimed funds to the California Labor
10 Workforce and Development Agency.

11 **I. Duties of the Parties Prior to the Court's Approval**

12 71. Promptly after execution of this Agreement, Plaintiff will move the Court for
13 Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
14 accomplishing the following:

15 (a) Scheduling the Final Approval Hearing on the issue of whether this
16 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members
17 and a hearing on fees, costs and the Service Payments;

18 (b) Approving as to form and content the proposed Notice Packet;

19 (c) Directing the mailing of the Notice Packet by first class mail to the
20 Settlement Class Members;

21 (d) Preliminarily approving this Settlement;

22 (e) Preliminarily certifying the class for purposes of this Settlement; and

23 (f) Advising the LWDA of the proposed Settlement.

24 **J. Duties of the Parties Following Court's Final Approval**

25 72. In connection with the Final Approval Hearing provided for in this Agreement,
26 Class Counsel shall submit a proposed Final Approval Order:

27 (a) Approving the Settlement, adjudging the terms thereof to be fair,
28 reasonable and adequate, and directing consummation of its terms and provisions;

(b) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Class Representative, and the payment to the Settlement Administrator for costs of administering the settlement; and

(c) Entering judgment approving settlement.

K. Voiding the Agreement

73. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Agreement which effects a fundamental change of the Settlement, the entire Agreement shall be rendered voidable and unenforceable as to all Parties herein at the option of either Party.

74. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

75. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise specified in this Agreement.

L. Other Terms

76. Waiver. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

77. Parties' Authority. The signatories hereto represent that they are fully authorized to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

78. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as practicable after execution of this Agreement, Class Counsel shall, with the assistance and

1 cooperation of Defendant and Defense Counsel, take all necessary steps to secure the Court's
2 preliminary and final approval of the settlement, and the final entry of judgment.

3 79. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
4 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
5 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
6 cause of action or rights released and discharged by this Agreement.

7 80. No Admission. Defendant denies any and all liability to Plaintiff and/or any
8 Settlement Class Member and/or Aggrieved Employee in this Action, as to any and all causes of
9 action that were asserted or that might have been asserted in this Action. Nonetheless,
10 Defendant wishes to settle and compromise the matters at issue in the Complaint to avoid further
11 substantial expense and the inconvenience and distraction of protracted and burdensome
12 litigation. Defendant has taken into account the uncertainty and risks inherent in litigation, and
13 without conceding any infirmity in the defenses that it has asserted or could assert against
14 Plaintiff, have determined that it is desirable and beneficial that Plaintiff's claims be settled in
15 the manner and upon the terms and conditions set forth in this Agreement.

16 81. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
17 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
18 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
19 Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
20 Agreement with the intention of avoiding further disputes and litigation with the attendant
21 inconvenience and expenses. This Agreement is a settlement document, and it, along with all
22 related documents such as the notices, and motions for preliminary and final approval, shall,
23 pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
24 inadmissible in evidence in any proceeding, except an action or proceeding to approve the
25 settlement, and/or interpret or enforce this Agreement. The stipulation for class certification as
26 part of this Agreement is for settlement purposes only and if, for any reason the settlement is not
27 approved, the stipulation will be of no force or effect.

1 82. No Publicity. The Parties will not publicize the Settlement or disclose it to third
2 parties prior to the Court granting Preliminary Approval, except as required or necessary to
3 effectuate its terms and comply with law. After the Final Approval Date, Class Counsel and
4 Class Representative agree that they will not discuss the Settlement with the media, any
5 settlement and verdict reporting service, any social media postings or other Internet postings.
6 Nothing herein shall be construed to prevent Class Counsel from the public filing of motions or
7 other case materials in the Action related to seeking and obtaining Court approval of this
8 Settlement and the related awards of attorneys' fees and costs, or to communications with
9 Settlement Class Members or their representatives about this Settlement, including through the
10 posting of Court-filed documents on Class Counsel's websites for access solely by the
11 Settlement Class Members, or to prevent the Parties or their representatives from communicating
12 with financial or legal advisors regarding the Settlement. In response to any media inquiry,
13 Class Counsel may state only that the Action has been settled on terms mutually agreeable to the
14 Parties.

15 83. Notices. Unless otherwise specifically provided herein, all notices, demands or
16 other communications given hereunder shall be in writing and shall be deemed to have been duly
17 given as of the third business day after mailing by United States registered or certified mail,
18 return receipt requested, addressed:

19 *To the Settlement Class:*

20 Brian J. Mankin
21 **brian@lmlfirm.com**
22 Lauby, Mankin & Lauby LLP
23 4590 Allstate Drive
24 Riverside, CA 92501
25 Tel: (951) 320-1444 | Fax: (951) 320-144

26 *To Defendant:*

27 James A. Bowles
28 **jbowles@hillfarrer.com**
 Richard S. Zuniga
 rzuniga@hillfarrer.com
 HILL, FARRER & BURRILL LLP
 One California Plaza

300 S. Grand Avenue, 37th Floor
Los Angeles, CA 90071-3147
Tel: (213) 620-0460 | Fax: (213) 624-4840

84. Construction. The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

85. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof. Each term of this Agreement is contractual and not merely a recital.

86. Modification. This Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

87. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and Plaintiff and Defendant may agree to seek the help of the Mediator to resolve any dispute they are unable to resolve informally. During this period, the Parties shall bear their own attorneys' fees and costs. This provision shall not apply to any legal action or other proceeding instituted by any person or entity other than Plaintiff or Defendant.

1 88. Choice of Law. This Settlement Agreement shall be governed by and construed,
2 enforced and administered in accordance with the laws of the State of California, without regard
3 to its conflicts-of-law rules.

4 89. Integration Clause. This Settlement Agreement contains the entire agreement
5 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
6 or contemporaneous agreements, understandings, representations, and statements, whether oral
7 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
8 hereunder may be waived except in writing.

9 90. Binding On Assigns. This Agreement shall be binding upon and inure to the
10 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
11 successors and assigns.

12 91. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
13 because the members of the Settlement Class are numerous, it is impossible or impractical to
14 have each Class Member execute this Agreement. The Notice Packet will advise all Settlement
15 Class Members of the binding nature of the release provided herein and such shall have the same
16 force and effect as if this Agreement were executed by each Settlement Class Member.

17 92. Counterparts. This Agreement may be executed in counterparts, and when each
18 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
19 original, and, when taken together with other signed counterparts, shall constitute one fully
20 signed Agreement, which shall be binding upon and effective as to all Parties. Electronic
21 signatures shall have the same force and effect as an original.

22 Dated: January 6, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:

23 

24 Elizabeth Moreno (Jan 6, 2022 14:14 PST)

25 Elizabeth Moreno
26
27
28

1 Dated: January ___, 2022

DEFENDANT J.J. KANE ASSOCIATES, INC.

2
3
4 By: _____

5
6 **APPROVED AS TO FORM:**

7 Dated: January 6, 2022

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

9 
10 _____
11 Brian J. Mankin
12 Attorneys for Plaintiff

13 Dated: January ___, 2022

DEFENSE COUNSEL:
HILL, FARRER & BURRILL LLP

14
15 _____
16 James A. Bowles, Esq.
17 Richard Zuniga, Esq.
18 Attorneys for Defendant

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END OF DOCUMENT

1 Dated: January 5, 2022

DEFENDANT J.J. KANE ASSOCIATES, INC.

Aldes L. Vance

By: General Counsel

6 APPROVED AS TO FORM:

7 Dated: January __, 2022

8 CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

9
10 Brian J. Mankin
Attorneys for Plaintiff

11 Dated: January 6, 2022

12 DEFENSE COUNSEL:
HILL, FARRER & BURRILL LLP

13
14 James A. Bowles
15 James A. Bowles, Esq.
16 Richard Zuniga, Esq.
17 Attorneys for Defendant

18 END OF DOCUMENT

EXHIBIT “B”

NOTICE OF SETTLEMENT OF CLASS ACTION

Elizabeth Moreno v. J.J. Kane Associates, Inc.

Superior Court of the State of California, County of Riverside
Case No. CVRI2101236

To: All current and former nonexempt (hourly paid) employees employed by J.J. Kane Associates, Inc., in California at some time between November 1, 2018, and January 7, 2022 (the “Class”):

THIS NOTICE is of a proposed settlement of a class action lawsuit, and an announcement of a court hearing that you may choose to attend. Your rights may be affected by the legal proceedings in this action. The Court will conduct a hearing on **INSERT DATE** to address whether the proposed settlement should be approved (“Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class action settlement contained in the Settlement Agreement.

IDENTIFYING INFORMATION

You have been identified as a Class Member in the above lawsuit. Under the terms of the proposed settlement, you are estimated to receive approximately **INSERT AMOUNT** as your share of the Settlement should the Court grant the settlement in full. Please note that this is only an estimate. Your actual share may be more or less than this estimate. Your estimate is based on the number of weeks during which you worked for J.J. Kane Associates, Inc., (“J.J. Kane” or “Defendant”) in California between November 1, 2018, and January 7, 2022 (the “Class Period”), as discussed in more detail in Section IV. Your eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section IV.
EXCLUDE YOURSELF	If you do not wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion from the Settlement Class by INSERT DATE , 2022 (see Section V for more details on how to opt-out). If you opt-out of the settlement of the Class Claims, you will no longer be a Class Member, and you will (1) <u>not</u> receive any settlement payment for the Class Claims, but you will preserve your right to pursue the Released Class Claims described in Section IV, and (2) be barred from filing an objection to the settlement. You may still receive a payment as part of the civil penalties paid pursuant to the California Private Attorneys General Act of 2004 (“PAGA”) and will release your claims for such civil penalties in exchange for such payment.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an objection stating why you object to the settlement by INSERT DATE , 2022 (see Section VI for more details on how to object).
DISPUTE THE NUMBER OF WEEKS WORKED	If you believe the number of workweeks that you were credited with working below is incorrect, you may submit the enclosed Dispute Form with any supporting evidence to the Settlement Administrator (see Section IV for more details on how to submit a Dispute Form). Defendant’s records will be presumed correct, but you may provide evidence to the Settlement Administrator showing how many Work Weeks you believe you should be credited.

I. Why should I read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Elizabeth Moreno v. J.J. Kane Associates, Inc.*, Superior Court of the State California, County of Riverside, Case No. CVRI2101236 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

J.J. Kane’s records show that you were employed in California as an hourly paid employee at some time during the Class Period. The Court ordered this Notice to be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you were employed by J.J. Kane as an hourly employee in California at some time during the Class Period, you are automatically included in the Settlement and do not need to take any further action to receive a payment.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

II. What is this lawsuit about?

On March 9, 2021, Plaintiff and Class Representative Elizabeth Moreno, through her attorneys (“Class Counsel”), filed a class and representative action lawsuit against Defendant for alleged wage and hour violations on behalf of Class Members. The Lawsuit alleges that Defendant violated various California Labor Code provisions, California Business and Professions Code Section 17200, and the applicable Industrial Welfare Commission (“IWC”) Wage Order. In summary, Plaintiff alleges that Defendant failed to pay minimum wages, failed to pay overtime wages, failed to provide meal periods, failed to provide rest breaks, failed to timely pay wages each period and upon separation of employment, and failed to provide accurate itemized wage statements. All of these claims are called the “Class Claims.” The Lawsuit also sought civil penalties on behalf of the California Labor Workforce Development Agency (“LWDA”). The civil penalty claims are called “PAGA Claims” and the relevant period for PAGA claims is November 1, 2019, through January 7, 2022 (the “PAGA Period”).

J.J. Kane has denied, and continues to deny, the factual and legal allegations in the Lawsuit and believes that it has valid defenses to Plaintiff’s claims. By agreeing to settle, J.J. Kane is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action and/or a representative action. Rather, J.J. Kane has agreed to settle the case as part of a compromise with Plaintiff and the Class Members.

The Court has not ruled on the merits of Plaintiff’s claims. And, by approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the final fairness hearing. However, to avoid additional expense, inconvenience, and risks of continued litigation, Defendant and Plaintiff have concluded that it is in their respective best interests and the interests of the Class to settle the Lawsuit on the terms summarized in this Notice. After extensive investigation and review of information provided by Defendant to Class Counsel, the Settlement was reached following an arm’s length mediation. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Settlement was a good option to resolve the disputed claims.

The Class Representative and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to Defendant, the risk the Court may not certify this case to proceed as a class action, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still performing services for Defendant, this Settlement will not affect your status. California law strictly prohibits unlawful retaliation. Further, Defendant will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member’s participation or decision not to participate in this Settlement. If a Class Member does not participate, his/her share will be paid to those who do participate.

III. Who represents the Class?

The Court has designated Plaintiff Elizabeth Moreno to serve as Class Representative in this lawsuit. The attorneys and law firm that serve as Class Counsel are identified and can be reached as follows:

Attorneys for the Class Members

Brian Mankin, Esq.
brian@lmlfirm.com
Misty Lauby, Esq.
misty@lmlfirm.com
Lauby, Mankin & Lauby LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444

IV. What are the terms of the Settlement?

On [PA DATE], the Court granted preliminary approval of the Settlement. Class Members who do not opt out of the Settlement (the “Settlement Class”), pursuant to the procedures set forth in this Notice, will be mailed a settlement check, and in exchange, will be bound by the terms of the Settlement and release of certain wage and penalty claims against Defendant.

Without admitting any wrongdoing, Defendant have agreed to pay \$235,000 (the “Settlement Amount”) to fully resolve all claims in the Lawsuit. The Parties agreed to the following payments from the Settlement Amount:

Settlement Administration Costs. The Court has approved Phoenix Class Action Administration to act as the “Settlement Administrator,” who is sending this Notice Packet to you and will perform many other duties relating to the Settlement. Under the Settlement, \$5,000 will be paid from the Settlement Amount to pay the Settlement Administration Costs.

Penalties to the California Labor Workforce and Development Agency and Aggrieved Employees. The Labor Code Private Attorneys General Act of 2004 (“PAGA”) authorizes employees to file lawsuits to attempt to recover civil penalties on behalf of other Aggrieved Employees and the State of California for alleged Labor Code violations. Under the Settlement, \$20,000 of the Settlement Amount will be allocated to Plaintiff’s claim under the PAGA. Of this amount, \$15,000 will be paid to the LWDA in satisfaction of the claims for penalties

under PAGA, and the remaining \$5,000 will be divided between all Aggrieved Employees on a Weeks Worked basis. “Aggrieved Employees” is defined to include all current and former nonexempt (hourly paid) employees employed by Defendant in the State of California at any time during the PAGA Period of November 1, 2019, through January 7, 2022. Review the information below to determine if you are an Aggrieved Employee and eligible to receive a share of the \$5,000 allocation:

Do you Qualify as an Aggrieved Employee?	Weeks Worked as an Aggrieved Employee	Your Share of PAGA Penalties
YES/NO	INSERT	\$INSERT

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the lawsuit on behalf of the Class Members on a contingency fee basis (meaning that Class Counsel has not been paid any money to date and would only receive its attorneys’ fees if the case succeeded) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Settlement Amount. Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will collectively ask for fees of one-third of the Settlement Amount (\$78,333.33) as reasonable compensation for the work Class Counsel performed and will continue to perform in this lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$15,000 for the costs Class Counsel incurred in connection with the lawsuit.

Service Payments to Class Representative. Class Counsel will ask the Court to award Class Representative Elizabeth Moreno a service payment in the amount of \$5,000 to compensate her for her service, risks undertaken, and extra work provided on behalf of the Class Members.

Calculation of Individual Settlement Amounts to Class Members. After deducting the amounts above, the balance of the Settlement Amount will form the Net Settlement Amount (or “NSA”) for distribution to the “Participating Class Members” (i.e., those who did not timely request to be excluded). The Settlement Administrator will calculate each Class Members’ pro-rata share of the NSA based on the number of weeks worked by each Class Member during the Class Period. The dollars per compensable Work Week will be calculated by dividing the total Weeks Worked by Settlement Class Members into the Net Settlement Amount to determine a per pay period value (“Workweek Value”). The Workweek Value will be multiplied by the number of Weeks Worked by each Participating Class Member during the Class Period to determine the Individual Settlement Amount for each Participating Class Member. If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Amounts for each Participating Class Member so that the amount actually distributed to Participating Class Members equals 100 percent of the Net Settlement Amount. While the range of recovery will differ for Class Members, it is estimated that the average payment will be \$xxx.xx, the high payment will be \$x,xxx.xx, and the low payment will be \$xx.xx. Review the information below to determine your share as a Class Member:

Workweeks Worked as a Class Member During the Class Period	Your Share of the Net Settlement Amount
INSERT	\$INSERT

Disputes to Workweeks Credited. For each Settlement Class Member, the Workweeks Worked (i.e., meaning you worked at least one hour during a workweek) during the Class Period and PAGA Period will be calculated from Defendant’s records. If you disagree with the numbers reported above, you may submit the enclosed Dispute Form to the Settlement Administrator on or before [INSERT DATE 45 Days After Mailing], with documentation to establish the number of weeks you claim to have worked for Defendant in California between November 1, 2018, through January 7, 2022. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Parties and Administrator will evaluate the evidence submitted by the Settlement Class member and discuss in good faith how many Weeks Worked should be credited to each Settlement Class member. If the Parties are unable to agree, the Court will render a final decision.

Timing of Payments to Class Members. After the Court grants Final Approval of the Settlement and Judgment is entered, settlement checks will be mailed to all Participating Class Members who did not timely request to be excluded. For those Class Members who requested to be excluded from the settlement of the Class Claims, their settlement checks will be for their share (if any) of PAGA civil penalties for release of the PAGA Claims, and they will not include any payment for settlement of the Class Claims. The anticipated payment date (assuming the Settlement receives final approval and there are no objections or appeals, which may delay the payments) is approximately [INSERT DATE 30 Days After Final Approval]. Participating Class Members and/or Aggrieved Employees will have 180 days from the issuance of the last check to cash all of the checks. If a Participating Class Member fails to timely cash a settlement check, a stop payment will be placed on the check and the funds will be paid to the California State Controller’s Office in the name of the Participating Class Member, so that the Participating Class Member can attempt to collect the funds at a later date. If an Aggrieved Employee fails to timely cash a settlement check, a stop payment will be placed on the check and his/her share will be reissued to the California Labor Workforce Development Agency, pursuant to Order of the Court.

Allocation and Taxes. One-third (33.33%) of the Individual Settlement Payment distributed to each Participating Class Member will be considered and reported as wages (Form W-2 reporting). The remaining two-thirds (66.67%) will be considered and reported as interest and penalties (Form 1099 reporting). The Settlement Administrator shall take all usual and customary deductions from the Individual Settlement Payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest and penalty distribution; however, the payments will be reported on IRS Form 1099 as income. Payments for PAGA Claims shall be paid one hundred percent (100%) as civil penalties for which no taxes shall be withheld and for which payment will be reported on IRS Form 1099. Participating Class Members and Aggrieved Employees are responsible for the proper income tax treatment of the Individual Settlement Payments and their payments for PAGA Claims. The Settlement Administrator, J.J. Kane and its counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments or payments for PAGA Claims.

Release. Once the Court approves the Settlement, enters Judgment, and Defendant funds the Settlement Amount, then the Settlement Agreement will bind all of the Participating Class Members, as described below. Specifically, all Participating Class Members will release and discharge, for the time period from November 1, 2018, through January 7, 2022, Defendant, and all of its past and present officers, directors, and employees (collectively, the “Released Parties”) from all claims stated in the operative Complaint and those solely upon the facts in the Complaint, including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to timely pay vested vacation upon separation of employment, (f) failure to failure to timely pay wages each period and upon separation of employment, (g) failure to provide accurate itemized wage statements, and (h) unfair and unlawful competition, and (i) all other claims for statutory penalties based on the facts or claims alleged in the Complaint. Additionally, Plaintiff, acting on behalf of herself, Aggrieved Employees and the State of California and the LWDA, will release all PAGA claims that were stated in the Complaint and based solely upon the facts alleged in the Complaint and the notice sent by Plaintiff to the LWDA on November 2, 2020.

“No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made.”

V. How do I receive a payment?

VI. What are my rights and options?

- ## VII. What is the effect of the settlement?

Released Rights and Claims. The Settlement is intended to settle all claims against the Released Parties that were asserted in the Lawsuit regarding the alleged violations of wage and hour laws. If you are a Class Member and do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and to have released the above-described Released Claims. If the Settlement is not approved by the Court or does not become final for some other reason, the Lawsuit may continue, and the releases will not take effect.

VIII. When is the court hearing and what is it for?

On **INSERT FINAL APPROVAL HEARING DATE**, the Court will hold a public hearing in Department 1 of the Superior Court for the State of California, County of Riverside, 4050 Main St, Riverside, CA 92501, for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel's applications for attorneys' fees and costs, whether to approve the payments to the LWDA, and whether to approve Plaintiff's request for the service awards. This hearing may be continued or rescheduled by the Court without further notice to the Class. Objectors to the proposed settlement will be provided notice in the event that the Final Approval Hearing is continued to a later date. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval. Class Members who object to the proposed Settlement are not required to attend the Final Approval Hearing.

IX. Where can I get more information?

If you have questions about this Notice, the enclosed Request for Exclusion Form and Objection Form, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Class, you should contact the Settlement Administrator for more information or to request that a copy of this Notice and request for Exclusion Form and Objection Form be sent to you in the mail. If you wish to communicate directly with Class Counsel, you may contact them – contact information noted above in Section III. You may also seek advice and guidance from your own private attorney at your own expense, if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is on file with the Court and attached to the Declaration of Brian J. Mankin in Support of Motion for Preliminary Approval of Class Action Settlement filed on **DATE, 2022** and available to be inspected at any time during regular business hours at the Clerk's Office, Superior Court for the State of California, County of Riverside, 4050 Main St, Riverside, CA 92501. You may also review the pleadings, records, and other papers on file in this lawsuit at the Clerk's Office or online at <https://epublic-access.riverside.courts.ca.gov/public-portal/>. To access the case file, click on "Case Number Search," then create a free online account, then type in the case number (CVRI2101236) where requested, and click "Search."

PLEASE DO NOT WRITE OR TELEPHONE THE COURT OR DEFENDANT FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT.

EXHIBIT “C”

REQUEST FOR EXCLUSION FORM

Elizabeth Moreno v. J.J. Kane Associates, Inc.

Superior Court of the State of California, County of Riverside
Case No. CVRI2101236

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

DO YOU WANT TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT CHECK? (check the box that applies)

☐

YES: STOP HERE -- DO NOT RETURN THIS FORM. NO FURTHER ACTION IS NEEDED TO PARTICIPATE IN THE SETTLEMENT.

☐

NO: SIGN, DATE AND RETURN THIS FORM TO EXCLUDE YOURSELF FROM THE SETTLEMENT.

By signing and completing the below, I agree to the following:

I do NOT want to participate in the settlement in *Elizabeth Moreno v. J.J. Kane Associates, Inc.*, (Riverside Superior Court Case No. CVRI2101236). I understand by excluding myself from the settlement that I will not receive any money from the settlement other than my share of PAGA Penalties if I qualify as an Aggrieved Employee (with further detail provided in the attached Notice of Settlement of Class Action).

Signed on _____, 2022

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT DEADLINE]:

[INSERT SETTLEMENT ADMINISTRATOR ADDRESS]

EXHIBIT “D”

OBJECTION FORM

Elizabeth Moreno v. J.J. Kane Associates, Inc.

Superior Court of the State of California, County of Riverside
Case No. CVRI2101236

Please verify and/or complete any missing identifying information:

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

DO YOU OBJECT TO THE SETTLEMENT? (check the box that applies)

☐

NO: STOP HERE -- DO NOT RETURN THIS FORM.

☐

**YES: COMPLETE THE REVERSE SIDE AND RETURN THIS FORM STATING
THE REASONS WHY YOU OBJECT TO THE SETTLEMENT.**

The Court will consider your objection at the Final Approval Hearing if you submit a timely and valid written statement of objection. Any objection should describe the nature of and basis for the objection, and any other information that you would like the Court to consider.

I OBJECT to the Settlement in the case of *Elizabeth Moreno v. J.J. Kane Associates, Inc.*, on the following grounds (if additional space is necessary, please include additional sheets of paper):

Signed on _____, 2022

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT OBJECTION DEADLINE]:

[INSERT SETTLEMENT ADMINISTRATOR ADDRESS]

EXHIBIT “E”

DISPUTE FORM

Elizabeth Moreno v. J.J. Kane Associates, Inc.

Superior Court of the State of California, County of Riverside
Case No. CVRI2101236

Please verify and/or complete any missing identifying information:

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

According to the records of J.J. Kane Associates, Inc. ("J.J. Kane"):

- (a) You worked for J.J. Kane for ___ workweeks as a Class Member between November 1, 2018, through January 7, 2022 (the "Class Period"); and
- (b) You worked for J.J. Kane for ___ workweeks as an Aggrieved Employee between November 1, 2019, through January 7, 2022 (the "PAGA Period").

DO YOU DISAGREE WITH ITEMS (a)-(b) AND WANT THE PARTIES AND ADMINISTRATOR TO INVESTIGATE FURTHER?

☐

NO: STOP HERE -- DO NOT RETURN THIS FORM.

☐

YES: COMPLETE THE REVERSE SIDE AND RETURN THIS FORM STATING THE REASONS WHY YOU BELIEVE YOU SHOULD BE CREDITED WITH ADDITIONAL WORKWEEKS WORKED AND INCLUDE COPIES (NOT ORIGINALS) OF SUPPORTING DOCUMENTATION.

Please state why you believe that you should be credited with more Workweeks Worked than stated on the Notice and attach copies (not originals) of supporting documentation. The Parties and Settlement Administrator will consider your challenge and make a determination if you are entitled to additional Workweeks:

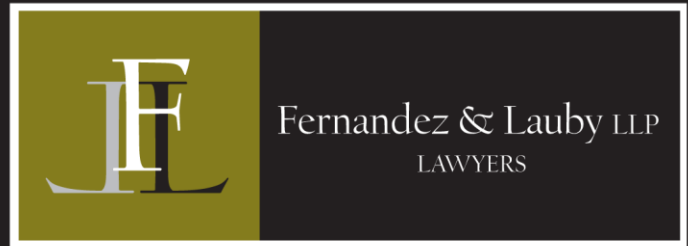
Signed on _____, 2022

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO
LATER THAN [INSERT DEADLINE]:

[INSERT SETTLEMENT ADMINISTRATOR ADDRESS]

EXHIBIT “F”



November 2, 2020

Sent Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

J J Kane Associates, Inc.
1000 Lenola Road, Bldg One – Suite 203
Maple Shade NJ 08052

Re: PAGA Civil Penalty Claim
Elizabeth Moreno v. J J Kane Associates, Inc.

To the Labor and Workforce Development Agency, J J Kane Associates, Inc., and all affiliated entities:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Elizabeth Moreno (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against her former employer(s), J J Kane Associates, Inc.. and/or any affiliated entities (the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately February 2019 through September 2, 2020. Claimant alleges that, at all relevant times, she and all other employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to Claimant was subjected during her employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company’s policies and practices, Claimant was subjected to meal period violations when Claimant was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the

Company, (3) forced to take a meal period after the 5th hour of work, and (4) not provided a mandated second meal period on occasions for shifts in excess of 10 hours.

The Company also failed to provide Claimant and Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks, Claimant was unable to leave the premises for breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by the hectic workload and due to the Company's policy and practice of not providing a second mandated rest break. Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

Moreover, the Company failed to maintain accurate employment records as mandated by California law. Further, the Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including meal and rest period premiums. Additionally, the Company failed to pay Claimant and the Aggrieved Employees their final wages within the timeframe required by Labor Code §§ 201 – 203. Finally, during employment with the Company, Claimant and the Aggrieved Employees received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

As a result of these violations, and others described below, Claimant alleges that she and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately record and compensate for all hours worked. This resulted in earned, but unpaid, minimum and overtime wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees worked in excess of 8 and/or 12 hours per day, and/or forty hours per week without receiving proper payment of the requisite overtime and/or doubletime wages for all hours worked pursuant to Labor Code §§ 204 and 510 and/or the applicable IWC Wage Order.

Accordingly, Labor Code §§ 210, 558, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states

in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

PAGA ASSESSMENT FOR FAILURE TO MAINTAIN EMPLOYMENT RECORDS
(Labor Code §§ 1174, 1174.5, 1198, and § 7 of the IWC Wage Orders)

Labor Code § 1174(d), and § 7 of the IWC Wage Orders require employers to maintain accurate employment records, including accurate payroll records showing the total number of regular and overtime hours worked each day by employees, including meal periods, and the gross wages earned by the employee, including all applicable pay rates and the corresponding number of hours worked at each pay rate, among other requirements.

The Company failed to maintain accurate employment records as mandated by California law. Therefore, in addition to recovering the amount of attorneys’ fees and cost incurred herein, Claimant is entitled to the assessment of civil penalties in accordance with Labor Code §§ 1174(d), 1174.5, 1199, and 2699.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**
(Labor Code §§ 204, 204.1, 208, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

The Company violates § 204(a) and (d) each pay period because it pays its employees eleven days after the close of the biweekly payroll periods. Further, as a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the

Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code §§ 203, 256.) Labor Code § 2699 also imposes a penalty.

PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees. The Company violated Labor Code § 226(a) due to violations including: failure to accurately state gross wages earned; failure to accurately state total hours worked; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates; and failure to accurately state the corresponding number of hours worked at each hourly rate. Accordingly, Labor Code §§ 226.3 and 2699 impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with

any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to her employment and/or other employees of the Company, she reserves the right to add new claims by amending this claim letter.

Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Misty M. Lauby', with a stylized flourish at the end.

By: Misty M. Lauby, Esq.
E-mail: MML@fernandezlauby.com
www.California-EmploymentLawyers.com

EXHIBIT “G”

Compliance Chart

Detailing Compliance with Class Action Case Management Order #1, filed May 7, 2021

CMO Requirement	Location in Moving Papers where Requirement is Satisfied	
H(1)(a)	See Settlement Agreement ("S.A."), attached as Exhibit A to Declaration of Brian J. Mankin ("Mankin Decl."), as well as the remainder of this Compliance Chart confirming that no prohibited items are included in any order, notice, form, or judgment.	
H(1)(b)	See generally S.A. confirming that the settlement agreement is written, signed by all necessary parties; See Exhibit A to Mankin Decl (S.A. filed as an attachment to declaration of counsel).	
H(3)(a)	<i>i.</i>	See Mankin Decl. ¶ 26 (Attorney estimate of # of class members)
	<i>ii.</i>	See Mankin Decl. ¶¶ 28-42 (estimate of total damages and penalties if successful at trial on all claims)
	<i>iii.</i>	See Mankin Decl. ¶¶ 28-42 (reasonable expectation of trial award and reasons for estimate), ¶ 3 (number of class cert orders and trials)
	<i>iv.</i>	See Mankin Decl. ¶ 43 (estimate of average, high, and low recoveries)
	<i>v.</i>	See Mankin Decl. ¶¶ 12-16 (formal and informal discovery, investigation, re size of class and strength of claims)
	<i>vi.</i>	See Mankin Decl. ¶ 45 (unaware of any related cases after reasonable inquiry)
H(3)(b)	See Declaration of Richard Zuniga ("Zuniga Decl.") ¶ 2 (Similar cases, made reasonable inquiry)	
H(3)(c)	See S.A. ¶ 70(a) (If Participating Class Member's Check is not cashed, the Settlement Administrator will issue the unclaimed funds to the California State Controller's Office in the name of the Class Member); <i>see also</i> S.A. ¶ 70(b) (If and Aggrieved Employee's check is not cashed, the Settlement Administrator will issue funds to the California Labor Workforce Development Agency)	
H(3)(c)	<i>i.</i>	Not applicable. The unclaimed funds are not being distributed to a <i>cy pres</i>
	<i>ii.</i>	Not applicable. The unclaimed funds are not being distributed to a <i>cy pres</i>
	<i>iii.</i>	Not applicable. The unclaimed funds are not being distributed to a <i>cy pres</i>
	<i>iv.</i>	See S.A. ¶ 70 (unclaimed funds will <u>not</u> go to Industrial Relations Unpaid Wage Fund).
H(3)(d)	<i>i.</i>	See Mankin Decl. ¶ 64 (bids sought from multiple admin, Phoenix low bid)
	<i>ii.</i>	See Declaration of Michael Moore of Phoenix ("Moore Decl.") ¶¶ 1-8 (experience) and ¶ 9 (fixed rate fee and how it was calculated)
H(3)(e)	<i>i.</i>	See S.A. ¶ 30 (defining Released Parties)
	<i>ii.</i>	See S.A. ¶ 29 (defining "Released Class Claims")
	<i>iii.</i>	See S.A. ¶¶ 6 and 31 (establishing that the settlement agreement only releases liability during the Class Period)
H(3)(f)	Not applicable. Notice to be given by first class mail to addresses believed to be current.	
H(3)(g)	Not applicable. This is not a claims-made settlement. See S.A. ¶ 47 (non-claims-made)	
H(3)(h)	Not applicable. This is a non-reversionary settlement. See S.A. ¶ 47 (non-reversionary)	
H(3)(i)	See S.A. ¶ 47(a) (Defendant is responsible to pay employer's share of payroll taxes <i>in addition</i> to gross settlement amount)	
H(3)(j)	Not applicable.	

Compliance Chart

Detailing Compliance with Class Action Case Management Order #1, filed May 7, 2021

CMO Requirement	Location in Moving Papers where Requirement is Satisfied	
H(3)(k)	<i>See</i> Class Notice, Request for Exclusion Form, and Objection Form, attached as Exhibits A, B, and C to Proposed Order (drafted in a manner likely to be readily understood, without latin terms, legal terms of art, or unfamiliar symbols or abbreviations); <i>See also</i> Declaration of Jaime Ido of Defendant J.J. Kane ¶ 3-4 (re: age, education, experience of Class Members and ability to read and comprehend English)	
H(3)(l)	<i>See</i> this Compliance Chart	
H(4)(a)	<i>See</i> Proposed Order and Exhibits A, B, and C to Proposed Order (confirming that the Notice, Request for Exclusion Form, and Objection Form are included as attachments to the Proposed Order)	
H(4)(b)	<i>See</i> Proposed Order (confirming that Agreement is not attached)	
H(4)(c)	<i>See</i> Mankin Decl. ¶ 74 (noting that the terms and terminology of the order and accompanying forms were carefully reviewed to ensure they are internally consistent, consistent with each other, and consistent with the settlement agreement)	
H(4)(d)	<i>See</i> Proposed Order ¶ 6 (identifying the Settlement Administrator and describing - by reference to the S.A. - the nature of services it will be required to perform)	
H(4)(e)	<i>See</i> Proposed Order ¶¶ 4-7 (exclusion form)	
H(4)(f)	<i>See</i> Proposed Order ¶¶ 4-7 (objection form)	
H(4)(g)	<i>i.</i>	<i>See generally</i> Proposed Order and Exhibit A to Proposed Order (no requirement for objecting party to appear at hearing on the motion for final approval)
	<i>ii.</i>	<i>See generally</i> Proposed Order and Exhibit A to Proposed Order (no requirement for objecting party to file or serve a notice of intention to appear at hearing on the motion for final approval)
H(4)(h)	<i>See</i> Proposed Order ¶ 6 (admin must give notice to any objecting party of continuance of hearing of motion for final approval)	
H(4)(i)	<i>See generally</i> Proposed Order and Class Notice attached as Exhibit A to Proposed Order (confirming that neither the order nor the notice enjoin class members from filing any actions or administrative claims or proceedings pending the final hearing on settlement, or for any other period).	
H(4)(j)	Not applicable. This is not a claims-made settlement. <i>See</i> S.A. ¶ 47 (non-claims-made)	
H(5)(a)	<i>See</i> Class Notice, attached as Exhibit A to Proposed Order (including each Class Members' estimated recovery)	
H(5)(b)	<i>See</i> Class Notice, attached as Exhibit A to Proposed Order, pg. 2 (stating "the Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable")	
H(5)(c)	<i>See</i> Class Notice, attached as Exhibit A to Proposed Order, pg. 5 (advising Class Members where to find the S.A. by describing (i) full title and filing date of the S.A. and noting that it is attached to Mankin Decl., (ii) the address of this Courthouse, and (iii) the web address where the case file can be viewed online)	

Compliance Chart

Detailing Compliance with Class Action Case Management Order #1, filed May 7, 2021

CMO Requirement	Location in Moving Papers where Requirement is Satisfied	
H(5)(d)	See Class Notice, Request for Exclusion Form, and Objection Form, attached as Exhibits A, B, and C to Proposed Order (confirming that the settlement administrator is <u>not</u> referred to as "claims administrator")	
H(5)(e)	See Class Notice, attached as Exhibit A to Proposed Order, pgs. 4 (describing the releases being given by the Participating Class Members)	
H(6)	Not applicable. This is not a claims-made settlement. See S.A. ¶ 47 (non-claims-made)	
H(7)(a)	See Objection Form, attached as Exhibit C to Proposed Order (objection must be mailed or delivered to the identified Settlement Administrator by the Objection Deadline)	
H(7)(b)	See Objection Form, attached as Exhibit C to Proposed Order (required information for objection does not exceed what is necessary to (i) identify objector as person entitled to object to settlement, (ii) describe nature and basis for objection, and (iii) contact objector to clarify any uncertainties)	
H(7)(c)	Not applicable. This is not a claims-made settlement. See S.A. ¶ 47 (non-claims-made)	
H(8)(a)	See Request for Exclusion Form, attached as Exhibit B to Proposed Order (informing class members (i) that the Request for Exclusion must be mailed or delivered to the identified Settlement Administrator, (ii) of the name and address of the Settlement Administrator, and (iii) of the date by which the Request for Exclusion must be mailed or otherwise delivered)	
H(8)(b)	See Request for Exclusion Form, attached as Exhibit B to Proposed Order (required information for Request for Exclusion does not exceed what is necessary to: (i) identify the person as a class member, and (ii) contact the person to clarify any uncertainties).	
H(9)(a)	See Motion for Preliminary Approval, Section III [Terms of Settlement] and VI(B) [Support for Assessment of PAGA Penalties]	
H(9)(b)	<i>i.</i>	See Mankin Decl. ¶¶ 18-23 (nature of alleged violations)
	<i>ii.</i>	See Mankin Decl. ¶¶ 28-40 (number of alleged violations)
	<i>iii.</i>	See Mankin Decl. ¶¶ 42 (total penalties for which Defendant potentially liable)
H(9)(c)	<i>i.</i>	See Mankin Decl. ¶¶ 28-40 (extent likely to be found true at trial)
	<i>ii.</i>	See Mankin Decl. ¶ 16 (nature and extent of discovery)
	<i>iii.</i>	See Mankin Decl. ¶¶ 39 (likelihood of proving knowing and intentional)
	<i>iv.</i>	See Mankin Decl. ¶¶ 42 (total penalties likely found liable)
	<i>v.</i>	See Mankin Decl. ¶¶ 46-51 (facts tend to suggest max unjust, etc)
	<i>vi.</i>	See Mankin Decl. ¶¶ 28-42 (how agreed-upon penalties calculated)
	<i>vii.</i>	See Mankin Decl. ¶¶ 17, 51-52 (confirming settlement reached via neutral mediator)
H(10)	<i>viii.</i>	See Mankin Decl. ¶¶ 46-51 (other factors re: penalty allocation is fair)
	Not applicable at this time.	

EXHIBIT “H”