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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

SHAWNECE MACKEY, individually, and on
behalf of all others similarly situated,

Plaintiffs,

vs.

AIMES CONSULTING, INC., a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: BCV-21-101040

CLASS ACTION

**CLASS ACTION AND PAGA SETTLEMENT
AGREEMENT AND CLASS NOTICE**

Complaint filed: May 6, 2021
Trial date: Not set

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff SHAWNECE MACKEY (collectively “Plaintiff”) and defendant AIMES CONSULTING, INC. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. **DEFINITIONS.**

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Shawnece Mackey v. Aimes Consulting, Inc.*, initiated on May 6, 2021, as amended on July 13, 2021, and pending in Superior Court of the State of California, County of Kern, case number BCV-21-101040.
- 1.2. “Administrator” means the ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means any person employed by Defendant in California and classified as a non-exempt employee who worked for Defendant during the PAGA Period.
- 1.5. “Class” means all persons employed by Defendant in California and classified as non-exempt who worked for Defendant during the Class Period.
- 1.6. “Class Counsel” means Kane Moon, Allen Feghali, and Brett Gunther of Moon & Yang, APC.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number,

and number of Class Period Workweeks and PAGA Pay Periods.

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

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

1.11. “Class Notice” means the “Notice of Proposed Class Action Settlement” , to be mailed to Class Members in English with a Spanish translation (if applicable) in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12. “Class Period” means the period from May 6, 2017 to the date the Court issues preliminary approval of the instant settlement.

1.13. “Class Representative” means Shawnece Mackey the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as Class Representative.

1.14. “Class Representative Service Payment” means the up to \$7,500 payment to the named Class Representative for initiating the Action and providing services in support of the Action.

1.15. “Court” means the Superior Court of California, County of Kern.

1.16. “Defendant” means named Defendant Aimes Consulting, Inc.

1.17. “Defense Counsel” means Sarah Ornelas, Esq. of Borton Petrini, LLP.

1.18. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal

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

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

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

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

1.22. “Gross Settlement Amount” means Three Hundred and Fifty Thousand Dollars and Zero Cents (\$350,000.00) which is the combined, total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.

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

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

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

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

1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code § 2699(i).

1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment.

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

- 1.29. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.31. “PAGA Period” means the period from May 6, 2020 to the date of the Court granting preliminary approval of the instant settlement.
- 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *Et seq.*).
- 1.33. “PAGA Notices” means Plaintiffs’ May 4, 2021 letter to Defendant and the LWDA providing notice pursuant to Labor Code § 2699.3(a).
- 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$5,000) and the 75% to LWDA (\$15,000) in settlement of PAGA claims.
- 1.35. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36. “Plaintiff” means Shawnece Mackey the named plaintiff in the Action.
- 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.38. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39. “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.40. “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.41. “Released Parties” means: Defendant and each of its past, present and future subsidiaries, parents, affiliated and related companies, divisions, successors, predecessors or assigns; and their past, present, and future officers, directors, shareholders, partners, agents, insurers, employee, advisors, accountants, representatives, trustees, heirs, executors,

administrators, predecessors, successors or assigns.

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

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

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

1.45. “Workweek” means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. RECITALS.

2.1. On May 6, 2021, Plaintiff Mackey commenced this Action by filing a Complaint alleging causes of action against Defendant for 1) failure to pay minimum wages; 2) failure to pay overtime compensation; 3) failure to provide meal periods; 4) failure to authorize and permit rest breaks; 5) failure to indemnify necessary business expenses; 6) failure to timely pay final wages at termination; 7) failure to provide accurate itemized wage statements; and 8) unfair business practices. On July 13, 2021, Plaintiff filed a First Amended Complaint adding a Ninth Cause of Action against Defendant for PAGA civil penalties. The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”). Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged. Defendant further maintains that it complied with all applicable laws, regulations and statutes with respect to claims involved in this Action, and otherwise maintains that Plaintiff’s claims are frivolous.

- 1 2.2. Pursuant to Labor Code § 2699.3(a), Plaintiff gave timely written notice to Defendant and
2 the LWDA by sending the PAGA Notice.
- 3 2.3. On September 30, 2022, the Parties participated in an all-day mediation presided over by
4 Michael Young, Esq. which, after post-mediation settlement discussions, led to this
5 Agreement to settle the Action.
- 6 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, information sufficient to
7 meaningfully evaluate the claims at issue, including applicable policy documents and a
8 sample of time and pay records for the Class. Plaintiff's investigation was sufficient to
9 satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*, 48 Cal.
10 App. 4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116,
11 129-130 (2008) ("*Dunk/Kullar*").
- 12 2.5. The Court has not granted class certification.
- 13 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any
14 other pending matter or action asserting claims that will be extinguished or affected by the
15 Settlement.

16

17 **3. MONETARY TERMS.**

- 18 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant
19 promises to pay the total combined sum of Three Hundred and Fifty Thousand Dollars and
20 Zero Cents (\$350,000.00) and no more as the Gross Settlement Amount. The administrator
21 will calculate the employer payroll taxes owed on the Wage Portions of the Individual
22 Class Payments ahead of and for the purpose of the Parties' seeking of preliminary and
23 final approval of the settlement. Defendant has no obligation to pay the Gross Settlement
24 Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator
25 will disburse the entire Gross Settlement Amount without asking or requiring Participating
26 Class Members or Aggrieved Employees to submit any claim as a condition of payment.
27 None of the Gross Settlement Amount will revert to Defendant.
- 28 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the

1 following payments from the Gross Settlement Amount, in the amounts specified by the
2 Court in the Final Approval:

3 3.2.1. To Plaintiff: Class Representative Service Payment to the named Class
4 Representative of not more than Seven Thousand Five Hundred Dollars and Zero
5 Cents (\$7,500.00) in addition to any Individual Class Payment and any Individual
6 PAGA Payment the Class Representative is entitled to receive as a Participating
7 Class Member. Defendant will not oppose Plaintiff's request for a Class
8 Representative Service Payment that does not exceed this amount. As part of the
9 motion for Class Counsel Fees Payment and Class Litigation Expenses Payment,
10 Plaintiff will seek Court approval for any Class Representative Service Payment no
11 later than [16 court] days prior to the Final Approval Hearing. If the Court
12 approves a Class Representative Service Payment less than the amount requested,
13 the Administrator will retain the remainder in the Net Settlement Amount. The
14 Administrator will pay the Class Representative Service Payment using IRS Form
15 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on
16 the Class Representative Service Payment.

17 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 3 3 1 / 3 %,
18 which is currently estimated to be One Hundred and Sixteen Thousand Six
19 Hundred and Sixty-Six Dollars and Sixty-Seven Cents (\$116,666.67) and a Class
20 Counsel Litigation Expenses Payment of not more than Twenty-Five Thousand
21 Dollars and Zero Cents (\$25,000.00). Defendant will not oppose requests for these
22 payments provided that do not exceed these amounts. Plaintiff and/or Class
23 Counsel will file a motion for Class Counsel Fees Payment and Class Litigation
24 Expenses Payment no later than 16 court days prior to the Final Approval Hearing.
25 If the Court approves a Class Counsel Fees Payment and/or a Class Counsel
26 Litigation Expenses Payment less than the amounts requested, the Administrator
27 will allocate the remainder to the Net Settlement Amount. Released Parties shall
28 have no liability to Class Counsel or any other Plaintiff's Counsel arising from any

claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed Fourteen Thousand Seven Hundred and Fifty Dollars and Zero Cents (\$14,750.00) except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$14,750.00, the Administrator will retain the remainder in the Net Settlement Amount.

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

3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion").^{vi} The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual

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

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of Twenty Thousand Dollars and Zero Cents (\$20,000.00) to be paid from the Gross Settlement Amount, with 75% (i.e., Fifteen Thousand Dollars and Zero Cents (\$15,000.00)) allocated to the LWDA PAGA Payment and 25% (i.e., Five Thousand Dollars and Zero Cents (\$5,000)) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (i.e., \$5,000) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Data. Not later than 25 days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for

1 purposes of this Settlement and for no other purpose, and restrict access to the Class Data
2 to Administrator employees who need access to the Class Data to effect and perform under
3 this Agreement. Nothing in this Paragraph will prevent or preclude Class Counsel from
4 performing their ethical or fiduciary duties to the Class Members as to this settlement.
5 Defendant has a continuing duty to immediately notify Class Counsel if it discovers that
6 the Class Data omitted class member identifying information and to provide corrected or
7 updated Class Data as soon as reasonably feasible. Without any extension of the deadline
8 by which Defendant must send the Class Data to the Administrator, the Parties and their
9 counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise
10 resolve any issues related to missing or omitted Class Data.

11 4.2. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement
12 Amount, no later than thirty (30) days after the Effective Date. The Administrator will
13 calculate the Defendant's share of payroll taxes which will be paid from the Class Fund.

14 4.3. Payments from the Gross Settlement Amount. Within fourteen (14) days after Defendant
15 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual
16 Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the
17 Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel
18 Litigation Expenses Payment, and the Class Representative Service Payment.
19 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
20 Payment and the Class Representative Service Payment shall not precede disbursement of
21 Individual Class Payments and Individual PAGA Payments.

22 4.3.1. The Administrator will issue checks for the Individual Class Payments and/or
23 Individual PAGA Payments and send them to the Class Members via First Class
24 U.S. Mail, postage prepaid. The face of each check shall prominently state the
25 date (not less than 180 days after the date of mailing) when the check will be
26 voided. The Administrator will cancel all checks not cashed by the void date. The
27 Administrator will send checks for Individual Settlement Payments to all
28 Participating Class Members (including those for whom Class Notice was returned

undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database ("NCOA").

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

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

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

4.3.5. The Administrator shall remit payment for Employer Payroll Taxes to the

appropriate taxing authorities within the deadlines established by law.

5. **RELEASES OF CLAIMS.**

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

5.1. **Plaintiff's Release.**

5.1.1. **Scope of Plaintiff's Release.** Plaintiff and her former and present spouse, family members, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences, even claims not plead in the Action, from the beginning of time through the date Plaintiff signs this Agreement, including, but not limited to: all claims under the California Labor Code; the California Fair Employment and Housing Act; the California Family Rights Act; the California Constitution; the California Government Code; the California Civil Code; any Industrial Welfare Commission Wage Order; the Americans with Disabilities Act, as amended; Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; 42 U.S.C. § 1981, as amended; the **Age Discrimination in Employment Act**, as amended; the Fair Labor Standards Act, as amended; the Equal Pay Act; the Rehabilitation Act of 1973; the Family and Medical Leave Act; any and all other federal, state, and local statutes, ordinances, regulations, rules, and other laws, and all claims based on constitutional, statutory, common law, or regulatory grounds, as well as all other claims based on theories of wrongful or constructive discharge, breach of contract or implied contract, fraud, misrepresentation, promissory estoppel, intentional and/or negligent infliction of emotional distress, or damages under any other federal, state, or local statutes, ordinances, regulations, rules, or laws. This release is for any and all relief, no matter how denominated, including, but not limited to, back pay, front pay,

1 vacation pay, bonuses, compensatory damages, tortious damages, liquidated
2 damages, punitive damages, damages for pain and suffering, and attorneys' fees
3 and costs ("Plaintiffs' Release.") Plaintiffs' Release does not extend to any claims
4 or actions that cannot be released as a matter of law, including claims for vested
5 benefits, unemployment benefits, disability benefits, social security benefits, or
6 workers' compensation benefits. Plaintiff acknowledges that Plaintiff may
7 discover facts or law different from, or in addition to, the facts or law that Plaintiff
8 now knows or believes to be true but agrees, nonetheless, that Plaintiffs' Release
9 shall be and remain effective in all respects, notwithstanding such different or
10 additional facts or Plaintiffs' discovery of them.

11 5.1.2. Plaintiff's Waiver of Rights Under California Civil Code § 1542. For purposes of
12 Plaintiffs' Release, Plaintiffs expressly waive and relinquishes the provisions,
13 rights, and benefits, if any, of Section 1542 of the California Civil Code, which
14 reads:

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

20
21 5.2. Release by Participating Class Members: All Participating Class Members, on behalf of
22 themselves and their respective former and present spouses, family members,
23 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release
24 Released Parties from (i) all claims that were alleged, or reasonably could have been
25 alleged, based on the Class Period facts stated in the Operative Complaint, including, e.g.,
26 any and all claims arising under California Labor Code sections 201, 202, 203, 204, 218.5,
27 218.6, 226, 226.7, 510, 512, 1174(d), 1194, 1194.2, 1197, 1198, 2802 and the applicable
28

1 Industrial Welfare Commission Wage Orders based on any alleged failure to pay
2 minimum wage; failure to pay overtime compensation; failure to provide meal periods;
3 failure to authorize and permit rest periods; failure to indemnify necessary business
4 expenses; failure to timely pay final wages; failure to timely pay wages during
5 employment; failure to provide accurate wage statements; failure to keep adequate
6 records; and unfair business practices arising under California Business and Professions
7 Code section 17200 *et seq.* Excluded from this portion of the release are claims for
8 PAGA penalties that were alleged, or reasonably could have been alleged, based on the
9 PAGA Period facts stated in the Operative Complaint and the Plaintiff's PAGA Notice.
10 Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not
11 release any other claims, including claims for vested benefits, wrongful termination,
12 violation of the Fair Employment and Housing Act, unemployment insurance, disability,
13 social security, workers' compensation, or claims based on facts occurring outside the
14 Class Period.

15 5.3. Release by Class Members Who Are Aggrieved Employees: All Class Members who are
16 Aggrieved Employees are deemed to release, on behalf of themselves and their respective
17 former and present spouses, family members, representatives, agents, attorneys, heirs,
18 administrators, successors, and assigns, the Released Parties from all claims for PAGA
19 penalties that were alleged, or reasonably could have been alleged, based on the PAGA
20 Period facts stated in the Operative Complaint and/or the Plaintiff's PAGA Notice,
21 including any claim for PAGA penalties based on alleged violations of California Labor
22 Code sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 1174(d), 1194,
23 1194.2, 1197, 1198, 2802 and the applicable Industrial Welfare Commission Wage Orders
24 based on any alleged failure to pay minimum wage; failure to pay overtime
25 compensation; failure to provide meal periods; failure to authorize and permit rest
26 periods; failure to indemnify necessary business expenses; failure to timely pay final
27 wages; failure to timely pay wages during employment; failure to provide accurate wage
28 statements; and/or failure to keep adequate records.

1
2 **6. MOTION FOR PRELIMINARY APPROVAL.**

3 The Parties agree to prepare and file a motion for preliminary approval (“Motion for Preliminary
4 Approval”) upon the full execution of this Agreement.

5 6.1. Plaintiff’s Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all
6 documents necessary for obtaining Preliminary Approval, including: (i) a copy of the
7 notice, and memorandum in support, of the Motion for Preliminary Approval that includes
8 an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA
9 Settlement under Labor Code § 2699(f)(2)); (ii) a copy of the proposed Order Granting
10 Preliminary Approval and Approval of PAGA Settlement; (iii) a copy of the proposed
11 Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed”
12 bid for administering the Settlement and attesting to its willingness to serve; competency;
13 operative procedures for protecting the security of Class Data; all facts relevant to any
14 actual or potential conflicts of interest with Class Members; and the nature and extent of
15 any financial relationship with Plaintiffs, Class Counsel or Defense Counsel; (v) a signed
16 declaration from Plaintiffs confirming willingness and competency to serve and disclosing
17 all facts relevant to any actual or potential conflicts of interest with Class Members, and/or
18 the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its
19 competency to represent the Class Members; its timely transmission to the LWDA of all
20 necessary PAGA documents (initial notice of violations (Labor Code § 2699.3(a)),
21 Operative Complaint (Labor Code § 2699(l)(1)), this Agreement (Labor Code §
22 2699(l)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with
23 Class Members, the Administrator and/or the Cy Pres Recipient. In their Declarations,
24 Plaintiffs and Class Counsel Declaration shall aver that they are not aware of any other
25 pending matter or action asserting claims that will be extinguished or adversely affected by
26 the Settlement.

27 6.2. Responsibilities of Counsel. Class Counsel will be responsible for expeditiously finalizing
28 and filing the Motion for Preliminary Approval no later than thirty (30) days after the full

1 execution of this Agreement; obtaining a prompt hearing date for the Motion for
2 Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for
3 Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary
4 Approval Order to the Administrator.

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

13
14 **7. SETTLEMENT ADMINISTRATION.**

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

22 7.2. Employer Identification Number. The Administrator shall have and use its own Employer
23 Identification Number for purposes of calculating payroll tax withholdings and providing
24 reports state and federal tax authorities.

25 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
26 the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation §
27 468B-1.

28 7.4. Notice to Class Members.

- 1 7.4.1. No later than three (3) business days after receipt of the Class Data, the
2 Administrator shall notify Class Counsel that the list has been received and state
3 the number of Class Members, PAGA Members, Workweeks, and Pay Periods in
4 the Class Data.
- 5 7.4.2. Using best efforts to perform as soon as possible, and in no event later than
6 fourteen (14) days after receiving the Class Data, the Administrator will send to all
7 Class Members identified in the Class Data, via first-class United States Postal
8 Service (“USPS”) mail, the Class Notice with Spanish translation (if applicable),
9 substantially in the form attached to this Agreement as Exhibit A. The first page of
10 the Class Notice shall prominently estimate the dollar amounts of any Individual
11 Class Payment and/or Individual PAGA Payment payable to the Class Member, and
12 the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate
13 these amounts. Before mailing Class Notices, the Administrator shall update Class
14 Member addresses using the National Change of Address database.
- 15 7.4.3. Not later than three (3) business days after the Administrator’s receipt of any Class
16 Notice returned by the USPS as undelivered, the Administrator shall re-mail the
17 Class Notice using any forwarding address provided by the USPS. If the USPS
18 does not provide a forwarding address, the Administrator shall conduct a Class
19 Member Address Search, and re-mail the Class Notice to the most current address
20 obtained. The Administrator has no obligation to make further attempts to locate
21 or send Class Notice to Class Members whose Class Notice is returned by the
22 USPS a second time.
- 23 7.4.4. The deadlines for Class Members’ written objections, Challenges to Workweeks
24 and/or Pay Periods, and Requests for Exclusion will be extended an additional
25 fourteen (14) days beyond the forty-five (45) days otherwise provided in the Class
26 Notice for all Class Members whose notice is re-mailed. The Administrator will
27 inform the Class Member of the extended deadline with the re-mailed Class
28 Notice.

1 7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
2 discovers any persons who believe they should have been included in the Class
3 Data and should have received Class Notice, the Parties will expeditiously meet
4 and confer in person or by telephone, and in good faith. in an effort to agree on
5 whether to include them as Class Members. If the Parties agree, such persons will
6 be Class Members entitled to the same rights as other Class Members, and the
7 Administrator will send, via email or overnight delivery, a Class Notice requiring
8 them to exercise options under this Agreement not later than fourteen (14) days
9 after receipt of Class Notice, or the deadline dates in the Class Notice, which ever
10 are later.

11 7.5. Requests for Exclusion (Opt-Outs).

12 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement
13 must send the Administrator, by fax, email, or mail, a signed written Request for
14 Exclusion not later than forty-five (45) days after the Administrator mails the Class
15 Notice (plus an additional fourteen (14) days for Class Members whose Class
16 Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or
17 his/her representative that reasonably communicates the Class Member's election
18 to be excluded from the Settlement and includes the Class Member's name,
19 address and email address or telephone number. To be valid, a Request for
20 Exclusion must be timely faxed, emailed, or postmarked by the Response
21 Deadline.

22 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it
23 fails to contain all the information specified in the Class Notice. The Administrator
24 shall accept any Request for Exclusion as valid if the Administrator can reasonably
25 ascertain the identity of the person as a Class Member and the Class Member's
26 desire to be excluded. The Administrator's determination shall be final and not
27 appealable or otherwise susceptible to challenge. If the Administrator has reason to
28 question the authenticity of a Request for Exclusion, the Administrator may

1 demand additional proof of the Class Member's identity. The Administrator's
2 determination of authenticity shall be final and not appealable or otherwise
3 susceptible to challenge.

4 7.5.3. Every Class Member who does not submit a timely and valid Request for
5 Exclusion is deemed to be a Participating Class Member under this Agreement,
6 entitled to all benefits and bound by all terms and conditions of the Settlement,
7 including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3
8 of this Agreement, regardless whether the Participating Class Member actually
9 receives the Class Notice or objects to the Settlement.

10 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a
11 Non-Participating Class Member and shall not receive an Individual Class
12 Payment or have the right to object to the class action components of the
13 Settlement. Because future PAGA claims are subject to claim preclusion upon
14 entry of the Judgment, Non-Participating Class Members who are Aggrieved
15 Employees are deemed to release the claims identified in Paragraph 5.3 of this
16 Agreement and are eligible for an Individual PAGA Payment.

17 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have forty-five (45)
18 days after the Administrator mails the Class Notice (plus an additional seven (7) days for
19 Class Members whose Class Notice is re-mailed) to challenge the number of Class
20 Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class
21 Notice. The Class Member may challenge the allocation by communicating with the
22 Administrator via fax, email or mail. The Administrator must encourage the challenging
23 Class Member to submit supporting documentation. In the absence of any contrary
24 documentation, the Administrator is entitled to presume that the Workweeks contained in
25 the Class Notice are correct so long as they are consistent with the Class Data. The
26 Administrator's determination of each Class Member's allocation of Workweeks and/or
27 Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The
28 Administrator shall promptly provide copies of all challenges to calculation of Workweeks

and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7. Objections to Settlement.

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

7.7.2. For any Participating Class Member to object, the Class Member must send written objections to the Administrator, signed by the Class Member, by fax or mail, no later than forty-five (45) days after the Administrator's mailing of the Class Notice (plus an additional seven (7) days for Class Members whose Class Notice was re-mailed). The Settlement Administrator shall send all objections it receives to Defense Counsel and Class Counsel within three (3) business days of receipt. Participating Class Members may also appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. The Court retains final authority with respect to the consideration and admissibility of any Class Member objections.

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

7.7.4. Aggrieved Employees shall have no right to object to the PAGA portion of the Settlement and shall be bound by the Release of claims identified in Paragraph 5.3 of this Agreement.

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

7.8.1. Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class

Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

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

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

7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods.

1 The Administrator's decision shall be final and not appealable or otherwise
2 susceptible to challenge.

3 7.8.5. Administrator's Declaration. Not later than fourteen (14) days before the date by
4 which Plaintiff is required to file the Motion for Final Approval of the Settlement,
5 the Administrator will provide to Class Counsel and Defense Counsel, a signed
6 declaration suitable for filing in Court attesting to its due diligence and compliance
7 with all of its obligations under this Agreement, including, but not limited to, its
8 mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing
9 of Class Notices, attempts to locate Class Members, the total number of Requests
10 for Exclusion from Settlement it received (both valid or invalid), the number of
11 written objections and attach the Exclusion List. The Administrator will
12 supplement its declaration as needed or requested by the Parties and/or the Court.
13 Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

14 7.8.6. Final Report by Settlement Administrator. Within ten (10) days after the
15 Administrator disburses all funds in the Gross Settlement Amount, the
16 Administrator will provide Class Counsel and Defense Counsel with a final report
17 detailing its disbursements by employee identification number only of all payments
18 made under this Agreement. At least fifteen (15) days before any deadline set by
19 the Court, the Administrator will prepare, and submit to Class Counsel and
20 Defense Counsel, a signed declaration suitable for filing in Court attesting to its
21 disbursement of all payments required under this Agreement. Class Counsel is
22 responsible for filing the Administrator's declaration in Court.

23 24 **8. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE**

25 Based on its records, Defendant estimates that there are approximately 27,000 Total Workweeks
26 during the Class period. In the event the total number of Workweeks in the Class Period exceeds 18% of
27 the estimated 27,000 Total Workweeks, or 31,860 workweeks, Defendant will have the option to 1)
28 increase the Gross Settlement Amount by the percentage that the actual number of class members or

workweeks exceeds the original estimate of 27,000 beyond 18% or 2) end the Class Period at the date upon which it hits the 27,000 Workweek mark.

9. DEFENDANT’S RIGHT TO WITHDRAW.

If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 7% of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than thirty (30) days after the expiration of the 45-day opt-out/exclusion period; late elections will have no effect.

10. MOTION FOR FINAL APPROVAL.

Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code § 2699(l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to

1 obtain Final Approval. The Court's decision to award less than the amounts requested for
2 the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
3 Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute
4 a material modification to the Agreement within the meaning of this paragraph.

5 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the
6 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
7 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
8 administration matters, and (iii) addressing such post-Judgment matters as are permitted by
9 law.

10 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
11 conditions of this Agreement, specifically including the Class Counsel Fees Payment and
12 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the
13 Parties, their respective counsel, and all Participating Class Members who did not object to
14 the Settlement as provided in this Agreement, waive all rights to appeal from the
15 Judgment, including all rights to post-judgment and appellate proceedings, the right to file
16 motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The
17 waiver of appeal does not include any waiver of the right to oppose such motions, writs or
18 appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this
19 Agreement will be suspended until such time as the appeal is finally resolved and the
20 Judgment becomes final, except as to matters that do not affect the amount of the Net
21 Settlement Amount.

22 10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
23 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
24 material modification of this Agreement (including, but not limited to, the scope of release
25 to be granted by Class Members), this Agreement shall be null and void. The Parties shall
26 nevertheless expeditiously work together in good faith to address the appellate court's
27 concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis,
28 any additional Administration Expenses reasonably incurred after remittitur. An appellate

1 decision to vacate, reverse, or modify the Court's award of the Class Representative
2 Service Payment or any payments to Class Counsel shall not constitute a material
3 modification of the Judgment within the meaning of this paragraph, as long as the Gross
4 Settlement Amount remains unchanged.

5
6 **11. AMENDED JUDGMENT.**

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

9
10 **12. ADDITIONAL PROVISIONS.**

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

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

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

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

21 12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
22 together with its attached exhibits shall constitute the entire agreement between the Parties
23 relating to the Settlement, superseding any and all oral representations, warranties,
24 covenants, or inducements made to or by any Party.

25 12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
26 represent that they are authorized by Plaintiffs and Defendant, respectively, to take all
27 appropriate action required or permitted to be taken by such Parties pursuant to this
28 Agreement to effectuate its terms, and to execute any other documents reasonably required

to effectuate the terms of this Agreement including any amendments to this Agreement.

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

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

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

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

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

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

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

12.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered

1 during Action and in this Agreement relating to the confidentiality of information shall
2 survive the execution of this Agreement.

3 12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to
4 Evidence Code § 1152, and all copies and summaries of the Class Data provided to Class
5 Counsel by Defendant in connection with the mediation, other settlement negotiations, or
6 in connection with the Settlement, may be used only with respect to this Settlement, and no
7 other purpose, and may not be used in any way that violates any existing contractual
8 agreement, statute, or rule of court. Not later than 90 days after the date when the Court
9 discharges the Administrator's obligation to provide a Declaration confirming the final pay
10 out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class
11 Data received from Defendant unless, prior to the Court's discharge of the Administrator's
12 obligation, Defendant makes a written request to Class Counsel for the return, rather than
13 the destructions, of Class Data.

14 12.15. Headings. The descriptive heading of any section or paragraph of this Agreement is
15 inserted for convenience of reference only and does not constitute a part of this
16 Agreement.

17 12.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be
18 to calendar days. In the event any date or deadline set forth in this Agreement falls on a
19 weekend or federal legal holiday, such date or deadline shall be on the first business day
20 thereafter.

21 12.17. Notice. All notices, demands or other communications between the Parties in connection
22 with this Agreement will be in writing and deemed to have been duly given as of the third
23 business day after mailing by United States mail, or the day sent by email or messenger,
24 addressed as follows:

25 To Plaintiff:

26 Kane Moon, Esq.
27 Allen Feghali, Esq.
28 Brett Gunther, Esq.
MOON LAW GROUP, PC
1055 W. Seventh St., Suite 1880

Los Angeles, CA 90017

To Defendant:

Sarah Ornelas, Esq.
BORTON PETRINI, LLP
201 Needham Street
Modesto, CA 95354

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

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

Plaintiff & Class Representatives:

Dated: July __, 2023

By: _____
SHAWNECE MACKEY

Plaintiff's Counsel:

Dated: July 28, 2023

MOON LAW GROUP, PC

By: _____
Kane Moon
Allen Feghali
Brett Gunther

Attorneys for Plaintiff

Los Angeles, CA 90017

To Defendant:

Sarah Ornelas, Esq.
BORTON PETRINI, LLP
201 Needham Street
Modesto, CA 95354

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

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

Plaintiff & Class Representatives:

7/28/2023

Dated: July __, 2023

DocuSigned by:
By: 
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SHAWNECE MACKEY

Plaintiff's Counsel:

Dated: July __, 2023

MOON LAW GROUP, PC

By: _____

Kane Moon
Allen Feghali
Brett Gunther

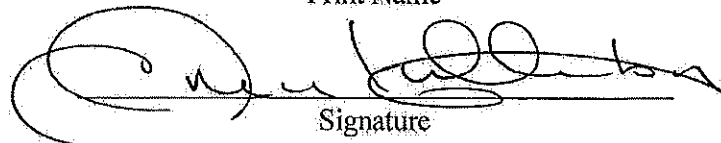
Attorneys for Plaintiff

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2 **Defendant:**

3 Dated: July 28, 2023

AIMES CONSULTING, INC.

4 By: Iman Killebrew
5 Print Name

6 
7 Signature

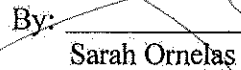
8 CEO

9 Title

10
11 **Defendant's Counsel:**

12 Dated: July 28, 2023

BORTON PETRINI, LLP

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14 By: 
15 Sarah Ornelas

16 Attorneys for Defendant
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