

Exhibit 2

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KRISTEN VAIK VAZQUEZ
16

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 COUNTY OF LOS ANGELES

19 THOMAS PENA, an individual, individually
20 and on behalf of all others similarly situated,

21 Plaintiff,

22 v.

23 AYZENBERG GROUP, INC., a California
Corporation; ERIC AYZENBERG, an
24 individual; ADRIANE ZAUDKE, an
individual; KRISTEN VAIK VAZQUEZ, an
25 individual; and DOES 1 through 10,

26 Defendants.
27
28

Case No. 21STCV15447
Assigned to: Hon. Maren Nelson
Dept. 17

CLASS ACTION

**AMENDED JOINT STIPULATION AND
SETTLEMENT OF CLASS,
COLLECTIVE, AND REPRESENTATIVE
ACTION**

Complaint Filed: April 22, 2021

1 Subject to final approval by the Court, which counsel and the Parties agree to diligently
2 pursue and recommend in good faith, Plaintiffs Thomas Pena, Eric Ulbrich, and Mark Ramsey
3 (“Named Plaintiffs”)¹, individually and on behalf of all others similarly situated and alleged
4 aggrieved employees, on the one hand, and Defendant Ayzenberg Group, Inc. (“Defendant” or
5 “Ayzenberg”) on the other hand (collectively the “Parties” and individually, a “Party”), hereby
6 agree to the following binding settlement of the class and representative action designated *Thomas*
7 *Pena v. Ayzenberg Group, Inc., et al.*, LASC Case No. 21STCV15447 pursuant to the terms and
8 conditions set forth below (the “Settlement Agreement” or “Agreement”).

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27 ¹ Eric Ulbrich is a plaintiff in the related PAGA lawsuit entitled *Eric Ulbrich v. Ayzenberg Group,*
28 *Inc., et al.*, (Case No. 21STCV42580). A notice of related cases was filed and served on or about
December 20, 2021.

TABLE OF CONTENTS

Page

I.	DEFINITIONS.....	5
II.	RECITALS.....	16
III.	MONETARY TERMS FUNDING OF THE CLASS SETTLEMENT AMOUNT.....	17
IV.	ATTORNEYS' FEES AND COSTS.....	2120
V.	CLASS REPRESENTATIVE INCENTIVE AWARD.....	2120
VI.	SETTLEMENT ADMINISTRATION COSTS.....	2120
VII.	LABOR AND WORKFORCE DEVELOPMENT AGENCY PAYMENT.....	2120
VIII.	NET SETTLEMENT AMOUNT.....	2221
IX.	INDIVIDUAL SETTLEMENT PAYMENT CALCULATIONS.....	2221
X.	SETTLEMENT ADMINISTRATION PROCESS.....	2423
XI.	NULLIFICATION OF THE SETTLEMENT AGREEMENT.....	2827
XII.	OBJECTION PROCEDURES.....	3029
XIII.	CERTIFICATION REPORTS REGARDING INDIVIDUAL SETTLEMENT PAYMENT CALCULATIONS.....	3029
XIV.	TAX TREATMENT OF INDIVIDUAL SETTLEMENT PAYMENTS.....	3130
XV.	ADMINISTRATION OF TAXES BY THE CLAIMS ADMINISTRATOR.....	3234
XVI.	RELEASE BY CLASS MEMBERS.....	3332
XVII.	PRELIMINARY APPROVAL HEARING.....	3433
XVIII.	FINAL SETTLEMENT APPROVAL HEARING AND ENTRY OF JUDGMENT.....	3534
XIX.	JUDGMENT AND CONTINUED JURISDICTION.....	3635
XX.	OTHER PROVISIONS.....	3635
I.	DEFINITIONS.....	5
II.	RECITALS.....	16
III.	MONETARY TERMS FUNDING OF THE CLASS SETTLEMENT AMOUNT.....	17
IV.	ATTORNEYS' FEES AND COSTS.....	21
V.	CLASS REPRESENTATIVE INCENTIVE AWARD.....	21
VI.	SETTLEMENT ADMINISTRATION COSTS.....	21

1	<u>VII. LABOR AND WORKFORCE DEVELOPMENT AGENCY PAYMENT.....</u>	<u>21</u>
2	<u>VIII. NET SETTLEMENT AMOUNT.....</u>	<u>22</u>
3	<u>IX. INDIVIDUAL SETTLEMENT PAYMENT CALCULATIONS.</u>	<u>22</u>
4	<u>X. SETTLEMENT ADMINISTRATION PROCESS.</u>	<u>24</u>
5	<u>XI. NULLIFICATION OF THE SETTLEMENT AGREEMENT.....</u>	<u>28</u>
6	<u>XII. OBJECTION PROCEDURES.</u>	<u>30</u>
7	<u>XIII. CERTIFICATION REPORTS REGARDING INDIVIDUAL SETTLEMENT</u>	
8	<u>PAYMENT CALCULATIONS.....</u>	<u>30</u>
9	<u>XIV. TAX TREATMENT OF INDIVIDUAL SETTLEMENT PAYMENTS.</u>	<u>31</u>
10	<u>XV. ADMINISTRATION OF TAXES BY THE CLAIMS ADMINISTRATOR.....</u>	<u>32</u>
11	<u>XVI. RELEASE BY CLASS MEMBERS.....</u>	<u>33</u>
12	<u>XVII. PRELIMINARY APPROVAL HEARING.</u>	<u>34</u>
13	<u>XVIII. FINAL SETTLEMENT APPROVAL HEARING AND ENTRY OF JUDGMENT.....</u>	<u>35</u>
14	<u>XIX. JUDGMENT AND CONTINUED JURISDICTION.</u>	<u>36</u>
15	<u>XX. OTHER PROVISIONS.</u>	<u>36</u>

1 **I. DEFINITIONS.**

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

4 1. “Action” means and refers to the Named Plaintiffs’ instant lawsuits captioned
5 *Thomas Pena v. Ayzenberg Group, Inc., et al.*, LASC Case No. 21STCV15447, as amended, and
6 the related case *Eric Ulbrich v. Ayzenberg Group, Inc.*, LASC Case No. 21STV42580, alleging
7 wage and hour violations against Ayzenberg Group, Inc. (“Ayzenberg”), Eric Ayzenberg, Adriane
8 Zaudke and Kristen Vaik Vazquez (collectively “Defendants”), initiated on April 22, 2021.

9 2. “Administration Expenses Payment” means the amount the Claims Administrator
10 will be paid from the ~~Gross~~Class Settlement Amount to reimburse its reasonable fees and expenses
11 in accordance with the Claims Administrator’s “not to exceed” bid submitted to the Court in
12 connection with Preliminary Approval of the Settlement.

13 ~~3. “Aggrieved Employee” means a person paid compensation (directly or through a~~
14 ~~loan-out entity) on account of services provided for Defendant in the production of Motion~~
15 ~~Pictures, as defined by California Labor Code § 201.5, from October 24, 2019 through the~~
16 ~~preliminary approval of this settlement.~~

17 ~~4.3.~~ “Amended Complaint” means and refers to the Second Amended Complaint
18 Plaintiff filed to add causes of action under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*
19 (FLSA) and a misclassification claim, and Thomas Pena, Eric Ulbrich, and Mark Ramsey as
20 Plaintiffs.

21 ~~5.4.~~ “Attorneys’ Fees and Costs” means and refers to the attorneys’ fees agreed upon by
22 the Parties and approved by the Court for Class Counsel’s litigation and resolution of the Action,
23 and all costs incurred and to be incurred by Class Counsel in the Action, including, but not limited
24 to, costs associated with documenting the Settlement, providing any notices required as part of the
25 Settlement or Court’s Order, securing the Court’s approval of the Settlement, administering the
26 Settlement, and any expert expenses. Class Counsel will request attorneys’ fees not to exceed
27 thirty-three point three percent (33.3%) of the Class Settlement Amount of \$600,000, which is a
28 total of \$200,000. The costs requested to be reimbursed will not exceed \$15,000. The attorneys’

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1 fees and costs awarded are subject to the Court's approval. If the attorneys' fees and costs
2 awarded by the Court are a reduced amount, then the difference between the amounts set forth
3 above (\$200,000 and \$15,000, respectively) and the reduced attorneys' fees and costs awarded
4 shall be distributed pro-rata to Participating Class Members. Defendant has agreed not to oppose
5 Class Counsel's request for attorneys' fees and costs as set forth above. Such attorneys' fees and
6 costs shall be paid from the Qualified Settlement Fund. Class Counsel will be issued an IRS Form
7 1099 for the Attorneys' Fees and Costs Award detailed in this Section and shall be solely and
8 legally responsible for paying all applicable taxes on the payment made pursuant to this paragraph.

9 6-5. "Claims Administration Costs" or "Settlement Administration Costs" means and
10 refers to the costs payable from the Class Settlement Amount to the Claims Administrator for
11 administering this Settlement, including, but not limited to, printing, distributing, and tracking
12 documents for this Settlement, calculating estimated amounts per Class Member, tax reporting,
13 distributing the Class Settlement Amount, providing necessary reports and declarations, and other
14 duties and responsibilities set forth herein and as requested by the Parties to process this
15 Settlement Agreement. The Claims Administration Costs will be paid from the Class Settlement
16 Amount, including, if necessary, any such costs in excess of the amount represented by the Claims
17 Administrator as being the maximum costs necessary to administer the settlement. The Claims
18 Administration Costs are currently estimated to be \$2015,000. The Parties agree to work in good
19 faith to minimize, as much as possible, the Claims Administration Costs. To the extent actual
20 Claims Administrations Costs are greater than \$2015,000, such excess amount will be deducted
21 from the Class Settlement Amount, subject to Court approval, provided the Claims Administration
22 Costs will not increase the total Class Settlement Amount.

23 7-6. "Claims Administrator" or "Settlement Administrator" means and refers to
24 ~~HYMCPT Group, Inc., or any other~~ the neutral third-party class action settlement claims
25 administrator agreed to by the Parties and approved by the Court for the purposes of administering
26 this Settlement. The Parties each represent that they do not have any financial interest in the
27 Claims Administrator or otherwise have a relationship with the Claims Administrator that could
28 create a conflict of interest.

1 ~~8-7.~~ "Class Counsel." HARRIS & RUBLE shall be appointed Class Counsel upon
2 approval by the Court.

3 ~~9-8.~~ "Class Counsel Fees Payment" and "Class Counsel ~~Administration~~Litigation
4 Expenses Payment" mean the amounts allocated to Class Counsel for reimbursement of reasonable
5 attorneys' fees and expenses, respectively, incurred to prosecute the Action.

6 ~~10-9.~~ "Class Data" means Class Member identifying information in Ayzenberg's
7 possession including the Class Member's name, last-known mailing address, last-known telephone
8 number, last-known email address, Social Security number, employee identification number,
9 dates of employment, and number of Class Period Pay Periods and PAGA Period Pay Periods.

10 ~~11-10.~~ "Class List" means a complete list of all Class Members that Defendant will
11 diligently and in good faith compile from its records and provide to the Settlement Administrator
12 within fourteen (14) calendar days after Preliminary Approval of this Settlement. Defendant shall
13 provide the Settlement Administrator with a Microsoft Excel spreadsheet containing the following
14 information for each class Member: (1) full name; (2) last known home address; (3) last known
15 telephone number; (4) social security number; (5) total Pay Periods worked by the Class Member
16 during the Class Period (i.e., the number of projects worked); (6) total Pay Periods during the
17 Class Period; (7) total Pay Periods during the PAGA Period; and (8) any other information
18 required by the Settlement Administrator in order to effectuate the terms of the Settlement ("Class
19 List").

20 ~~12-11.~~ "Class Member(s)" or "Settlement Class" means all persons paid compensation
21 (directly or through a loan-out entity) on account of services provided for Defendant in the
22 production of Motion Pictures, as defined by California Labor Code § 201.5 from October 24,
23 2016 through the preliminary approval of this settlement.

24 ~~13-12.~~ "Class Member Address Search" means the Claims Administrator's investigation
25 and search for current Class Member mailing addresses using all reasonably available sources,
26 methods and means including, but not limited to, the National Change of Address database, skip
27 traces, and direct contact by the Claims Administrator with Class Members via telephone or
28 email.

1 ~~14.13.~~ “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION
2 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to
3 Class Members in English in the form, without material variation, attached as **Exhibit A** and
4 incorporated by reference into this Agreement.

5 ~~15.14.~~ “Class Period” or “Settlement Period.” The Class Period will begin on October 24,
6 2016, and end on the date the Court enters an order preliminarily approving the Parties’
7 Settlement.

8 ~~16.15.~~ “Class Representative(s)” means the Named Plaintiffs in the operative Complaints
9 in the Action seeking Court approval to serve as a Class Representative.

10 ~~17.16.~~ “Class Representative Incentive Award” means the amount to be paid to Named
11 Plaintiffs in recognition of their effort and work in prosecuting the Action on behalf of Class
12 Members and for their general release of claims. Subject to the Court granting Final Approval of
13 this Settlement Agreement, Named Plaintiffs – Thomas Pena, Eric Ulbrich, and Mark Ramsey –
14 will request Court approval of a Class Representative Incentive Award of \$7,500 each. Defendant
15 has agreed not to oppose this amount. Named Plaintiffs will be issued an IRS Form 1099 in
16 connection with this payment. Named Plaintiffs shall be solely and legally responsible for paying
17 any and all applicable taxes on this payment and shall hold Defendant harmless from any claim or
18 liability for taxes, penalties or interest arising as a result of the payment. This time-and-effort and
19 general release payment shall be in addition to each Named Plaintiff’s share of the Net Settlement
20 Amount as a Participating Class Member, and shall be conditioned on the execution of this
21 Settlement Agreement and a general release of all claims, including a release pursuant to
22 California Civil Code § 1542. Defendant makes no representations as to the tax treatment or legal
23 effect of the payments called for herein, and Named Plaintiffs are not relying on any statement or
24 representation by Defendant or its counsel in this regard.

25 ~~18.17.~~ “Class Settlement Amount” means the total value of the Settlement, which is Six
26 Hundred Thousand Dollars and Zero Cents (\$600,000.00) (the “Class Settlement Amount”), to be
27 paid by Defendant in full satisfaction of all claims arising from the Action. The Class Settlement
28 Amount includes all Individual Settlement Payments to Participating Class Members and PAGA

1 Members, all employee-side taxes arising from the payments made under this Settlement, the
2 Class Representative Incentive Awards to Named Plaintiffs, Claims Administration Costs to the
3 Claims Administrator, the Labor and Workforce Development Agency Payment, and Attorneys'
4 Fees and Costs. In addition to the Class Settlement Amount, Defendant shall also pay the
5 employer-side share of payroll taxes on the wage portion of the Individual Settlement Payments.
6 Defendant shall not pay more than the \$600,000 Class Settlement Amount stated herein, plus the
7 employer-side share of payroll taxes on the wage portion of the Individual Settlement Payments,
8 which will be calculated by the Settlement Administrator.

9 There is no reversion to Defendant of the Class Settlement Amount and the entire Class
10 Settlement Amount will be paid out.

11 ~~19~~18. "Court" means and refers to the Superior Court of the State of California for the
12 County of Los Angeles.

13 ~~20~~19. "Effective Date." The Effective Date of the Settlement will be the later of the
14 following: (a) if no timely objections are filed or if all objections are withdrawn, the date upon
15 which the time from challenging the Final Approval Order and/or Judgment has passed (no less
16 than 45 days following Final Approval); (b) if an objection is filed and not withdrawn, the date for
17 filing an appeal and no such appeal being filed; or (c) if any timely appeals are filed, the date of
18 the resolution (or withdrawal) of any such appeal in a way that does not alter the terms of the
19 Settlement.

20 ~~21~~20. "Excluded Class Members" means any Class Member who timely and validly
21 submits a written request to be excluded from the Class on or before the Objection / Exclusion
22 Deadline Date. A request for exclusion only applies to the class claims and not the PAGA claim.
23 Accordingly, any Class Member who excludes themselves from the class claims will not be
24 excluded from the PAGA claim release and will be bound by the Judgment entered by this Court.

25 ~~22~~21. "Final Approval" or "Final Approval Date" means the date on which the Court's
26 Final Approval Order is entered.

27 ~~23~~22. "Final Approval Hearing" means the hearing at which the Court considers whether
28 to finally approve the Settlement and to enter the Final Approval Order.

1 ~~24. “Gross Settlement Amount” means \$600,000 which is the total amount Defendant~~
2 ~~agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay~~
3 ~~Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment,~~
4 ~~Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and~~
5 ~~the Claims Administrator’s Expenses. The Gross Settlement Amount does not include~~
6 ~~employer side payroll taxes; Defendant agrees to separately pay employer side payroll~~
7 ~~taxes on the Wage Portions of the Individual Class Payments.~~

8 25-23. “Individual PAGA Payments” means the \$10,000 (25%) of the PAGA Settlement
9 Amount, which will be distributed to PAGA Members.

10 26-24. “Individual Settlement Payment” means the amount payable from the Net
11 Settlement Amount to each Participating Class Member and any payment a PAGA Member is
12 eligible to receive from the employee portion of the PAGA Penalties, less employee portions of
13 state and federal withholding taxes, including the employee FICA, FUTA and SDI contributions
14 and any other applicable payroll deductions required by law as a result of the payment of the
15 amount allocated to such Participating Class Member as set forth herein. Class Members, except
16 those who request to be excluded from the settlement (of the class claims only), will be paid their
17 portion of the Settlement, which will be considered 20% wages, 40% interest, and the remaining
18 40% penalties. The Settlement Administrator will be responsible for issuing to Participating Class
19 Members a form W-2 for amounts deemed “wages” and an IRS Form 1099 for the amounts
20 deemed penalties and interest.

21 27-25. “Judgment” means the judgment entered by the Court based upon the Final
22 Approval.

23 28-26. “LWDA” means the California Labor and Workforce Development Agency, the
24 agency entitled, under Labor Code Section 2699, subd. (i), to recover 75 of the PAGA Penalties.

25 29-27. “LWDA Notice” means the notice that Plaintiff will submit to the LWDA of this
26 Joint Stipulation of Settlement at the same time it is presented to the Court in accordance with
27 Labor Code Section 2699(1)(2) and thereafter submit a copy of any judgment or any other order
28 providing for an award of civil penalties in conformity with Labor Code Section 2699(1).

1 30-28. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the
2 LWDA under Labor Code section 2699, subd. (i).

3 31-29. “Named Plaintiffs” means Plaintiffs Thomas Pena, Eric Ulbrich, and Mark
4 Ramsey, as reflected in the Second Amended Complaint, and the related case, *Eric Ulbrich v.*
5 *Ayzenberg Group, Inc.*, LASC Case No. 21STCV42580.

6 32-30. “Net Settlement Amount” means the portion of the Class Settlement Amount
7 remaining after deduction of the approved (1) Attorneys’ Fees and Costs, (2) Settlement
8 Administration Costs, (3) Class Representative Incentive Award, and (4) PAGA Payment to the
9 LWDA. The Net Settlement Amount will be distributed to Participating Class Members subject to
10 the terms and conditions set forth herein.

11 33-31. “Non-Participating Class Member” means any Class Member who opts out of the
12 Settlement by sending the Claims Administrator a valid and timely Request for Exclusion.

13 34-32. “Notice of Class Action Settlement” means the document substantially in the form
14 attached as **Exhibit A** that will be mailed to Class Members’ last known addresses and that will
15 provide Class Members with information regarding the Action and information regarding the
16 Settlement.

17 35-33. “Notice of Objection” means a Class Member’s valid and timely written objection
18 to the Settlement Agreement. For the Notice of Objection to be valid, it must include: (a) the
19 objector’s full name, signature, address, and telephone number, and the last four digits of their
20 social security number or employee ID number; (b) a written statement of all grounds for the
21 objection accompanied by legal support, if any, for such objection; and (c) copies of any papers,
22 briefs, or other documents upon which the objection is based. Class Members regardless of
23 whether or not they submit a written objection to the Settlement Administrator will have the right
24 to appear at the Final Approval Hearing in order to have their objections heard by the Court. The
25 Settlement Administrator shall provide counsel for the Parties with complete copies of all
26 objections received, including the postmark dates or fax timestamps for each objection, within five
27 (5) calendar days of receipt. Plaintiff’s Counsel will provide copies of any objections and
28 supporting documents to the Court at least ten (10) days before the Final Approval Hearing.

1 ~~36.34.~~ “Notice Packet” means the Notice of Class Action Settlement the Settlement
2 Administrator will mail to Class Members.

3 ~~37.35.~~ “PAGA Members” means all persons paid compensation (directly or through a
4 loan-out entity) on account of services provided for Defendant in the production of Motion
5 Pictures, as defined by California Labor Code § 201.5 from October 24, 2019 through the
6 preliminary approval of this settlement. (“PAGA Period”).

7 ~~38.36.~~ “PAGA Payment” means the amount that the Parties have agreed to pay to the
8 Labor and Workforce Development Agency (“LWDA”) in connection with the Labor Code
9 Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “the PAGA”). The
10 Parties have agreed that \$40,000 of the Class Settlement Amount will be allocated to the
11 resolution of any Class Members’ claims arising under the PAGA. Pursuant to the PAGA,
12 \$30,000 (75%) of the PAGA Settlement Amount will be paid to the California Labor and
13 Workforce Development Agency and \$10,000 (25%) of the PAGA Settlement Amount will be
14 distributed to PAGA Members.

15 ~~39.37.~~ “PAGA Period” means the period from October 24, 2019 to the date of Preliminary
16 Approval.

17 ~~40.38.~~ “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

18 ~~41.39.~~ “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from
19 the ~~Gross Class~~ Settlement Amount, allocated 25% to the ~~Aggrieved Employees~~ PAGA Members
20 (\$10,000) and the 75% to LWDA (\$30,000) in settlement of PAGA claims.

21 ~~42.40.~~ “Participating Class Members” means all Class Members who are entitled to
22 receive their share of the Net Settlement Amount and who do not submit a valid and timely
23 Request for Exclusion.

24 ~~43.41.~~ “Pay Period” A Pay Period (i.e., a work week) is the equivalent of one project in
25 which a Class Member or PAGA Member worked at least one day.

26 ~~44.42.~~ “Preliminary Approval” means the Court’s order granting preliminary approval of
27 the Settlement Agreement.

1 45-43. “Qualified Settlement Account” means the fund established by the Claims
2 Administrator pursuant to Internal Revenue Code Section 1.468B-1.

3 46-44. “Released Claims.” This term is defined as follows: Following the Effective Date,
4 and upon Defendant fully funding the Class Settlement Amount, all Class Members shall fully and
5 finally release Released Parties of the Released Claims for the Class Period. The Released Claims
6 include any and all claims, wage and hour claims, rights, demands, liabilities and causes of action
7 of any nature or description arising from the facts and claims asserted in the Operative Complaint,
8 as amended, and/or that could have been asserted based on the facts alleged in the Operative
9 Complaint, as amended, against Defendant, including without limitation, statutory, constitutional,
10 contractual or common law claims for wages, damages, unpaid costs, penalties, liquidated
11 damages, interest, attorneys’ fees, litigation costs, restitution, equitable relief or other relief under
12 Business & Professions Code § 17200, et seq., based on the following categories: (a) any and all
13 claims involving any alleged failure to pay the minimum wages required by federal, state or local
14 law, including prevailing wages; (b) any and all claims arising under federal, state or local law
15 involving any alleged failure to pay for all hours worked, including but not limited to any claim
16 for minimum, straight time, overtime, or double time wages; (c) any and all claims arising under
17 federal, state or local law involving any alleged failure to pay straight time, overtime or double
18 time wages, including but not limited to any claim involving “off the clock” work, and any claim
19 involving Defendant’s workday or workweek, and any claim involving failure to include shift
20 differentials, bonuses, other incentive pay, or compensation of any kind in the “regular rate” of
21 pay; (d) any and all claims arising under federal, state or local law involving any alleged failure to
22 properly provide meal periods and/or authorize and permit rest periods, to pay premiums for
23 missed, late, short or interrupted meal and/or rest periods, or to pay such premiums at the regular
24 rate of compensation required by Labor Code § 226.7; (e) any and all claims arising under federal,
25 state or local law involving any alleged failure to keep accurate records or to issue proper wage
26 statements; (f) any and all claims arising under federal, state or local law involving any alleged
27 failure to timely pay wages, including but not limited to any claim that Defendant violated Labor
28 Code §§ 201 or 202, and any claim for waiting time penalties under Labor Code § 203; (g) any

1 and all claims arising under federal, state or local law involving any alleged failure to reimburse
2 for necessary business expenses, including under Labor Code §§2800 or 2802; (h) any and all
3 claims for unfair business practices in violation of California Business and Professions Code
4 sections 17200, et seq.; and (i) any and all penalties pursuant to the Private Attorneys General Act
5 (“PAGA”) of 2004 (collectively, the “Released Claims”). The Released Claims include all such
6 claims arising under the California Labor Code (including, but not limited to, sections 201, 201.3,
7 201.5, 202, 203, 204, 210, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7, 226.8, 227.3, 246, 256,
8 510, 511, 512, 515, 516, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1,
9 1197.2, 1198, 1198.5, 1199, 1770 *et seq.*, 2800, 2802, 2810.5, 2698 *et seq.*, and 2699 *et seq.*); the
10 Wage Orders of the California Industrial Welfare Commission; California Business and
11 Professions Code section 17200 *et seq.*; the California Civil Code, to include but not be limited to
12 claims under § 3336; the California common law of contract; the Fair Labor Standards Act, 29
13 U.S.C. § 201 *et seq.*; and federal common law. Participating Class Members who negotiate or
14 otherwise deposit their Settlement Payment Check will be deemed to have opted into the Action
15 for purposes of the Fair Labor Standards Act (“FLSA”) and as to those Class Members they
16 expressly waive and release any FLSA claims, ~~whether known or unknown~~, arising during the
17 Class Period and reasonably related to the claims and allegations in the Operative Complaint, as
18 amended. This release excludes the release of claims not permitted by law. The following
19 language will be printed on the reverse of each Settlement Payment Check, or words to this effect:
20 “By endorsing or otherwise negotiating this check, I acknowledge that I read, understood, and
21 agree to the terms set forth in the Notice of Class Action Settlement and I consent to join in the
22 Fair Labor Standards Act (“FLSA”) portion of the Action, elect to participate in the settlement of
23 the FLSA claims, and agree to release all of my FLSA claims that are covered by the Settlement.”
24 It is the intent of the Parties that the judgment entered by the Court upon final approval of the
25 Settlement shall have *res judicata* effect and be final and binding upon Plaintiff and all Class
26 Members who have not expressly requested to be excluded from of the Settlement. Participating
27 Class Members do not release any other claims, including claims for vested benefits, wrongful
28 termination, violation of the FEHA, unemployment insurance, disability, social security, workers’

1 compensation, or claims based on facts occurring outside the Class Period. In addition to the
2 releases given above, PAGA Members release Released Parties, from all claims for PAGA
3 penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period
4 facts contained in Plaintiffs' notices to the LWDA and the Operative Complaint. This release shall
5 apply to claims arising during the Class Period.

6 47-45. "Released Parties." The Released Parties include Ayzenberg Group, Inc., Eric
7 Ayzenberg, Adriane Zaduke, and Kristen Vaik Vazquez as named by Named Plaintiffs in the
8 Operative Complaint, as amended, and Ayzenberg Group, Inc.'s past, present and/or future, direct
9 and/or indirect, parents, subsidiaries, equity sponsors, related companies/corporations and/or
10 partnerships (defined as a company/ corporation and/or partnership that is, directly or indirectly,
11 under common control with Defendant or any of its parents), divisions, assigns, predecessors,
12 successors, insurers, consultants, joint venturers, joint employers, affiliates, alter-egos, any entity
13 with potential joint liability, employee benefit plans, and fiduciaries thereof, and all of their
14 respective ~~employees~~, directors, officers, agents, attorneys, stockholders, fiduciaries, parents,
15 subsidiaries, other service providers, and assigns.

16 48-46. "Request for Exclusion" means a notice submitted by a Class Member requesting
17 to be excluded from the Settlement. The Request for Exclusion: (a) may contain the Class
18 Member's name, address, telephone number, and the last four digits of the Class Member's Social
19 Security number and/or the Employee ID number; (b) contain a ~~clear~~ statement requesting to be
20 excluded from the settlement of the class claims similar to the following: "I wish to exclude
21 myself from the class settlement reached in the matter of *Thomas Pena v. Ayzenberg Group, Inc.*—
22 ~~understand that by excluding myself, I will not receive money from the settlement of my~~
23 ~~individual claims.~~,"; (c) be returned by mail to the Settlement Administrator at the specified
24 address; and (d) must be postmarked on or before the Response Deadline. The date of the
25 postmark on the return mailing envelope will be the exclusive means to determine whether a
26 Request for Exclusion has been timely submitted. A Class Member who does not request
27 exclusion from the Settlement will be deemed a Class Member and will be bound by all terms of
28 the Settlement Agreement if the Settlement is granted final approval by the Court. A request for

1 exclusion only applies to the class claims and not the PAGA claim. Accordingly, any Class
2 Member who excludes themselves will not be excluded from the PAGA claim release and will be
3 bound by the Judgment entered by this Court.

4 ~~49-47.~~ “Response Deadline” means the deadline by which Class Members must mail or
5 fax to the Settlement Administrator valid Requests for Exclusion or Notices of Objection to the
6 Settlement. The Response Deadline will be sixty (60) calendar days from the initial mailing of the
7 Notice Packet by the Claims Administrator, unless the 60th day falls on a Sunday or Federal
8 holiday, in which case the Response Deadline will be extended to the next day on which the U.S.
9 Postal Service is open. The Response Deadline for Requests for Exclusion will be extended
10 fifteen (15) calendar days for any Class Member who is re-mailed a Notice Packet by the
11 Settlement Administrator, unless the 15th day falls on a Sunday or Federal holiday, in which case
12 the Response Deadline will be extended to the next day on which the U.S. Postal Service is open.
13 The Response Deadline may also be extended by express agreement between Class Counsel and
14 Defendant’s counsel. Under no circumstances, however, will the Settlement Administrator have
15 the authority to unilaterally extend the deadline for Class Members to submit a Request for
16 Exclusion or objection to the Settlement.

17 ~~50-48.~~ “Settlement” means the disposition of the Action effected by this Agreement and
18 the Judgment.

19 ~~51-49.~~ “Settlement Payment Check” means the payment to Participating Class Members
20 and PAGA Members. The back of the Settlement Payment Check shall state, immediately below
21 the space where the check is to be endorsed by the payee: “By endorsing or otherwise negotiating
22 this check, I acknowledge that I read, understood, and agree to the terms set forth in the Notice of
23 Class Action Settlement and I consent to join in the Fair Labor Standards Act (“FLSA”) portion of
24 the Action, elect to participate in the settlement of the FLSA claims, and agree to release all of my
25 FLSA claims that are covered by the Settlement.”

26 **II. RECITALS.**

27 1. On April 21, 2021, Plaintiff Thomas Pena commenced this Action by filing a
28 Complaint alleging causes of action against Defendants for Unfair Competition Cal. Bus. & Prof.

Code § 17200) and violation of Sections 201.5, 203, 226(a), 226(b), 226.7, 510, 512(a), 515, 1194, 1197, 1197.1, and 1198.5 of the California Labor Code (the “Code”). The Complaint is not the operative complaint in the Action. On January 24, 2022, Plaintiff filed a First Amended Complaint alleging the above of action against Defendants as well as violations of Code section 2698 et seq. The First Amended Complaint is not the operative complaint in the Action. On March 29, 2022, Plaintiff filed a Second Amended Complaint alleging the above of action against Defendants as well as violations of the Fair Labor Standards Act (“FLSA”). The Second Amended Complaint is the operative complaint in the Action (the “Operative Complaint”). Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in the Operative Complaint and deny any and all liability for the causes of action alleged.

2. On April 28, 2021, Plaintiff gave written notice to Defendants and the LWDA pursuant to Labor Code section 2699.3, subd. (a) by sending a letter identifying the wage and hour violations alleged as PAGA violations in the Operative Complaint.

3. On November 17, 2021, the Parties participated in an all-day mediation presided over by Joel Grossman of JAMS which led to this Agreement to settle the Action.

4. Prior to executing the Settlement, Plaintiff obtained, through informal discovery, documents, testimony and information sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

III. MONETARY TERMS FUNDING OF THE CLASS SETTLEMENT AMOUNT.

1. GrossClass Settlement Amount. Defendant promises to pay \$600,000 and no more as the GrossClass Settlement Amount and to separately pay any and all employer-side payroll taxes owed on the wage portions of the Individual Settlement Payments. Defendant has no obligation to pay the GrossClass Settlement Amount (or any payroll taxes) prior to the deadlines stated in this Agreement. The Claims Administrator will disburse the entire GrossClass Settlement Amount without asking or requiring Participating Class Members or Aggrieved-EmployeesPAGA Members to submit any claim as a condition of payment. None of the GrossClass Settlement Amount will revert to Defendant.

1 2. Payments from the GrossClass Settlement Amount. The Claims Administrator will
2 make and deduct the following payments from the GrossClass Settlement Amount, in the amounts
3 specified by the Court in the Final Approval Order:

4 a. To Named Plaintiffs: Class Representative Incentive Awards to the Class
5 Representatives of not more than \$7,500, each (in addition to any Individual
6 Class Payment [and any Individual PAGA Payment] the Class
7 Representative is entitled to receive as a Participating Class Member).
8 Defendant will not oppose each Named Plaintiff's request for a Class
9 Representative Incentive Award that does not exceed this amount. Plaintiff
10 will file a motion for Class Representative Incentive Awards no later than
11 16 court days prior to the Final Approval Hearing. If the Court approves a
12 Class Representative Incentive Award less than the amount requested, the
13 Claims Administrator will retain the remainder in the Net Settlement
14 Amount. The Claims Administrator will pay the Class Representative
15 Incentive Award using IRS Form 1099(MISC). Named Plaintiffs assume
16 full responsibility and liability for taxes owed on the Class Representative
17 Incentive Award.

18 b. To Class Counsel: A Class Counsel Fees Payment of not more than
19 \$200,000 and a Class Counsel Administration Expenses Payment of not
20 more than \$15,000. Defendant will not oppose requests for these payments
21 provided that they do not exceed these amounts. Plaintiff and/or Class
22 Counsel will file a motion for Class Counsel Fees Payment and Class
23 Counsel Administration Expenses Payment no later than 16 court days prior
24 to the Final Approval Hearing. If the Court approves a Class Counsel Fees
25 Payment and/or a Class Counsel Administration Expenses Payment less
26 than the amounts requested, the Claims Administrator will allocate the
27 remainder to the Net Settlement Amount. Released Parties shall have no
28 liability to Class Counsel or any other Plaintiff's Counsel arising from any

1 claim to any portion any Class Counsel Fee Payment and/or Class Counsel
2 Administration Expenses Payment. The Claims Administrator will pay the
3 Class Counsel Fees Payment and Class Counsel Administration Expenses
4 Payment using one or more IRS 1099 Forms. Class Counsel assumes full
5 responsibility and liability for taxes owed on the Class Counsel Fees
6 Payment and the Class Counsel Administration Expenses Payment and
7 holds Defendants harmless, and indemnifies Defendants, from any dispute
8 or controversy regarding any division or sharing of any of these Payments.

- 9 c. To the Claims Administrator: A payment for Claims Administrator Costs
10 projected not to exceed \$2015,000. To the extent the Administration
11 Expenses are less or the Court approves payment less than \$2015,000, the
12 Claims Administrator will allocate the remainder to the Net Settlement
13 Amount.

14 ~~d. To Each Participating Class Member: An Individual Settlement~~
15 ~~Payment calculated by dividing the Net Settlement Amount by the total~~
16 ~~number of Pay Periods worked by all Participating Class Members during~~
17 ~~the Class Period and (b) multiplying the result by each Participating Class~~
18 ~~Member's Class Period Pay Periods.~~

- 19 e.d. Tax Allocation of Individual Class Payments. Twenty percent (20%) of
20 each Participating Class Member's Individual Settlement Payment will be
21 allocated to settlement of wage claims (the "Wage Portion"). The Wage
22 Portions are subject to tax withholding and will be reported on an IRS W-2
23 Form. Eighty percent (80%) of each Participating Class Member's
24 Individual Class Payment will be allocated to settlement of claims for
25 interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions
26 are not subject to wage withholdings and will be reported on IRS 1099
27 Forms. Participating Class Members assume full responsibility and liability
28 for any taxes owed on their Individual Settlement Payment.

1 f. ~~To the LWDA and Aggrieved Employees: PAGA Penalties in the~~
2 ~~amount of \$40,000 to be paid from the Gross Settlement Amount, with 75%~~
3 ~~(\$30,000) allocated to the LWDA PAGA Payment and 25% (\$10,000)~~
4 ~~allocated to the Individual PAGA Payments. The Claims Administrator~~
5 ~~will calculate each Individual PAGA Payment by (a) dividing the amount of~~
6 ~~the Aggrieved Employees' 25% share of PAGA Penalties (\$10,000) by the~~
7 ~~total number of PAGA Period Pay Periods worked by all Aggrieved~~
8 ~~Employees during the PAGA Period and (b) multiplying the result by each~~
9 ~~Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees~~
10 ~~assume full responsibility and liability for any taxes owed on their~~
11 ~~Individual PAGA Payment.~~

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

15 4. Within thirty (30) calendar days after the Effective Date of the Settlement,
16 Defendant will make a deposit of the ~~first installment of the~~ Class Settlement Amount into a
17 Qualified Settlement Account to be established by the Settlement Administrator. ~~The first~~
18 ~~installment shall be \$335,000 plus the employer-side taxes (to be calculated by the Settlement~~
19 ~~Administrator). The second installment shall be the remaining portion of the Class Settlement~~
20 ~~Amount, which is \$265,000. The second installment shall be completed 120 days after the first~~
21 ~~installment. After receipt of the first installment~~ After receipt of the Class Settlement Amount, the
22 Settlement Administrator will then issue payments within fourteen (14) calendar days to:
23 (a) Participating Class Members/PAGA Members; ~~and~~ (b) Named Plaintiffs' Class Representative
24 Incentive Awards. ~~After receipt of the second installment, the Settlement Administrator will then~~
25 ~~issue payments within fourteen (14) calendar days to: (a); (c) the Labor and Workforce~~
26 ~~Development Agency for the 75% portion of the PAGA Payment; (b)d) Class Counsel; and (e) the~~
27 Settlement Administrator will also issue a payment to itself for Court-approved services
28

1 performed in connection with the Settlement. Defendant has no obligation to deposit such funds
2 prior to the deadline set forth herein.

3 **IV. ATTORNEYS' FEES AND COSTS.**

4 Defendant agrees not to oppose or impede any application by Class Counsel for attorneys'
5 fees of not more than \$200,000, and the reimbursement of costs and expenses associated with
6 Class Counsel's litigation and settlement of the Action not to exceed \$15,000.

7 **V. CLASS REPRESENTATIVE INCENTIVE AWARD.**

8 In exchange for a general release by Named Plaintiffs, and in recognition of Named
9 Plaintiffs' effort and work in prosecuting the Action on behalf of Class Members, Defendant
10 agrees not to oppose or impede any application or motion for Class Representative Incentive
11 Awards of \$7,500 each for Thomas Pena, Eric Ulbrich, or Mark Ramsey, a total of \$22,500. The
12 Class Representative Incentive Award will be paid from the Class Settlement Amount and will be
13 in addition to Named Plaintiffs' individual settlement payment paid pursuant to the Settlement,
14 and is conditioned on the execution of a general release of claims (including a release under
15 California Civil Code § 1542) as set forth herein. Thomas Pena, Eric Ulbrich, and Mark Ramsey
16 will be solely and legally responsible for paying any and all applicable taxes on the payments
17 made pursuant to this paragraph and will indemnify and hold Defendant harmless from any claim
18 or liability for taxes, penalties, or interest arising as a result of the payment.

19 **VI. SETTLEMENT ADMINISTRATION COSTS.**

20 The Settlement Administrator will be paid for the reasonable costs of administration of the
21 Settlement and distribution of payments from the Class Settlement Amount, which are currently
22 estimated to be \$~~20~~15,000. To the extent actual Settlement Administrations Costs are greater than
23 \$~~20~~15,000, such excess amount will be deducted from the Class Settlement Amount, subject to
24 Court approval, provided the Settlement Administration Costs will not increase the Class
25 Settlement Amount.

26 **VII. LABOR AND WORKFORCE DEVELOPMENT AGENCY PAYMENT.**

27 Subject to Court approval, the Parties agree that \$40,000 of the Class Settlement Amount
28 will be designated for satisfaction of claims arising under PAGA. Pursuant to the PAGA, \$30,000

(75%) of the PAGA Settlement Amount will be paid to the California Labor and Workforce Development Agency and \$10,000 (25%) of the PAGA Settlement Amount will be distributed to PAGA Members on a *pro rata* basis based on the number of weeks worked during the PAGA Period.

VIII. NET SETTLEMENT AMOUNT.

The Net Settlement Amount and 25% portion of the PAGA Payment will be used to satisfy Individual Settlement Payments to Participating Class Members/PAGA Members in accordance with the terms of this Settlement.

IX. INDIVIDUAL SETTLEMENT PAYMENT CALCULATIONS.

1. Individual Settlement Payments will be paid from the Net Settlement Amount and the 25% portion of the PAGA Penalties allocated for PAGA Members. Specific calculations of Individual Settlement Payments will be made as follows:

- a. Defendant will provide the Settlement Administrator with the total number of Pay Periods for each Participating Class Member. Defendant will also provide the total aggregated number of Pay Periods worked by all Participating Class Members during the Class Period. The amount that each Participating Class Member will be eligible to receive will be calculated by dividing each participating Class Member's individual Pay Periods by the total Pay Periods of all Participating Class Members and multiplying the resulting fraction by the Net Settlement Amount.
- b. Defendant will also provide the Settlement Administrator with the total number of Pay Periods for each PAGA Member. Defendant will also provide the total aggregated number of Pay Periods worked by all PAGA Members during the PAGA Period. The amount that each PAGA Member will receive will be calculated by dividing each participating PAGA Member's individual Pay Periods by the total Pay Periods of all PAGA Members, and multiplying the resulting fraction by the 25% share of the PAGA Penalties designated for distribution to ~~aggrieved employees~~ the

1 PAGA Members. PAGA Members shall receive this portion of their
2 Individual Settlement Payment regardless of whether they request to be
3 excluded from the participation regarding the class claims.

4 e. ~~Pay Periods between October 24, 2016 and December 31, 2021 shall~~
5 ~~be credited to each Participating Class Member and PAGA Member at one~~
6 ~~hundred percent (100%). Pay Periods between January 1, 2022 and the date~~
7 ~~the Court enters an order preliminarily approving the Settlement shall be~~
8 ~~credited to each Participating Class Member and PAGA Member at fifty~~
9 ~~percent (50%).~~

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10 ~~d.c.~~ The Individual Settlement Payments estimate indicated on the Notice are
11 subject to change, depending on factors including how many Class
12 Members become Excluded Class Members (resulting in their Individual
13 Pay Periods being removed from the final Class Pay Periods, thereby
14 increasing the final weekly settlement amount).

15 2. The Individual Settlement Payment will be reduced by any required deductions for
16 each Participating Class Member as set forth herein, including employee-side tax withholdings or
17 deductions. Class Members, except those who request to be excluded from the settlement, will be
18 paid their portion of the Settlement, which will be considered 20% wages, 40% interest, and the
19 remaining 40% penalties. The Parties agree that the Claims Administrator will issue each
20 Participating Class Member a Form W-2 and a Form 1099 for all amounts paid under this
21 Settlement, making all deductions and withholdings required under law.

22 3. Eligible PAGA Members will receive their share of the employee portion of the
23 PAGA Penalties and will be deemed to have released any claims arising out of PAGA, regardless
24 of whether they request to be excluded from the release of their class claims.

25 4. The Individual Settlement Payments made to Participating Class Members under
26 this Settlement, and any other payments made pursuant to this Settlement, will not be utilized to
27 calculate any additional benefits under any benefit plans to which any Class Members may be
28 eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock

1 purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it
2 is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or
3 amounts to which any Class Members may be entitled under any benefit plans.

4 **X. SETTLEMENT ADMINISTRATION PROCESS.**

5 1. The Parties agree to cooperate in the administration of the Settlement and to make
6 all reasonable efforts to control and minimize the costs and expenses incurred in administration of
7 the Settlement. The Claims Administrator will provide the following services:

- 8 a. Establish and maintain a Qualified Settlement Account.
- 9 b. Calculate the Individual Settlement Payment each Class Member is eligible
10 to receive.
- 11 c. Assist Class Members who have questions regarding the Notice Packet.
- 12 d. Conduct additional address searches for mailed Notice Packets that are
13 returned as undeliverable.
- 14 e. Calculate Participating Class Members' Individual Settlement Payment,
15 field inquiries from Class Members, and administer any Requests for
16 Exclusion. This service will include settlement proceeds calculation,
17 printing and issuance of Settlement Payment Checks, and preparation of IRS
18 W-2 and 1099 Tax Forms. Basic accounting for, and payment of, employee
19 tax withholdings, and forwarding all payroll taxes and penalties to the
20 appropriate government authorities, will also be included as part of this
21 service.
- 22 f. Calculate and make any and all payments on behalf of Defendant required
23 pursuant to the Settlement Agreement, including but not limited to, FICA,
24 FUTA, and SDI contributions, which shall be made from the Class
25 Settlement Amount, as well as the employer's portion of all payroll taxes.
- 26 g. Issue to Named Plaintiffs, Participating Class Members, and Plaintiff's
27 Counsel any W-2, 1099, or other tax forms as may be required by law for
28 all amounts paid pursuant to this Settlement.

1 h. Provide declarations and/or other information to the Court as requested by
2 the Parties and/or the Court.

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

18 (2) Final Report by Settlement Administrator. Within 10 days after the
19 Claims Administrator disburses all funds in the ~~Gross~~Class
20 Settlement Amount, the Claims Administrator will provide Class
21 Counsel and Defendant's Counsel with a final report detailing its
22 disbursements of all payments made under this Agreement. At least
23 15 days before any deadline set by the Court, the Claims
24 Administrator will prepare, and submit to Class Counsel and
25 Defendant's Counsel, a signed declaration suitable for filing in
26 Court attesting to its disbursement of all payments required under
27 this Agreement. Class Counsel is responsible for filing the Claims
28 Administrator's declaration in Court.

- 1 i. Provide weekly status reports to counsel for the Parties.
- 2 j. Post the final judgment on the Claims Administrator’s website after it is
- 3 entered.
- 4 k. Website, Email Address and Toll Free Number. The Claims
- 5 Administrator will establish and maintain and use an internet website to
- 6 post information of interest to Class Members including the date, time
- 7 and location for the Final Approval Hearing and copies of the Settlement,
- 8 Motion for Preliminary Approval, the Preliminary Approval, the Class
- 9 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees
- 10 Payment, Class Counsel Administration Expenses Payment and Class
- 11 Representative Service Payment, the Final Approval and the Judgment.
- 12 The Claims Administrator will also maintain and monitor an email
- 13 address and a toll-free telephone number to receive Class Member calls,
- 14 faxes and emails.
- 15 l. Requests for Exclusion (Opt-outs) and Exclusion List. The Claims
- 16 Administrator will promptly review on a rolling basis Requests for
- 17 Exclusion to ascertain their validity. Not later than five days after the
- 18 expiration of the deadline for submitting Requests for Exclusion, the Claims
- 19 Administrator shall email a list to Class Counsel and Defense Counsel
- 20 containing (a) the names and other identifying information of Class
- 21 Members who have timely submitted valid Requests for Exclusion
- 22 (“Exclusion List”); (b) the names and other identifying information of Class
- 23 Members who have submitted invalid Requests for Exclusion; (c) copies of
- 24 all Requests for Exclusion from Settlement submitted (whether valid or
- 25 invalid).
- 26 m. Provide other customarily required services.
- 27 2. Within fourteen (14) calendar days of Preliminary Approval, Defendant will provide
- 28 the Class List to the Settlement Administrator. If any deficiencies are identified by the Settlement

1 Administrator, Defendant shall work with the Claims Administrator in good faith to resolve any
2 issues.

3 3. Within fourteen (14) calendar days after receiving the Class List from Defendant,
4 the Settlement Administrator will mail a Notice Packet to all Class Members via regular First-
5 Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

6 4. Prior to mailing, the Settlement Administrator will perform a search based on the
7 National Change of Address Database for information to update and correct for any known or
8 identifiable address changes. Any Notice Packets returned to the Settlement Administrator as
9 non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class
10 U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate
11 the date of such re-mailing on the Notice Packet. If no forwarding address is provided, the
12 Settlement Administrator will promptly attempt to determine the correct address using a skip-
13 trace, or other search using the name, address and/or Social Security number of the Class Member
14 involved, and will then perform a single re-mailing. Those Class Members who receive a re-
15 mailed Notice Packet, whether by skip-trace or by request, will have between the later of (a) an
16 additional fourteen (14) calendar days or (b) the Response Deadline to postmark or electronically
17 submit a Request for Exclusion or an objection to the Settlement.

18 5. All Class Members will be mailed a Notice Packet containing the form attached as
19 **Exhibit A** as approved by the Court.

20 6. Class Members will have an opportunity to dispute the information provided in
21 their Notice Packets. If Class Members dispute the number of Pay Periods to which they have
22 been credited or the amount of their Individual Settlement Payment, Class Members may produce
23 evidence to the Settlement Administrator showing that such information is inaccurate. Absent
24 evidence rebutting Defendant's records, Defendant's records will be presumed determinative.
25 However, if a Class Member produces evidence to the contrary, the Settlement Administrator will
26 consult with Class Counsel and Defendant's counsel, and will evaluate the evidence submitted by
27 the Class Member. Together, the Claims Administrator, Class Counsel and Defendant's counsel
28 will make the final decision as to the number of eligible Pay Periods that should be applied and/or

1 the Individual Settlement Payment to which the Class Member may be entitled. If an agreement
2 cannot be reached between the Claims Administrator, Class Counsel and Defendant's counsel, the
3 Claims Administrator shall make the final determination. All such disputes are to be resolved not
4 later than fourteen (14) calendar days after the Response Deadline.

5 7. Request for Exclusion Procedures. Any Class Member wishing to be excluded
6 from the Settlement Agreement must sign and postmark a written Request for Exclusion to the
7 Claims Administrator within the Response Deadline. The Request for Exclusion may contain
8 (a) the Class Member's name, address, telephone number, and the last four digits of the Class
9 Member's Social Security number and/or the Employee ID number, and (b) a ~~clear~~ statement
10 requesting to be excluded from the settlement of the class claims similar to the following: "I wish
11 to exclude myself from the class settlement reached in the matter of *Thomas Pena v. Ayzenberg*
12 *Group, Inc.* ~~I understand that by excluding myself, I will not receive money from the settlement~~
13 ~~of my individual claims."~~ The date of the postmark on the return mailing envelope will be the
14 exclusive means to determine whether a Request for Exclusion has been timely submitted. All
15 Requests for Exclusion will be submitted to the Settlement Administrator, who will certify jointly
16 to Class Counsel and Defendant's Counsel the Requests for Exclusion that were timely submitted.
17 Any Class Member who does not timely seek exclusion will be bound by the terms of this
18 Settlement Agreement.

19 **XI. NULLIFICATION OF THE SETTLEMENT AGREEMENT.**

20 1. Defendant's Option to Nullify the Settlement Agreement. If more than 5% of the
21 Class Members request to be excluded from the Settlement (opt-out or are otherwise excluded),
22 Defendant, in its sole discretion, shall have the option of nullifying the Settlement Agreement.
23 Should Defendant nullify the Settlement Agreement, it must notify Class Counsel in writing
24 within thirty (30) days of the Notice Packet Response Deadline. Prior to nullifying and
25 withdrawing from the Settlement pursuant to this provision, Defendant shall meet and confer with
26 Class Counsel. The Parties and any funds to be awarded under this Settlement Agreement shall be
27 returned to their respective statuses as of the date and time immediately prior to the execution of
28

1 this Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had
2 not been executed.

3 2. Nullification of the Settlement Agreement. In the event: (i) the Court does not
4 enter the Preliminary Approval Order and approve the Released Claims specified herein; (ii) the
5 Court does not finally approve the Settlement as provided herein; (iii) the Effective Date does not
6 occur as provided herein; (iv) Defendant exercises its option to nullify the Settlement Agreement
7 based on an excessive number of excluded Class Members, as described in the above paragraph;
8 or (v) the Settlement does not become final for any other reason (e.g., an objection by the LWDA),
9 this Settlement Agreement shall be null and void. However, before becoming null and void, the
10 Parties and counsel shall meet and confer in good faith to attempt to resolve the issue. Should this
11 Settlement Agreement be nullified, any order or award entered by the Court in furtherance of this
12 Settlement Agreement shall be treated as void from the beginning, and the Stipulations and
13 Recitals contained herein shall be of no force or effect, and shall not be treated as an admission by
14 the Parties or their Counsel. In such a case, the Parties and any funds to be awarded under this
15 Settlement Agreement shall be returned to their respective statuses as of the date and time
16 immediately prior to the execution of this Settlement Agreement, and the Parties shall proceed in
17 all respects as if this Settlement Agreement had not been executed, except that any fees already
18 incurred by the Settlement Administrator shall be paid by the Parties. A reduction in attorneys'
19 fees or costs, or a reduction in the Class Representative Incentive Award, shall not be grounds for
20 nullification of the Settlement Agreement.

21 3. Settlement Terms Bind All Class Members Who Do Not Request Exclusion. Any
22 Class Member who does not affirmatively request to be excluded from the Settlement Agreement
23 by submitting a timely and valid Request for Exclusion will be bound by all its terms, including
24 those pertaining to the Released Claims, as well as any Judgment that may be entered confirming
25 the Settlement. Eligible PAGA Members will receive their share of the employee portion of the
26 PAGA Penalties and will be deemed to have released any claims arising out of PAGA, regardless
27 of whether they request to be excluded from the release of their class claims.

1 **XII. OBJECTION PROCEDURES.**

2 To object to the Settlement Agreement, a Class Member should postmark a valid Notice of
3 Objection to the Settlement Administrator before the Response Deadline. The Notice of Objection
4 should be signed by the Class Member and contain all information required by this Settlement
5 Agreement. The postmark date will be deemed the exclusive means for determining that the
6 Notice of Objection is timely. Class Members regardless of whether or not they submit a written
7 objection to the Settlement Administrator will have the right to appear at the Final Approval
8 Hearing in order to have their objections heard by the Court. Neither the Parties nor their counsel
9 will solicit or otherwise encourage Class Members to submit written objections to the Settlement
10 Agreement or appeal from the Order and Judgment. Class Counsel will not represent any Class
11 Members with respect to any such objections to this Settlement.

12 **XIII. CERTIFICATION REPORTS REGARDING INDIVIDUAL SETTLEMENT**

13 **PAYMENT CALCULATIONS.**

14 1. Weekly Reports. The Settlement Administrator will provide Defendant's counsel
15 and Class Counsel a weekly report that certifies: (a) the number and names of Participating Class
16 Members from the Settlement Class who have disputed their anticipated Individual Settlement
17 Payment; (b) the number of Class Members who have submitted valid Requests for Exclusion; and
18 (c) any objections submitted to the Settlement along with a copy of any such objection.
19 Additionally, the Settlement Administrator will provide to counsel for both Parties any updated
20 reports regarding the administration of the Settlement Agreement as needed or requested.

21 2. Declaration re Notice Administration. Within fourteen (14) calendar days of the
22 response deadline, the Settlement Administrator shall provide Class Counsel a declaration
23 regarding administration of the Notice Packet, which shall name all individuals who chose to
24 exclude themselves from or object to the Settlement.

25 3. Uncashed Settlement Checks. Any checks issued by the Claims Administrator to
26 Participating Class Members will be negotiable for at least one hundred eighty (180) calendar
27 days. Those funds represented by settlement checks returned as undeliverable and those
28 settlement checks remaining uncashed for more than one hundred eighty (180) calendar days after

1 issuance shall be forwarded to the Controller of the State of California pursuant to the Unclaimed
2 Property Law, California Civil Code § 1500, *et seq.*, to be held in trust for those Participating
3 Class Members and PAGA Members who did not timely cash their Settlement checks. The
4 Parties agree that C.C.P. Section 384(b), permits the Court for good cause to approve an
5 alternative distribution method for uncashed checks when it better serves the public's interest, and
6 that such good cause exists here for payment to be made to the California State Unclaimed
7 Property Fund for the benefit of the Class Members. The Parties agree that this disposition results
8 in no "unpaid residue" under California Civil Procedure Code § 384, as all payments to the
9 Participating Class Members and PAGA Members will be paid out, whether or not these
10 individuals cash their Settlement checks. Therefore, Defendant will not be required to pay any
11 interest on such amounts.

12 4. Certification of Completion. Upon completion of administration of the Settlement,
13 the Settlement Administrator will provide a written declaration under oath to certify such
14 completion to the Court and counsel for all Parties.

15 **XIV. TAX TREATMENT OF INDIVIDUAL SETTLEMENT PAYMENTS.**

16 All Individual Settlement Payments will be allocated as follows: twenty percent (20%) of
17 each Individual Settlement Payment will be allocated as wages and eighty percent (80%) will be
18 allocated as non-wages (40% to interest and 40% to penalties). The portion allocated to wages
19 will be reported on an IRS Form W-2 and the portions allocated to non-wages will be reported on
20 an IRS Form-1099 by the Claims Administrator. The gross Individual Settlement Payments will
21 be reduced by any required legal deductions for each Class Member. All standard employee
22 payroll deductions will be made for state and federal withholding taxes, including any other
23 applicable payroll deductions owed by the Participating Class Members as a result of the wage
24 component, resulting in a net wage component. The Settlement Administrator will issue a check
25 and W-2 Form to each Class Member for the wage component. No withholding shall be made on
26 the interest and penalty portions of the gross Individual Settlement Payment. The Settlement
27 Administrator will issue a second check and IRS Form 1099 for the remaining interest and penalty
28 component. The Settlement Administrator shall be responsible for issuing the payments and

1 calculating and withholding all required state and federal taxes. The Parties and the Settlement
2 Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement
3 Payments under the terms of this Settlement Agreement. Any disputes not resolved concerning
4 the administration of the Settlement will be resolved by the Court, under the laws of the State of
5 California. Prior to any such involvement of the Court, counsel for the Parties will confer in good
6 faith to resolve the dispute without the necessity of involving the Court.

7 **XV. ADMINISTRATION OF TAXES BY THE CLAIMS ADMINISTRATOR.**

8 1. Tax Liability. Defendant makes no representation as to the tax treatment or legal
9 effect of the payments called for hereunder, and Plaintiff and Participating Class Members are not
10 relying on any statement, representation, or calculation by Defendant or by the Claims
11 Administrator in this regard. Plaintiff and Participating Class Members understand and agree they
12 will be solely responsible for the payment of their share of any taxes and penalties assessed on the
13 payments described herein.

14 2. Circular 230 Disclaimer. EACH PARTY TO THIS SETTLEMENT AGREEMENT
15 (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH
16 PARTY TO THIS SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING
17 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
18 PROVISION OF THIS SETTLEMENT AGREEMENT, AND NO WRITTEN
19 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
20 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY
21 SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
22 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
23 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
24 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
25 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
26 ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B) HAS NOT
27 ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE
28 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO

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

11 **XVI. RELEASE BY CLASS MEMBERS.**

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

16 2. Class Release. It is the desire of the Named Plaintiffs, Class Members (except
17 those who exclude themselves from the Settlement), and Defendant to fully, finally, and forever
18 settle, compromise, and discharge the Released Claims as to the Released Parties. Thus, following
19 the Effective Date and after Defendant fully funds the Class Settlement Amount, and except as to
20 such rights or claims as may be created by this Settlement Agreement, the Class Members shall
21 fully release and discharge the Released Parties from any and all Released Claims for the entire
22 Class Period. This release shall be binding on all Class Members who have not timely submitted a
23 valid and complete Request for Exclusion, including each of their respective attorneys, agents,
24 spouses, executors, representatives, guardians ad litem, heirs, successors, and assigns, and shall
25 inure to the benefit of the Released Parties, who shall have no further or other liability or
26 obligation to any Settlement Class Member with respect to the Released Claims, except as
27 expressly provided herein.

1 3. Release of Additional Claims and Rights by Named Plaintiffs (“Named Plaintiffs’
2 Released Claims”). Following the Effective Date and upon the complete funding of the Class
3 Settlement Amount, as a material condition of receiving any portion of the Class Representative
4 Incentive Award, Named Plaintiffs agree to execute a separate stand-alone agreement and release
5 all claims related to their employment with Defendant, including all claims alleged in the Action,
6 and be bound by a Civil Code Section 1542 release and waiver of all claims known and unknown,
7 without exception, except as may be prohibited by law. This specifically excludes claims for
8 unemployment insurance, disability, social security, and workers' compensation (except for claims
9 pursuant to Labor Code Sections 132a and 4553).

10 **XVII. PRELIMINARY APPROVAL HEARING.**

11 1. Plaintiff will obtain a hearing before the Court to request Preliminary Approval of
12 the Settlement Agreement and the entry of a Preliminary Approval Order for: (a) conditional
13 certification of the Settlement Class for settlement purposes only, (b) Preliminary Approval of the
14 proposed Settlement Agreement, and (c) setting a date for a Final Approval/Settlement Fairness
15 Hearing.

16 2. The Preliminary Approval Order will provide for the Notice Packet to be sent to all
17 Class Members as specified herein. In conjunction with the Preliminary Approval hearing,
18 Plaintiff will submit this Settlement Agreement and will include the proposed Notice Packet.

19 3. Class Counsel will be responsible for drafting all documents necessary to obtain
20 preliminary approval. Class Counsel will provide Defendant’s Counsel the opportunity to review
21 these papers five (5) business days prior to filing. Class Counsel shall consider in good faith, but
22 shall not be required to accept revisions or suggested changes by Defendant’s Counsel. Defendant
23 shall not oppose Plaintiff’s Motion for Preliminary Approval. Any failure by the Court to fully
24 and completely approve the Settlement Agreement, which has the effect of preventing the full and
25 complete approval of the terms of the Settlement Agreement as set forth herein, will result in this
26 Settlement Agreement and all obligations under this Settlement Agreement being nullified and
27 voided.

1 **XVIII. FINAL SETTLEMENT APPROVAL HEARING AND ENTRY OF JUDGMENT.**

2 1. Upon expiration of the Response Deadline, a Final Approval/Settlement Fairness
3 Hearing will be conducted to determine the Final Approval of the Settlement Agreement, along
4 with the amounts properly payable for: (a) Individual Settlement Payments; (b) the LWDA
5 Payment; (c) the Attorneys' Fees and Costs; (d) the Class Representative Incentive Payment; and
6 (e) all Settlement Administration Costs.

7 2. Class Counsel will be responsible for drafting all documents necessary to obtain
8 Final Approval and shall draft a Proposed Final Approval Order and Judgment, which includes all
9 individuals who opted-out of the proposed settlement. Not later than sixteen (16) court days
10 before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final
11 approval of the Settlement that includes a request for approval of the PAGA settlement under
12 Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment
13 (collectively "Motion for Final Approval"). Class Counsel will provide Defendant's Counsel the
14 opportunity to review these papers five (5) business days prior to filing. Class Counsel shall
15 consider in good faith, but shall not be required to accept, revisions or suggested changes by
16 Defendant's Counsel. Defendant shall not oppose Final Approval of this settlement. Any failure
17 by the Court to fully and completely grant final approval of the Settlement will result in this
18 Settlement Agreement entered into by the Parties and all obligations under this Settlement
19 Agreement being nullified and voided. Upon such failure, any order or award entered by the
20 Court in further of this Settlement Agreement shall be treated as void from the beginning, and the
21 stipulations and agreements contained herein shall be of no force or effect and shall not be treated
22 as an admission by the Parties or their counsel. In such a case, the Parties and any funds to be
23 awarded under this Settlement shall be returned to their respective statuses as of the date and time
24 immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects
25 as if this Settlement Agreement had not been executed, except that any fees already incurred by
26 the Claims Administrator shall be paid equally by the Parties.

1 **XIX. JUDGMENT AND CONTINUED JURISDICTION.**

2 After entry of the Final Approval Order, the Court shall have continuing jurisdiction solely
3 for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement;
4 (ii) settlement administration matters; and (iii) such post-Final Judgment matters as may be
5 appropriate under court rules or as set forth in this Agreement.

6 **XX. OTHER PROVISIONS.**

7 1. Exhibits Incorporated by Reference. The terms of this Settlement include the terms
8 set forth in any attached Exhibits, which are incorporated by this reference as though fully set
9 forth herein. Any Exhibits to this Settlement are an integral part of the Settlement.

10 2. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute
11 the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral
12 agreements may be deemed binding on the Parties.

13 3. Amendment or Modification. This Settlement Agreement may be amended or
14 modified only by a written instrument signed by counsel for all Parties or their successors-in-
15 interest and approved by the Court.

16 4. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant
17 and represent that they are expressly authorized by the Parties whom they represent to negotiate
18 this Settlement Agreement, and to take all appropriate action required or permitted to be taken by
19 such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other
20 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
21 counsel will cooperate with each other and use their best efforts to effect the implementation of the
22 Settlement. If the Parties are unable to reach agreement on the form or content of any document
23 needed to implement the Settlement, or on any supplemental provisions that may become
24 necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the
25 mediator, Joel Grossman, Esq., to resolve such disagreement.

26 5. Binding on Successors and Assigns. This Settlement Agreement will be binding
27 upon, and inure to the benefit of, the successors or assigns of the Parties hereto as previously
28 defined.

1 6. California Law Governs. All terms of this Settlement Agreement and Exhibits
2 hereto will be governed by and interpreted according to the laws of the State of California, except
3 for the FLSA claims, which shall be governed by federal law.

4 7. Execution and Counterparts. This Settlement Agreement is subject only to the
5 execution of all Parties. However, the Settlement Agreement may be executed in one or more
6 counterparts. All executed counterparts and each of them, including facsimile and scanned copies
7 of the signature page, will be deemed to be one and the same instrument. The Parties may execute
8 this Settlement Agreement electronically (e.g., DocuSign), and such copies shall have the same
9 force and effect as an executed original.

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

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

21 10. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
22 class certification for purposes of this Settlement only; except, however, that either party may
23 appeal any Court order that materially alters the Settlement Agreement's terms. Provided the
24 Judgment is consistent with the terms and conditions of this Agreement, the Parties, their
25 respective counsel, and all Participating Class Members who did not object to the Settlement as
26 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
27 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
28 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver

1 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
2 Parties' obligations to perform under this Agreement will be suspended until such time as the
3 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
4 the amount of the Net Settlement Amount.

5 11. Class Action Certification for Settlement Purposes Only. The Parties agree to
6 stipulate to class action certification only for purposes of the Settlement. If, for any reason, the
7 Settlement is not approved, the stipulation to certification will be void. The Parties further agree
8 that certification for purposes of the Settlement is not an admission that class action certification is
9 proper under the standards applied to contested certification motions and that this Settlement
10 Agreement will not be admissible in this or any other proceeding as evidence that either: (a) a
11 class action should be certified or (b) Defendant is liable to Plaintiff or any Class Member, other
12 than according to the Settlement's terms.

13 12. Non-Admission of Liability. The Parties enter into this Settlement Agreement to
14 resolve the dispute that has arisen between them and to avoid the burden, expense and risk of
15 continued litigation. In entering into this Settlement Agreement, Defendant does not admit, and
16 specifically denies, that it has violated any federal, state, or local law; violated any regulations or
17 guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal
18 requirements; breached any contract; violated or breached any duty; engaged in any
19 misrepresentation or deception; or engaged in any other unlawful conduct with respect to its
20 employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the
21 negotiations connected with it, shall be construed as an admission or concession by Defendant of
22 any such violations or failures to comply with any applicable law. Except as necessary in a
23 proceeding to enforce the terms of this Settlement Agreement, this Settlement Agreement and its
24 terms and provisions shall not be offered or received as evidence in any action or proceeding to
25 establish any liability or admission on the part of Defendant or to establish the existence of any
26 condition constituting a violation of, or a non-compliance with, federal, state, local or other
27 applicable law.

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

4 14. Waiver. No waiver of any condition or covenant contained in this Settlement
5 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered
6 to imply or constitute a further waiver by such party of the same or any other condition, covenant,
7 right or remedy.

8 15. Enforcement Action. If one or more of the Parties institutes any legal action or
9 other proceeding against any other Party or Parties to enforce the provisions of this Settlement or
10 to declare rights and/or obligations under this Settlement, the successful Party or Parties will be
11 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, in
12 connection with any enforcement actions, to the extent permitted by California law.

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

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

24 18. All Terms Subject to Court Approval. All amounts and procedures described in
25 this Settlement Agreement herein will be subject to final approval by the Court.

26 19. Cooperation and Execution of Necessary Documents. All Parties will cooperate in
27 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
28 this Settlement Agreement. The Parties and their counsel agree not to take any action to encourage

1 any Class Members to request exclusion from and/or object to the Settlement. Defendant agrees not
2 to obtain waivers or Pick Up Stix agreements from the Class Members during the Settlement
3 approval process and will work in good faith to reach an agreement approved by the Court.
4 Defendant further agrees that it will not oppose Plaintiff's motion for preliminary approval or
5 motion for final approval.

6 20. Confidentiality. Neither Named Plaintiffs nor Class Counsel shall issue any press
7 release or announcement of any kind related in any way to the Settlement. Named Plaintiffs and
8 Class Counsel agree that, prior to preliminary approval of the Settlement, they will keep the terms
9 of this Settlement confidential except for purposes of communicating with Named Plaintiffs only.
10 Named Plaintiffs shall be informed that the Settlement is confidential and shall be advised to keep
11 the settlement confidential. From and after preliminary approval of the settlement, the Class
12 Members (including Named Plaintiffs and Class Counsel) may: (1) as required by law; (2) as
13 required under the terms of the settlement; or (3) as required under counsel's duties and
14 responsibilities as Class Counsel, comment regarding the specific terms of the settlement. In all
15 other cases, Named Plaintiffs and Class Counsel agree to limit their statements regarding the terms
16 of the settlement, whether oral, written or electronic (including the world wide web), to say the
17 Class Action has been resolved and that Named Plaintiffs and Class Counsel are satisfied with the
18 settlement terms. Nothing in this Paragraph is intended to interfere with Class Counsel's duties
19 and obligations to faithfully discharge their duties as Class Counsel, including but not limited to,
20 communicating with Class Members regarding the Settlement.

21 21. Binding Agreement. The Parties warrant that they understand and have full
22 authority to enter into this Settlement, intend that this Settlement Agreement will be fully
23 enforceable and binding on all Parties, and agree that it will be admissible and subject to
24 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
25 provisions that otherwise might apply under federal or state law. Plaintiffs, and not their
26 respective representative(s), must personally execute this Settlement Agreement.

27 22. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel
28 are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be

1 relied upon as such within the meaning of United States Treasury Department Circular 230 (31
2 CFR Part 10, as amended) or otherwise.

3 23. Stay of Litigation. The Parties agree that upon the execution of this Agreement the
4 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
5 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
6 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
7 process.

8 Dated: ~~June 9~~, September, 2022

Plaintiff Thomas Pena

10 Dated: ~~June 9~~, September, 2022

Erich Ulbrich

12 Dated: ~~June 9~~, September, 2022

Mark Ramsey

15 **Ayzenberg Group, Inc.**

16 Dated: ~~June 9~~, September, 2022

Edgar Davtvan, Chief Financial Officer

19 **APPROVED AS TO FORM:**

20 **HARRIS RUBLE**

21 Dated: ~~June 9~~, September, 2022

Alan Harris
Attorneys for Plaintiff

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

24 Dated: ~~June 9~~, September, 2022

Ronda D. Jamgotchian
Attorneys for Defendant