

Graciela Torres v. Pensar Big, Inc.

Los Angeles County Superior Court Case No. 21PSCV00485

CLASS ACTION AND REPRESENTATIVE ACTION SETTLEMENT AGREEMENT

AND RELEASE OF CLAIMS

This Class Action and Representative Action Settlement Agreement is entered into by and between Plaintiff Graciela Torres, individually and on behalf of the Class (as defined below) and the State of California, as a private attorney general and Defendant Pensar Big, Inc. (dba El Pollo Loco). This settlement is approved by their respective counsel of record, subject to the terms and conditions hereof and the Court's approval.

A. Definitions

1. "Action" or "Lawsuit" means and refers to the case entitled *Torres v. Pensar Big, Inc.*, Case No. 21PSCV00485, filed in the Los Angeles County Superior Court.

2. "PAGA Group Members" means all non-exempt, hourly employees who work or worked for Defendant in California during the PAGA Period, as defined below.

3. "Agreement," "Settlement Agreement," "Settlement," or "Stipulation" shall mean this Class Action and PAGA Settlement Agreement, including any attached Exhibits.

4. "Class Claims" or "Released Class Claims" will include all claims that were pled in the First Amended Complaint, as defined in Paragraph 47, reasonably related to or arising out of the facts asserted therein, except the claim under the PAGA, including, but not limited to claims for failure to pay minimum wages, failure to pay regular wages, failure to pay overtime wages, meal and rest break violations, failure to pay meal and rest break premium pay and/or failure to pay such premium pay at the correct rate(s) of pay, failure to provide accurate itemized wage statements, failure to pay wages owed during employment, failure to timely pay all wages upon separation of employment, failure to reimburse for business expenses, failure to keep accurate records, failure to provide personnel records, failure to provide payroll records, failure to provide sick pay, and unfair and unlawful business practices.

5. "Class/PAGACounsel" refers to Mehrdad Bokhour of Bokhour Law Group, P.C. and Jake D. Finkel of The Finkel Firm.

6. “Class Data” means a complete list that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator and shall include: each respective Settlement Class Member’s full name; last known address; last known telephone number; Social Security Number; and dates of employment and/or number of Workweeks worked during the Class Period and the number of PAGA Periods worked during the PAGA Period, if applicable. At no time during the Settlement process will any Class Member’s identifying information, as described in this paragraph above, be filed with the Court, except under seal and only if ordered by the Court.

7. “Class Period” and “Class Release Period” shall mean April 8, 2020 through May 15, 2023.

8. “Class Representative” or “Plaintiff” means and refers to Graciela Torres.

9. “Complaint” refers to the First Amended Complaint filed in Los Angeles County Superior Court action entitled *Torres v. Pensar Big, Inc.*, Case No. 21PSCV00485.

10. “Court” means the California Superior Court, County of Los Angeles or any Court of competent jurisdiction.

11. “Defendant” means and refers to Pensar Big, Inc. dba El Pollo Loco.

12. “Defendant’s Counsel” or “Defense Counsel” mean and refer to John LeCrone, Esq. and Stephen Franz, Esq. of Davis Wright Tremaine LLP.

13. “Effective Date” means the latter of (a) The Court’s final approval of the settlement if no objection(s) by or on behalf of Class Members have been filed and not withdrawn; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or has been filed and withdrawn; or (c) the final resolution of any appeal that has been filed. “Final” means that the Settlement has been granted “Final Approval” by the Court and the “Effective Date” has occurred.

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

1 15. “Final Settlement Class” means, collectively, all Participating Class Members and
2 all Allegedly Aggrieved Employees.

3 16. “Individual Settlement Amount” shall have the meaning ascribed to it in Paragraph
4 48(d) below.

5 17. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 48(c)
6 below.

7 18. “Notice” means the Notice of Proposed Class Action Settlement and Final
8 Approval Hearing that will be sent to the Settlement Class Members and Allegedly Aggrieved
9 Employees. The Notice will be substantially similar to the draft Notice that is attached to this
10 Agreement as Exhibit “A”, subject to the resolution by the Court of any and all outstanding issues
11 between the Parties as to the terms contained therein and approval by the Court.

12 19. “Notice Response Deadline” is forty-five (45) calendar days from the date the
13 Notice is mailed to the Settlement Class Members.

14 20. “Objecting Settlement Class Member” means a Settlement Class Member, other
15 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with
16 respect to the Class Claims pursuant to Paragraph 71(c) below.

17 21. “PAGA” shall refer to the California Labor Code Private Attorneys General Act
18 of 2004, California Labor Code Sections 2698–2699.5.

19 22. “PAGA Claims” or “Released PAGA Claims” shall include any and all claims for
20 civil and statutory penalties pursuant to PAGA based on the allegations stated in the PAGA Notice
21 and that were or could have been pled in the First Amended Complaint, based on the facts alleged
22 therein, including claims for failure to pay minimum wages, failure to pay regular wages, failure
23 to pay overtime wages, meal and rest break violations, failure to pay meal and rest break premium
24 pay and/or failure to pay such premium pay at the correct rate(s) of pay, failure to pay wages
25 owed during employment, failure to provide accurate itemized wage statements, failure to timely
26 pay all wages upon separation of employment, failure to keep accurate records, failure to
27 reimburse for business expenses, failure to provide personnel records, failure to provide payroll
28 records, failure to provide sick pay, and unfair and unlawful business practices

23. “PAGA Notice” shall refer to the notices sent by Plaintiff, by and through counsel, on or about April 8, 2021, to the Labor and Workforce Development Agency (“LWDA”) and to Defendant, alleging that Defendant engaged in violations of the California Labor Code and California Wage Order(s).

24. “PAGA Period” and “PAGA Release Period” shall mean April 8, 2020 through May 15, 2023.

25. “Participating Class Member” means any and all Settlement Class Members who are deemed to participate and receive an Individual Settlement Amount for the Class Claims and who do not opt-out of the settlement of the Class Claims by submitting timely valid Requests for Exclusion.

26. “Parties” or “Settling Parties” mean Plaintiff, the Settlement Class Members, the Allegedly Aggrieved Employees, and Defendant, collectively.

27. “Preliminary Approval Date” means the date the Court signs the order preliminarily approving the Settlement Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

28. “Preliminary Approval Order” means the judicial Order to be entered by the Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement and providing for the issuance of the Notice to the Settlement Class Members, an opportunity to opt out of settlement of the Class Claims, an opportunity to submit timely objections to the terms of this Settlement related to the Class Claims, and setting a hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and costs.

29. “QSF” means the Qualified Settlement Fund set up by the Settlement Administrator for the benefit of the Final Settlement Class, and from which the settlement payments shall be made, and which is intended to be a fund that qualifies under Internal Revenue Code Section 468.

30. “Release” shall mean the release and discharge of the Class Claims by Plaintiff and all of the Participating Class Members and the release and discharge of the PAGA Claims by Plaintiff and all of the Allegedly Aggrieved Employees.

1 31. “Released Parties” shall refer to Defendant and any of their present and former
2 parent companies, subsidiaries, divisions, concepts, related or affiliated companies and their
3 shareholders, partners, members, owners, officers, directors, agents, attorneys, insurers,
4 successors, and assigns, and any individual or entity that could be liable for any of the Released
5 Claims, and Defendant’s counsel of record in the action.

6 32. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 71(a)
7 below.

8 33. “Service Payment” or “Service Award” means the amount approved by the Court
9 to be paid to Class Representative in addition to her Individual Settlement Amount as a
10 Participating Class Member.

11 34. “Settlement Administration Costs” means the costs payable from the Settlement
12 Amount to the Settlement Administrator for administering this Settlement, including, but not
13 limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, due
14 diligence, reporting and remittance obligations, distributing the Settlement Amount, and
15 providing necessary reports and declarations, as requested by the Parties and the Court. The
16 Settlement Administration Costs shall be paid from the Settlement Amount.

17 35. “Settlement Administrator” means and refers to ILYM Group, Inc., which the
18 Parties have mutually agreed will provide the Notice to the Class Members and distribute the
19 settlement amounts as described in this Agreement.

20 36. “Settlement Amount” or “Gross Settlement Amount” shall have the meaning
21 ascribed to it in Paragraph 48(a) below.

22 37. “Settlement Class Member” or “Class Member” refers to individual members of
23 the Settlement Class.

24 38. “Settlement Class” and “Settlement Class Members” refers to all persons who are
25 or were previously employed by Defendant in California classified as a non-exempt, hourly
26 employee during the Class Period.

27 39. “Workweeks Worked” for each Settlement Class Member and Allegedly
28 Aggrieved Employee means any workweek during the Class Period/PAGA Period in which the

1 Settlement Class Member and/or Allegedly Aggrieved Employee was employed by Defendant as
2 a non-exempt, hourly employee in California and worked at least one shift during the workweek
3 for or on behalf of Defendant for which a prior release of claims has not been signed. Workweeks
4 Worked shall not include weeks or pay periods where a Settlement Class Member and/or
5 Allegedly Aggrieved Employee only had sick time, vacation time, was on leave, or otherwise did
6 not record any actual work time in Defendant's timekeeping system. Workweeks Worked will
7 be calculated based on Defendant's business records.

8 **B. General Terms**

9 40. On or about June 10, 2021, Plaintiff filed a PAGA Complaint in the Los Angeles
10 Superior Court against Defendant, including allegations of: (1) failure to pay minimum wages,
11 (2) failure to pay overtime wages, (3) meal period violations, (4) rest period violations, (5) wage
12 statement violations, (6) waiting time penalties, and (7) unfair competition.

13 41. Defendant denies Plaintiff's claims and allegations in the PAGA Notice, the
14 original Complaint and the First Amended Complaint in their entirety and contends that the
15 Action is meritless and is not suitable for class certification and/or representative action treatment.
16 Nothing in this Agreement is intended or will be construed as an admission by Defendant that the
17 claims in the Action have merit or that Defendant bears any liability to Plaintiff, the Settlement
18 Class Members or the Allegedly Aggrieved Employees on those claims or any other claims.
19 Nevertheless, Defendant has taken into account the uncertainty and risks inherent in any litigation
20 and has also concluded that further defense of the Action would be protracted and expensive.
21 Defendant, therefore, has determined that it is desirable and beneficial that the Action be settled
22 in a manner and upon the terms and conditions set forth in this Settlement Agreement.

23 42. Class Representative believes she can proceed with her class and representative
24 claims, that the Action is meritorious, and that class certification is appropriate.

25 43. The Parties have conducted a thorough investigation into the facts of the Action.
26 This includes conducting extensive exchange of informal discovery, including Defendant's
27 written policies and practices and the production of a representative sample of payroll and
28 timekeeping records for Settlement Class Members and Allegedly Aggrieved Employees. Class

Counsel is both knowledgeable about and has done extensive research with respect to the applicable law and potential defenses to the claims of the Settlement Class Members and Allegedly Aggrieved Employees. Class Counsel has diligently pursued an investigation of the Class Members' claims against Defendant. Based on the foregoing data and on their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class Members and Allegedly Aggrieved Employees in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant, and numerous potential appellate issues.

44. On December 9, 2022, the Parties participated in mediation before Gail Glick, Esq., a highly experienced class and PAGA/representative action mediator. After a full-day mediation and the issuance of a mediator's proposal, the Parties reached a settlement. The Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arms-length negotiations between the Parties supervised by a highly experienced class and representative action mediator. This Agreement represents a compromise and settlement of highly disputed claims, and is intended to settle, compromise and discharge the Released Claims against the Released Parties fully, finally, and forever.

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

46. Stipulation for Class Certification and Representative Treatment. Because the Parties are settling claims under Labor Code section 2699 et. eq. and have stipulated to the certification of the Class with respect to all causes of action alleged in the Action for settlement purposes only, this Agreement requires approval by the Court in accordance with Labor Code section 2699(1) and California Rule of Court 3.769. Accordingly, the Parties enter into this Agreement on a conditional basis only subject to Court approval. For settlement purposes only,

1 Defendant will stipulate that the Settlement Class Members described herein who do not Request
2 Exclusion from the Settlement Class may be conditionally certified as a settlement class and that
3 the Allegedly Aggrieved Employees are appropriate for representative treatment for purposes of
4 settlement. This stipulation to certification and representative treatment is in no way an admission
5 that class action certification and/or representative treatment is proper and shall not be admissible
6 in this or in any other action except for the sole purposes of enforcing this Agreement. This
7 Agreement is contingent upon the approval and certification by the Court. Defendant does not
8 consent to certification of the Class for any purpose other than to effectuate settlement of the
9 Action. If the Effective Date does not occur, any certification of the Class as to Defendant and
10 any approval or award of PAGA penalties will be vacated, and Named Plaintiff, Defendant, and
11 the Class will be returned to their positions with respect to the Actions as if the Agreement had
12 not been entered into. In the event that the Effective Date does not occur: (a) any Court orders
13 preliminarily or finally approving certification of any class contemplated by this Agreement
14 and/or awarding PAGA penalties shall be null, void, and vacated, and shall not be used or cited
15 thereafter by any person or entity; and (b) the fact of the settlement reflected in this Agreement,
16 the fact that Defendant did not oppose the certification of a Class under this Agreement, or that
17 the Court preliminarily approved the certification of the Class and/or approved an award of PAGA
18 penalties, shall not be used or cited thereafter by any person or entity, including in any manner
19 whatsoever, including without limitation any contested proceeding relating to the certification of
20 any class. If the Effective Date does not occur, this Agreement shall be deemed null and void,
21 shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose
22 whatsoever. Defendant expressly reserves the right to challenge the propriety of class certification
23 in the Class Action for any purpose, if the Effective Date does not occur. Plaintiff expressly
24 reserves her rights to pursue class certification and representative treatment and a trial if the
25 Effective Date does not occur. The Parties and their respective counsel shall take all steps that
26 may be requested by the Court relating to the approval and implementation of this Agreement and
27 shall otherwise use their respective best efforts to obtain Court approval and implement this
28 Agreement.

1 **C. Terms of Settlement**

2 47. First Amended Complaint: As a condition of settlement, Plaintiff will file a First
3 Amended Complaint (“FAC”) to conform the pleadings with the scope of the Released Claims
4 and Released PAGA Claims. Defendant will not be required to file an answer or other responsive
5 pleading to the FAC. If, for any reason, the Court does not approve of the Settlement, or if the
6 Settlement does not become final for any reason, then the FAC will be deemed withdrawn and
7 the Complaint will again become the operative complaint without prejudice to Plaintiff’s right to
8 seek leave to file another amended complaint and without prejudice to Defendant’s rights to object
9 and/or challenge an amended pleading. Defendant does not impliedly or expressly waive any
10 arguments or defenses to the FAC.

11 48. The financial terms of the Settlement are as follows:

12 (a) Gross Settlement Amount: The Parties agree to settle this Action for Two Hundred
13 Forty Thousand Dollars (\$240,000) (“the Gross Settlement Amount”). The Gross Settlement
14 Amount includes payment of Individual Settlement Amounts to each Settlement Class Member
15 and PAGA Group Member, attorneys’ fees of Class Counsel, costs and expenses, the Service
16 Payment to Class Representative, all Settlement Administration Costs, and payment of the State’s
17 share of the PAGA Settlement Fund to the Labor Workforce Development Agency (LWDA) for
18 PAGA penalties. Defendant shall separately pay the employers’ share of applicable payroll taxes.
19 The Gross Settlement Amount is the maximum amount that will be paid by Defendant, subject to
20 potential pro rata increase under the conditions in Paragraph 48(b) below.

21 (b) Right of Defendant to Adjust Gross Settlement Amount: Defendant estimates that
22 that there are 13,208 Workweeks Worked through March 3, 2023. If the actual number of
23 Workweeks Worked exceeded 14,529 by May 15, 2023, then Defendant shall have the option of
24 either (a) increasing the Gross Settlement Amount on a pro rata basis or (b) shortening the Class
25 Period/PAGA Period to the date at which the 14,529 threshold is reached. Defendant will have
26 ten (10) calendar days from notification of this term being triggered to decide which option it
27 chooses.
28

1 (c) Net Settlement Amount: The “Net Settlement Amount” is defined as the Gross
2 Settlement Amount less attorneys’ fees and litigation costs as approved and awarded by the Court,
3 the Service Payment to Class Representative as approved and awarded by the Court, and the
4 Settlement Administration Costs as approved and awarded by the Court. In the event that the
5 Court reduces the attorneys’ fees and litigation costs or Service Awards, Settlement
6 Administration Costs, or either increases or decreases the amount allocated to PAGA penalties,
7 the Net Settlement Sum shall be increased or decreased accordingly.

8 (d) Individual Settlement Amounts for the Settlement Class: The Settlement
9 Administrator will use the Class Data provided by Defendant to calculate each Participating Class
10 Member’s and Allegedly Aggrieved Employee’s Individual Settlement Amounts based on the
11 following formula:

12 i. PAGA Amount: \$10,000 of the Gross Settlement Amount has been
13 designated to the PAGA claims. Twenty-five percent (25%), or \$2,500, shall be paid out to
14 Allegedly Aggrieved Employees, while seventy-five percent (75%), or \$7,500, will be paid to the
15 LWDA. Each Allegedly Aggrieved Employee shall receive a portion of the \$2,500 proportionate
16 to the number of Workweeks Worked by the Allegedly Aggrieved Employees during the PAGA
17 Period compared to the total number of Workweeks Worked by all Allegedly Aggrieved
18 Employees during the PAGA Period. Allegedly Aggrieved Employees shall have their settlement
19 amount for the Released PAGA claims paid one hundred percent (100%) as civil penalties for
20 which no taxes will be withheld and for which a Form 1099 will be issued by the Settlement
21 Administrator.

22 ii. Class Amount: The Net Settlement Amount shall be allocated to each
23 Participating Class Member based on his/her/their proportionate Workweeks Worked during the
24 Class Period. This is determined by multiplying the Net Settlement Amount by a fraction, the
25 numerator of which is the Participating Class Member’s total Workweeks Worked during the
26 Class Period, and the denominator of which is the total Workweeks Worked by all Participating
27 Class Members during the Class Period. If there are any timely submitted Requests for Exclusion,
28 the Settlement Administrator shall proportionately increase the Individual Settlement Amounts

1 for each Participating Class Member so that the amount actually distributed to Participating Class
2 Members equals 100% of the Net Settlement Amount allocated toward Released Class Claims.

3 (e) Allocation of Individual Settlement Amounts: The Individual Settlement Amounts
4 will be allocated for tax purposes based on the allegations in the Action as follows: thirty three
5 percent (33%) will be paid as wages subject to withholding of all applicable local, state, and
6 federal taxes; thirty three percent (33%) will be paid as interest; and thirty four percent (34%) will
7 be paid as penalties. Pursuant to, *e.g.*, California Labor Code Sections 203, 226, no taxes will be
8 withheld from the sixty seven percent (67%) that will be paid as interest and as civil penalties.
9 The Settlement Administrator will issue to each Participating Class Member an Internal Revenue
10 Service Form W-2 and comparable state forms with respect to the wage allocation, and a Form
11 1099 with respect to the civil penalties and interest allocations.

12 (f) Service Payment to Class Representative: The amount awarded to Class
13 Representative as a Service Payment will be set by the Court in its discretion, not to exceed Ten
14 Thousand Dollars (\$10,000). Defendant agrees not to oppose this request. The Service Payment
15 to Class Representative will be paid out of the Gross Settlement Amount. Class Representative
16 will be issued IRS Form 1099 in connection with this payment. Plaintiff shall be solely and legally
17 responsible to pay any and all applicable taxes on this payment. The Parties agree that any amount
18 awarded by the Court as the Service Payment to Plaintiff less than the requested amount shall not
19 be a basis for Plaintiff or Class Counsel to void this Agreement. Should the Court approve a lesser
20 amount for the Service Payment, the difference shall be added to the Net Settlement Amount to
21 be distributed to the Participating Class Members. In the event of any appeal of the amount of the
22 service awards (if any) approved by the Court, if, after the exhaustion of any such appellate
23 review, additional amounts not awarded to Class Representative shall be added to the Net
24 Settlement Amount to be distributed to the Participating Class Members.

25 (g) Attorneys' Fees and Costs: Defendant agrees not to oppose a request by Class
26 Counsel to the Court for an award of attorneys' fees of one-third (33.33%) of the Gross Settlement
27 Amount (approximately \$80,000), plus reasonable litigation costs not to exceed Fifteen Thousand
28 Dollars (\$15,000) ("Attorneys' Fees and Cost Award"). For purposes of this Settlement,

Defendant agrees not to oppose any contention by Class Counsel that attorneys' fees should be based on the common fund theory. The Attorneys' Fee and Cost Award shall be paid from the Gross Settlement Amount, and except for this award, Defendant shall have no further obligation to pay any attorneys' fees, costs, or expenses to Class Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members. Any Court order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. In the event of any appeal of the amount of the awards of attorneys' fees and costs (if any) approved by the Court, final funding and administration of the portion of the attorneys' fees and/or costs award in dispute will be segregated and stayed pending the exhaustion of appellate review. If, after the exhaustion of any such appellate review, additional amounts not awarded as attorneys' fees and costs shall be added to the Net Settlement Amount to be distributed to the Participating Class Members and/or Allegedly Aggrieved Employees. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the Court. Class Counsel agrees that any allocation of fees between or among Class Counsel and any other attorney representing or claiming to represent the Class Members shall be the sole responsibility of Class Counsel.

(h) Settlement Administration Costs: The fees and other charges of the Settlement Administrator will be paid from the Gross Settlement Amount, not to exceed \$7,500 subject to Court approval, unless approved by all Parties and the Court.

(i) Tax Liability: Class Counsel, Defendant, and Defendant's Counsel make no representations as to the tax treatment or legal effect of Settlement Amounts called for hereunder, and Plaintiff and the Settlement Class Members are not relying on any statement or representation by Class Counsel, Defendant, or Defendant's Counsel in this regard. Plaintiff and Final Settlement Class Members understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their respective Settlement Amounts described herein. Income tax withholding will also be made pursuant to applicable federal, state, and/or local withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner

1 required by the Internal Revenue Code of 1986 (the “Code”) and consistent with this Settlement
2 Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, are
3 changed after the date of this Agreement, the processes set forth in this Section may be modified
4 in a manner to bring Defendant into compliance with any such changes.

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

9 49. No Credit Towards Benefit Plans. The Individual Settlement Payments and
10 Individual PAGA Payments made to Participating Class Members and/or Allegedly Aggrieved
11 Employees under this Settlement Agreement, as well as any other payment made pursuant to this
12 Settlement Agreement, will not be utilized to calculate any additional benefits under any benefit
13 plans to which any Participating Class Members and/or Allegedly Aggrieved Employees may be
14 eligible, including but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock
15 purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather,
16 it is the Parties’ intention that this Settlement Agreement will not affect the rights, contributions,
17 or amounts to which any Participating Class Member and/or Allegedly Aggrieved Employees
18 may be entitled under benefit plans.

19 50. “Non-Reversionary” Settlement. This is a “non-reversionary” settlement. Under
20 no circumstances will any portion of the Settlement Amount revert to Defendant. Final Settlement
21 Class Members will not have to make a claim to receive an Individual Settlement Amount.
22 Distributions, in the form of Individual Settlement Amounts, will be made directly to each Final
23 Settlement Class Member. The Settlement Administrator shall be responsible for accurately and
24 timely reporting any remittance obligations with respect to unclaimed funds as a result of a Final
25 Settlement Class Member not cashing an Individual Settlement Amount by the check cashing
26 deadline, as set forth herein.

27 51. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
28 adequate, and will so represent same to the Court.

D. Release by Plaintiff and the Final Settlement Class

52. Upon the Effective Date of this Settlement, Plaintiff and each Participating Class Member, for themselves and for their respective agents, spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, predecessors, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, will forever completely release and discharge the Released Parties from the Released Class Claims for the Class Release Period. Plaintiff and Participating Class Members will release Defendant and the Released Parties from all remedies that could be claimed in connection with the Released Class Claims including but not limited to, statutory, constitutional, contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief.

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

54. Upon the Effective Date of this Settlement, Plaintiff, the LWDA, and each Allegedly Aggrieved Employee, for themselves and for their respective agents, spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, predecessors, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, will forever completely release and discharge the Released Parties from the Released PAGA Claims for the PAGA Release Period. Plaintiff and each Allegedly Aggrieved Employee will release Defendant and the Released Parties from all remedies that could be claimed in connection with the Released PAGA Claims including but not limited to, statutory, constitutional, contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief.

55. Each Allegedly Aggrieved Employee and the LWDA will be deemed to have made the foregoing Release as if by manually signing it.

56. Plaintiff and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Participating Class

Members to obtain a recovery based on, arising out of, and/or related to any and all of the Released Class Claims. The Settlement Class Members shall be notified in the Notice. This paragraph does not apply to any Settlement Class Member who timely and validly opts out of the Settlement for purposes of Class Claims.

57. Plaintiff and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Allegedly Aggrieved Employees and the LWDA to obtain a recovery based on, arising out of, and/or related to any and all of the Released PAGA Claims. The Allegedly Aggrieved Employees and the LWDA shall be notified in the Notice.

58. Class Representative, on behalf of herself and the Participating Settlement Class Members, acknowledges and agrees that the Class Claims or Released Class Claims are disputed, and that the payments set forth herein constitute payment of all sums allegedly due to her. Class Representative, on behalf of herself and the Participating Settlement Class Members, acknowledges and agrees that California Labor Code Section 206.5 is not applicable to the Parties hereto. Section 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 by Class Representative

59. As a material inducement to Defendant to enter into this Settlement Agreement, in addition to Class Representative's release of the Released Class Claims and Released PAGA Claims, as discussed in Paragraphs 52 and 54 above, Class Representative does hereby, for herself and for her respective agents, spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, predecessors, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, forever completely release and discharge the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, contracts, controversies, damages, actions, causes

1 of action, suits, rights, demands, costs, losses, debts, and expenses (including for back wages,
2 meal and rest break premium pay, statutory penalties, civil penalties, liquidated damages,
3 exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever, from the
4 beginning of time through the execution of this Settlement Agreement, whether known or
5 unknown, suspected or unsuspected, concealed or hidden, including but not limited to all claims
6 arising out of, based upon, or relating to Class Representative's employment with Defendant or
7 the remuneration for or termination of such employment (collectively, the "Class Representative's
8 Claims").

9 60. Without limiting the generality of the foregoing release, Class Representative also
10 expressly releases all claims or rights against Released Parties arising out of or relating to alleged
11 violations of any contracts, express or implied (including but not limited to any contract of
12 employment); any contract or covenant of good faith and fair dealing (express or implied); any
13 tort, including but not limited to, negligence, fraud, misrepresentation and violation of California
14 Labor Code Section 970, negligent infliction of emotional distress, intentional infliction of
15 emotional distress, defamation, "retaliation" claims and claims for violation of public policy,
16 wage claims, wrongful termination claims, disability claims, benefit claims, personal injury
17 claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and
18 any and all claims arising under any federal, state or other governmental statute, law, regulation
19 or ordinance, including, but not limited to, claims for violation of the FLSA, the California Labor
20 Code, the Wage Orders of California's Industrial Welfare Commission, other state wage and hour
21 laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act (ADEA),
22 the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the
23 California Fair Employment and Housing Act, the California Family Rights Act, the Family
24 Medical Leave Act, California's Whistleblower Protection Act, California Business &
25 Professions Code §§17200 et seq., the Private Attorneys General Act of 2004, Labor Code
26 Sections 2699, *et seq.*, and any and all claims arising under any federal, state or other
27 governmental statute, law, regulation or ordinance. Further, Class Representative agrees to the
28 fullest extent permitted by law, that other than this Action, Class Representative will not pursue

any putative class action, collective action, or representative action against the Released Parties, or any of them, and that if such action is filed by any other person, Class Representative will withdraw as a participant.

61. As part of Class Representative's release set forth herein, she 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 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of the State of California states:

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

Class Representative's general release provided herein is made with an express waiver and relinquishment of any claim, right, or benefit under California Civil Code § 1542. Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of all Released Parties, Class Representative, and Class Counsel expressly acknowledge that this Settlement Agreement is intended to include in its effect, without limitation, all claims that Class Representatives knew of, as well as all claims that they do not know or suspect to exist in their favor against the Released Parties, or any of them, for the time period from the beginning of time to the execution of this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any and all such Class Representative's claims.

F. Interim Stay of Proceedings

62. Pending completion of all of the prerequisites necessary to effectuate this Settlement, including amending the operative complaint, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action except such as are necessary to effectuate the Settlement.

1 **G. Notice Process**

2 63. Appointment of Settlement Administrator. The Parties have agreed to the
3 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
4 including mailing the Notice, using standard devices to obtain forwarding addresses,
5 independently reviewing and verifying documentation associated with any claims or opt-out
6 requests, resolving any disputes regarding the calculation or application of the formula for
7 determining the Individual Settlement Amounts, drafting and mailing the settlement checks to
8 Final Settlement Class Members and Allegedly Aggrieved Employees, issuing Forms W-2 and
9 1099, reporting to taxing authorities, due diligence, reporting and remittance obligations, and
10 performing such other tasks as set forth herein or as the Parties mutually agree or that the Court
11 orders. The Settlement Administrator shall also be responsible for issuing to Plaintiff, Final
12 Settlement Class Members, and Class Counsel any Forms W-2, Forms 1099, or other Tax Forms
13 as may be required by law for all amounts paid pursuant to this Agreement. The Settlement
14 Administrator shall also be responsible for setting up all necessary tax accounts and forwarding
15 all payroll taxes and penalties to the appropriate government authorities.

16 64. Disputes Regarding Settlement Administration. Any and all disputes relating to
17 administration of the Settlement by the Settlement Administrator (except for disputes regarding
18 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
19 over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendant notify
20 the Court that all payments and obligations contemplated by this Settlement Agreement have been
21 fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in
22 good faith to resolve the dispute without the necessity of Court intervention.

23 65. Class Data. Within fifteen (15) calendar days after entry of the Preliminary
24 Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The
25 Settlement Administrator will run a check of the Class Members' addresses against those on file
26 with the U.S. Postal Service's National Change of Address List. The Class Data provided to the
27 Settlement Administrator will not be provided to Class Counsel and it will remain confidential, it
28 shall be used solely to administer the Settlement, and it will not be used or disclosed to anyone,

1 except as required by applicable tax authorities, pursuant to Defendant's express written consent,
2 or by order of the Court.

3 66. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
4 Administrator to the Settlement Class Members, by first class mail, in English and Spanish, within
5 seven (7) calendar days following the Settlement Administrator's receipt of the Class Data. The
6 Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding
7 addresses of Settlement Class Members if any envelopes are returned.

8 67. Returned Notices. The Settlement Administrator will take steps to ensure that the
9 Notice is received by all Settlement Class Members, including utilization of the National Change
10 of Address Database maintained by the United States Postal Service to review the accuracy of
11 and, if possible, update a mailing address. If no forwarding address is provided, the Settlement
12 Administrator will promptly attempt to determine the correct address using a skip-trace, or other
13 search using the name, address, and/or Social Security number of the Class Member involved and
14 will then perform a single re-mailing. In the event the procedures in this Paragraph are followed
15 and the intended recipient of a Notice packet still does not receive the Notice packet, the Class
16 Member shall be bound by all terms of the Settlement and any Judgment entered by the Court if
17 the Settlement is approved by the Court. Notices will be re-mailed to any Settlement Class
18 Member for whom an updated address is located within ten (10) calendar days following both the
19 Settlement Administrator learning of the failed mailing and its receipt of the updated address. The
20 Notice shall be identical to the original Notice, except that it shall notify the Settlement Class
21 Member that the exclusion (opt-out) request or objection must be returned by the later of the
22 Notice Response Deadline or fifteen (15) calendar days after the remailing of the Notice.

23 68. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
24 if an envelope has not been returned within thirty (30) calendar days of the mailing that the
25 Settlement Class Member received the Notice.

26 69. Disputes Regarding Class Data. Settlement Class Members are deemed to
27 participate in the Settlement unless they opt-out. The Notice will inform Settlement Class
28 Members of his/her/their estimated Individual Settlement Amount and the number of Workweeks

1 Worked during the Class Period and PAGA Periods Worked during the PAGA Period. Settlement
2 Class Members may dispute their Workweeks Worked if they feel they were employed more
3 workweeks in the Class Period in California than Defendant's records show by timely submitting
4 evidence to the Settlement Administrator. Defendant's records will be presumed determinative
5 absent reliable evidence to rebut Defendant's records, but the Settlement Administrator will
6 evaluate the evidence submitted by the Settlement Class Member and provide the evidence
7 submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith
8 about the evidence to determine the Class Member's actual number of Workweeks Worked and
9 estimated Individual Settlement Amount. If Class Counsel and Defense Counsel are unable to
10 agree, they agree to submit the dispute to the Settlement Administrator to render a final decision.
11 All disputes will be decided within ten (10) business days of the Notice Response Deadline.
12 Settlement Class Members will have until the Notice Response Deadline to dispute Workweeks
13 Worked, object, or opt out, unless extended by the Court. In the event that the Settlement
14 Administrator increases the number of Workweeks Worked for any Settlement Class Member,
15 then the Settlement Administrator will recalculate the Participating Class Members' Individual
16 Settlement Amounts; accordingly, in no event will Defendant be required to increase the Gross
17 Settlement Amount.

18 70. Declaration of Due Diligence. The Settlement Administrator shall provide counsel
19 for the Parties, at least twenty-five (25) calendar days prior to the final approval hearing, a
20 declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

21 71. Settlement Class Members' Rights. Each Settlement Class Member will be fully
22 advised of the Settlement, the ability to object to the provisions in the Settlement related to the
23 Class Claims, and the ability to opt out or request exclusion from the Class Claims provisions of
24 the Settlement. The Notice will inform the Settlement Class Members of the Court-established
25 deadlines for filing objections or requesting exclusion from the Class Claims provisions of the
26 Settlement in accordance with the following guidelines:

27 (a) Requests for Exclusion from Participating Settlement Class. Any
28 Settlement Class Member, other than Plaintiff, may request to be excluded from the Participating

1 Settlement Class by submitting a "Request for Exclusion" to the Settlement Administrator,
2 postmarked on or before the Notice Response Deadline. The Request for Exclusion should state
3 in words to this effect:

4 I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN
5 THE TORRES V. PENSAR LAWSUIT. I UNDERSTAND THAT IF I
6 ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL
7 NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE
8 CLASS CLAIMS IN THIS LAWSUIT.

9 Any Request for Exclusion must include the full name, address, telephone number, last
10 four digits of the social security number or date of birth, and signature of the Settlement Class
11 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
12 Settlement Administrator at the specified address in the Notice. Any such Request for Exclusion
13 must be made in accordance with the terms set forth in the Notice. A Request for Exclusion will
14 be timely only if postmarked by the Notice Response Deadline, unless the Parties otherwise agree
15 in writing. Any Settlement Class Member who timely requests exclusion in compliance with these
16 requirements: (i) will not have any rights under this Agreement with respect to the Class Claims,
17 including the right to object, appeal, or comment on the Settlement; (ii) will not be entitled to
18 receive any payments under this Agreement with respect to Class Claims; and (iii) will not be
19 bound by this Agreement, or the Judgment, with respect to the Class Claims.

20 (b) Binding Effect on Final Settlement Class Members. Except for those
21 Settlement Class Members who exclude themselves in compliance with the procedures set forth
22 above, all Settlement Class Members will: (i) be deemed to be Final Settlement Class Members
23 for all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
24 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise provided
25 herein, will be deemed to have waived all objections and oppositions to the fairness,
26 reasonableness, and adequacy of the Settlement.

27 (c) Objections to Settlement of Class Claims. Any Settlement Class Member,
28 other than Plaintiff, may object to the terms of this Agreement with respect to the Class Claims
and may appear at the Final Approval Hearing and object whether or not they have filed a written

objection as outlined herein. To object, a Settlement Class Member shall inform the Settlement Administrator, in writing, of his/her/their objection, which must be postmarked by the Notice Response Deadline at the address set forth in the Notice. Such objection shall include the full name, address, telephone number, dates of employment with Defendant of the Objecting Settlement Class Member, the case name and number, the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof, and, if the Objecting Settlement Class Member is represented by counsel, the name and address of his/her/their counsel. If any Objecting Settlement Class Member wishes to speak at the Final Approval Hearing with respect to the Class Claims, that Objecting Settlement Class Member's written submission should include a request to be heard, and the Court will determine whether Objecting Settlement Class Members will be permitted to speak. The Settlement Administrator shall provide objections, if any, to Class Counsel and Defense Counsel within three (3) calendar days of receipt, and the Settlement Administrator shall attach the same to its declaration of due diligence it files with the Court prior to the Final Approval Hearing. Any Participating Class Member who files an objection remains eligible to receive monetary compensation from the Settlement and will be bound by the terms of this Agreement including all releases. Plaintiff and Defendant shall not be responsible for any fees, costs, or expenses incurred by any Settlement Class Member and/or his/her/their counsel related to any objections to the Settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment under Code of Civil Procedure Section 663. Settlement Class Members and Allegedly Aggrieved Employees may not object to or opt out of the Settlement with respect to the PAGA Claims. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to submit Requests for Exclusion, Notices of Objection, or disputes regarding Class Data or to appeal from the Final Approval judgment. To the extent a timely Notice of Objection is withdrawn before Final Approval, such an objection shall be treated as though no objection has been made.

1 (d) Failure to Object. Any Settlement Class Member who desires to object
2 with respect to the Class Claims but fails to timely submit a written objection waives any right to
3 object will be foreclosed from making any objection to this Settlement. Any Settlement Class
4 Member who does not timely and properly become a party of record by intervening or filing a
5 motion to vacate the judgment waives any and all rights to appeal from the judgment, including
6 all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate
7 judgment, motion for new trial, a motion under California Code of Civil Procedure Section 473,
8 and extraordinary writs.

9 (e) Responses to Objections. Counsel for the Parties may file a response to any
10 objections submitted by Objecting Settlement Class Members at least five (5) court days before
11 the date of the Final Approval hearing.

12 72. Settlement Class Members will have until the Notice Response Deadline to object
13 or submit a Request for Exclusion or a dispute regarding Class Data to the Settlement
14 Administrator by U.S. Mail. The Settlement Administrator shall disclose jointly to Class Counsel
15 and Defendant's Counsel what objections or Requests for Exclusion or disputes regarding Class
16 Data were timely submitted on a weekly basis, and upon the request of Class Counsel or Defense
17 Counsel.

18 73. Funding of the Settlement Amount. Within fifteen (15) calendar days of the
19 Effective Date, Defendant shall make an initial payment to the Settlement Administrator of Forty
20 Thousand Dollars (\$40,000.00) and applicable employer taxes, as set forth herein, into the QSF.
21 Defendant shall make the payment of the remaining Two Hundred Thousand Dollars
22 (\$200,000.00) and applicable employer taxes no later than six (6) months after the Effective Date.

23 74. Distribution of Funds. Prior to the disbursement of any funds, the Settlement
24 Administrator will provide a disbursement summary of the calculations for the payments
25 described above for review and approval by Class Counsel and Defense Counsel. Following
26 approval by Class Counsel and Defense Counsel, and no later than ten (10) calendar days after
27 receipt of the Gross Settlement Payment pursuant to Paragraph 73, the Settlement Administrator
28 will mail the payments to the Participating Class Members, Allegedly Aggrieved Employees, the

1 payment for the attorneys' fees and costs to Class Counsel, any Service Payment to the Class
2 Representatives, the payment to the LWDA for PAGA penalties, and will pay itself the Settlement
3 Administration Costs.

4 75. Deadline for Cashing Settlement Checks. Final Settlement Class Members and
5 Allegedly Aggrieved Employees shall have one hundred eighty (180) calendar days after mailing
6 by the Settlement Administrator to cash their settlement checks. All unclaimed funds shall be sent
7 to the California Unclaimed Property Fund in the name of the Final Settlement Class Member or
8 Allegedly Aggrieved Employee. The release will be binding upon all Final Settlement Class
9 Members who do not cash their checks within the 180-day period. In the event that any settlement
10 check is returned to the Settlement Administrator within one hundred eighty (180) days of
11 mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned
12 settlement check, perform a skip trace to locate the individual. If a new address is located by these
13 means, the Settlement Administrator will have ten (10) business days to re-issue the check and
14 will notify Defense Counsel and Class Counsel that a re-issued check has been sent. Neither
15 Defendant, Defense Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator will have
16 any liability for lost or stolen settlement checks, forged signatures on settlement checks, or
17 unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Final
18 Settlement Class Member notifies the Settlement Administrator that he/she/they believe that a
19 settlement check has been lost or stolen, the Settlement Administrator shall immediately stop
20 payment on such check. If the check in question has not been negotiated prior to the stop payment
21 order, the Settlement Administrator will issue a replacement check.

22 76. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff,
23 Class Counsel, or the Settlement Administrator based on mailings, distributions, payments, or
24 reports made in accordance with or pursuant to this Agreement. This provision does not, however,
25 prevent a Party from seeking enforcement of this Agreement.

26 77. Without prejudice to any other remedies, the Settlement Administrator shall agree
27 to be responsible for any breach of its obligations (whether committed by the Settlement
28 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from

and against all liabilities, claims, causes of action, costs and expenses (including legal fees and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

H. Duties of the Parties Prior to the Court's Approval

78. Plaintiff will bring a motion before the Court for an order conditionally certifying the Class to include all claims pled in the Action based on the preliminary approval of this Agreement. Class Counsel will be responsible for drafting all documents necessary to obtain preliminary approval. Plaintiff will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

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

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

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

(d) Preliminarily approving this Settlement; and

(e) Preliminarily certifying the class for purposes of this Settlement only.

79. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this Settlement Agreement, and will include the proposed Notice packet, which will include the Notice of Class Action Settlement document and proposed Mailing Envelope.

80. In accordance with Section 2699(1)(2) of the California Labor Code, Plaintiff shall provide a copy of this Settlement Agreement to the LWDA on the same day that Plaintiff files his motion for Preliminary Approval of this Settlement with the Court.

81. Reallocation of Settlement Proceeds. In the event the Court fails, on its first hearing, to approve this Agreement because the amount of the PAGA penalties is not adequate, then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within this Agreement, to try to achieve Final Approval of the Agreement upon any subsequent Court hearings.

1 **I. Duties of the Parties Following Court's Final Approval**

2 82. On the date set forth in the Order for Preliminary Approval and Notice Packet, a
3 Final Approval Hearing shall be held before the Court in order to (1) review this Agreement and
4 determine whether the Court should give it final approval, and (2) consider any objections made
5 and all responses by the Parties to such objections. At the Final Approval Hearing, the Parties
6 shall ask the Court to grant final approval to this Agreement. Class Counsel will be responsible
7 for drafting all documents necessary to obtain final approval. In connection with the Final
8 Approval hearing provided for in this Settlement Agreement, Class Counsel shall submit a
9 proposed Final Approval Order:

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

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

15 (c) Entering judgment approving settlement, thereby permanently barring all
16 Participating Class Members from prosecuting any Released Class Claims against any of the
17 Released Parties and permanently barring all Allegedly Aggrieved Employees and the LWDA
18 from prosecuting any Released PAGA Claims against any of the Released Parties; and

19 (d) Scheduling a conference or hearing to confirm all payments referenced above have
20 been made in accordance with this Agreement and to dismiss the Action.

21 **J. Voiding the Agreement**

22 83. If the Court fails or refuses to issue the Final Approval Order or fails to approve
23 any material condition of this Settlement Agreement which effects a fundamental change of the
24 Settlement, the Parties agree to meet and confer to address the Court's concerns. If the Parties are
25 unable to agree upon a resolution, the Parties agree to seek the assistance of mediator Gail Glick,
26 Esq. to resolve the dispute.

27 84. If five percent (5%) or more of the Settlement Class Members timely submit a
28 Request for Exclusion, Defendant shall have the option of terminating or modifying this

1 Agreement without prejudice to its pre-settlement positions and defenses in the Action. If
2 Defendant exercises such option under this paragraph, it shall be relieved of any obligation to pay
3 the Gross Settlement Amount or any other obligations from the Settlement by giving notice to
4 Class Counsel and the Settlement Administrator within ten (10) calendar days of the Notice
5 Response Deadline and Defense Counsel's receipt of all Request for Exclusion reports from the
6 Settlement Administrator. If Defendant exercises its option under this paragraph, Defendant shall
7 be solely responsible for all Settlement Administration Costs incurred up to the date Defendant
8 exercises its option.

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

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

16 **K. Other Terms**

17 87. Full and Complete Defense. This Agreement may be pleaded by any Released
18 Party as a full and complete defense to and may be used as the basis for an injunction against, any
19 action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted,
20 asserting any Released Claim.

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

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

26 90. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
27 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
28 such documents and to take such other action as may reasonably be necessary to implement the

1 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best
2 efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that
3 may become necessary by order of the Court, or otherwise, to effectuate this Settlement
4 Agreement and the terms set forth herein. As soon as practicable, Defense Counsel shall, with the
5 assistance and cooperation of Defendant and Class Counsel, to the extent it may become
6 necessary, gather Class Data from all applicable entities including any and all staffing agencies
7 that staffed any of the Class Members and/or Allegedly Aggrieved Employees to Defendant
8 during the respective Class and PAGA Periods. As soon as practicable after execution of this
9 Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and
10 Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval
11 of the settlement and the final entry of judgment. This shall include Class Counsel providing
12 Defense Counsel with drafts of the proposed Preliminary Approval Order and proposed Final
13 Approval Order and/or Judgment for review, comment and approval within a reasonable time
14 before the aforementioned documents are filed or submitted to the Court. Class Counsel and
15 Defense Counsel will meet and confer regarding any proposed revisions to the foregoing
16 documents in advance of the documents being submitted to the Court, and if any unresolved issue
17 remains, counsel will bring the outstanding issue or concern to the Court's attention at the
18 appropriate hearing.

19 91. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
20 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
21 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
22 cause of action, or rights released and discharged by this Settlement Agreement.

23 92. No Admission. Defendant denies any and all liability to Plaintiff and/or any
24 Settlement Class Member or Allegedly Aggrieved Employee in this Action, as to any and all
25 causes of action that were asserted or that might have been asserted in this Action. Nonetheless,
26 Defendant wishes to settle and compromise to avoid further substantial litigation expense and the
27 inconvenience and distraction of protracted litigation. Defendant also has taken into account the
28 uncertainty and risks inherent in litigation, and without conceding any infirmity in the defenses

that they have asserted or could assert against Plaintiff, have determined that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms and conditions set forth in this Agreement.

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

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

To the Settlement Class Members and Allegedly Aggrieved Employees:

Mehrdad Bokhour
mehrdad@bokhourlaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

Jake D. Finkel
jake@lawfinkel.com
3470 Wilshire Blvd., Suite 830
Los Angeles, California 90010
Tel: (213) 787-7411; Fax: (323) 916-0521

To Defendant:

1 John Lecrone
2 *johnlecrone@dwt.com*
3 Stephen Franz
4 *stephenfranz@dwt.com*
5 David Wright Tremaine LLP
6 865 South Figueroa Street, 24th Floor
7 Los Angeles, California 90017
8 Tel: (213) 633-6800; Fax: (213) 633-6899

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

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

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

25 98. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
26 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide
27 written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and
28 Plaintiff and Defendant agree to seek the help of the mediator identified in this Agreement 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.

99. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure Section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties to interpret, enforce, and effectuate the terms, conditions, intents, and obligations of this Agreement.

100. Enforceability. Pursuant to California Evidence Code Section 1123(a) and (b), this Agreement is intended by the Parties to be, and shall be, enforceable, binding and admissible in a court of law.

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

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

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

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

105. Counterparts. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be

deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

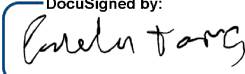
106. Publicity. Plaintiff and Class Counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry, post any new material on any internet websites, or have any communication with the press about the Lawsuit, and/or the fact, amount, or terms of the Settlement. Plaintiff and Class Counsel will not initiate any contact with the Class Members or anyone else about the Settlement, except that: (a) Class Counsel, if contacted by a Class Member, may respond that a settlement has been reached and that the details will be communicated in a forthcoming Court-approved notice; and (b) Plaintiff, if contacted by a Settlement Class Member or Allegedly Aggrieved Employee, may respond only that the Settlement Class Member or Allegedly Aggrieved Employee should contact Class Counsel. Nothing in this paragraph shall prevent Class Counsel and Plaintiff from undertaking all required submissions to the LWDA as required by the PAGA statute in connection with this Settlement. Class Counsel and Plaintiff will also provide Defendant's Counsel with a copy of the papers submitted to the LWDA, either prior to or on the same day as the submission to the LWDA.

APPROVAL AND EXECUTION BY PARTIES:

7/25/2023

Dated: July __, 2023

CLASS REPRESENTATIVE:

DocuSigned by:

 6152419BB0BB471

Graciela Torres

Dated: July 31, 2023

DEFENDANT: PENSAR BIG, INC.

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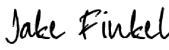
By Carmen Huerta or Assignee
 Its President

APPROVED AS TO FORM:

7/25/2023
Dated: July ___, 2023

CLASS COUNSEL

THE FINKEL FIRM

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Dated: August 7, 2023

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