

1 **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT**

2 This Class Action and PAGA Settlement Agreement and Release of Claims is entered into
3 by and between Plaintiff Craig Ayotte, individually and on behalf of all others similarly situated,
4 and Defendants Frank Rimerman + Co. LLP, Frank, Rimerman Advisors, LLC, Frank, Rimerman
5 Information Security, LLC, and is approved by their respective counsel of record, subject to the
6 terms and conditions hereof and the Court's approval.

7 **A. Definitions**

8 1. "Action" or "Lawsuit" means and refers to the case entitled *Ayotte v. Frank,*
9 *Rimerman + Co. LLP, et al.*, Case No. 21CV386288, filed in Santa Clara Superior Court.

10 2. "Aggrieved Employees" include all persons who are or were previously employed
11 by Defendants in California classified as a non-exempt or hourly employee at any time from
12 August 26, 2020 through May 31, 2022.

13 3. "Agreement," "Settlement Agreement," "Settlement," or "Stipulation" shall mean
14 this Class Action and PAGA Settlement Agreement and Release of Claims, including any
15 attached Exhibits.

16 4. "Class Claims" or "Released Class Claims" will include all claims that were pled
17 in the operative First Amended Complaint based on the facts alleged therein, including claims for
18 failure to pay minimum and overtime wages and/or failure to pay such wages at the correct rate(s)
19 of pay), meal and rest break violations, failure to reimburse business expenses, failure to provide
20 accurate itemized wage statements, failure to timely pay all wages upon separation of
21 employment, and unfair and unlawful business practices.

22 5. "Class Counsel" refers to Mehrdad Bokhour of Bokhour Law Group, P.C. and
23 Joshua Falakassa of Falakassa Law, P.C.

24 6. "Class Data" means a complete list that Defendants will diligently and in good
25 faith compile from its records and provide to the Settlement Administrator on one spreadsheet
26 and shall include the Settlement Class Members' full names; last known addresses; telephone
27 numbers; Social Security Numbers; and dates of employment and/or number of Workweeks
28 Worked as non-exempt or hourly employees of Defendants during the Class Period and the PAGA

1 Period for each Settlement Class Member.

2 7. "Class Period" and "Class Release Period" shall mean August 27, 2017 through
3 May 31, 2022.

4 8. "Class Representative" or "Plaintiff" means and refers to Craig Ayotte.

5 9. "Complaint" refers to the First Amended Complaint filed in the Santa Clara
6 County Superior Court action entitled *Ayotte v. Frank Rimerman + Co., LLP, et al.*, Case No.
7 21CV386288.

8 10. "Court" means the California Superior Court, County of Santa Clara or any Court
9 of competent jurisdiction.

10 11. "Defendants" means and refers to Frank Rimerman + Co. LLP, Frank, Rimerman
11 Advisors, LLC, and Frank, Rimerman Information Security, LLC.

12 12. "Defendant's Counsel" or "Defense Counsel" mean and refer to Jenn M. Protas
13 and Laura C. Riparbelli of Hoge, Fenton, Jones & Appel, Inc.

14 13. "Effective Date" means ten (10) calendar days following the date the Court enters
15 an order granting final approval of the Settlement, assuming no appeal is filed; or if a timely
16 appeal is filed, the date of final resolution of that appeal (including any requests for rehearing
17 and/or petitions for *certiorari*), resulting in final judicial approval of the Settlement.

18 14. "Final" means that the Settlement has been granted "Final Approval" by the Court
19 and the "Effective Date" has occurred.

20 15. "Final Approval" refers to the order of the Court granting final approval of this
21 Settlement Agreement and entering a judgment approving this Settlement on substantially the
22 same terms provided herein or as may be modified by subsequent agreement of the Parties or
23 order of the Court.

24 16. "Final Settlement Class" means, collectively, all Participating Class Members and
25 all Aggrieved Employees.

26 17. "Individual Settlement Amount" shall have the meaning ascribed to it in Paragraph
27 48(d) below.

28 18. "Net Settlement Amount" shall have the meaning ascribed to it in Paragraph 48(c)

1 below.

2 19. "Notice" means the notice of settlement of class action and PAGA Settlement that
3 will be sent to the Settlement Class Members.

4 20. "Notice Response Deadline" is 45 calendar days from the date the Notice is mailed
5 to the Settlement Class Members.

6 21. "Objecting Settlement Class Member" means a Settlement Class Member, other
7 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with
8 respect to the Class Claims pursuant to Paragraph 70(a) below.

9 22. "PAGA" shall refer to the California Labor Code Private Attorneys General Act
10 of 2004, California Labor Code Sections 2698-2699.5.

11 23. "PAGA Claims" or "Released PAGA Claims" shall include any and all claims for
12 civil penalties pursuant to PAGA based on the allegations stated in the PAGA Notice and that
13 were pled in the operative First Amended Complaint based on the facts alleged therein, including
14 claims for failure to pay minimum and overtime wages and/or failure to pay such wages at the
15 correct rate(s) of pay), meal and rest break violations, failure to reimburse business expenses,
16 failure to provide accurate itemized wage statements, failure to timely pay all wages upon
17 separation of employment, and unfair and unlawful business practices.

18 24. "PAGA Notice" shall refer to the notice sent by Plaintiff, by and through counsel,
19 on or about August 26, 2021, to the LWDA and to Defendants, alleging that Defendants engaged
20 in violations of the California Labor Code and California Wage Order(s).

21 25. "PAGA Period" and "PAGA Release Period" shall mean August 26, 2020 through
22 May 31, 2022.

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

27 27. "Parties" or "Settling Parties" mean Plaintiff, the Settlement Class Members, the
28 Aggrieved Employees, and Defendants, collectively.

1 28. "Preliminary Approval Date" means the date the Court preliminarily approves the
2 Settlement Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

3 29. "Preliminary Approval Order" means the judicial Order to be entered by the Court,
4 upon the application or motion of the Plaintiff, preliminarily approving this Settlement and
5 providing for the issuance of the Notice to the Settlement Class Members, an opportunity to opt
6 out of settlement of the Class Claims, an opportunity to submit timely objections to the terms of
7 this Settlement related to the Class Claims, and setting a hearing on the fairness of the terms of
8 Settlement, including approval of attorneys' fees and costs.

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

13 31. "Release" shall mean the release and discharge of the Class Claims by Plaintiff
14 and all of the Participating Class Members and the release and discharge of the PAGA Claims by
15 Plaintiff and all of the Aggrieved Employees.

16 32. "Released Parties" shall refer to Defendants, together with their current and former
17 officers, directors, members, managers, shareholders, agents, parents, subsidiaries, affiliates,
18 operators, partners, attorneys, successors, and assignees.

19 33. "Request for Exclusion" shall have the meaning ascribed to it in Paragraph 70(a)
20 below.

21 34. "Service Payment" or "Service Award" means the amount approved by the Court
22 to be paid to Class Representative in addition to his Individual Settlement Amount as a
23 Participating Class Member.

24 35. "Settlement Administration Costs" means the costs payable from the Settlement
25 Amount to the Settlement Administrator for administering this Settlement, including, but not
26 limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, due
27 diligence, reporting and remittance obligations, distributing the Settlement Amount, and
28 providing necessary reports and declarations, as requested by the Parties. The Settlement

Administration Costs shall be paid from the Settlement Amount.

36. "Settlement Administrator" means and refers to a settlement administrator mutually agreed to by the Parties, that will provide the Notice to the Class Members and distribute the settlement amounts as described in this Agreement.

37. "Settlement Amount" or "Gross Settlement Amount" shall have the meaning ascribed to it in Paragraph 48(a) below.

38. "Settlement Class Member" or "Class Member" refers to individual members of the Settlement Class.

39. "Settlement Class" and "Settlement Class Members" refers to all persons who are or were previously employed by Defendants in California classified as a non-exempt employee during the Class Period.

40. "Workweeks Worked" for each Settlement Class Member and Aggrieved Employee means any workweek during the Class Period and/or the PAGA Period, as applicable, in which the Settlement Class Member and/or Aggrieved Employee was employed by Defendants as a non-exempt employee in California and worked at least one shift during the workweek for or on behalf of Defendants for which a prior release of claims has not been signed. Workweeks Worked will be calculated based on Defendant's business records.

B. General Terms

41. On or about August 27, 2021, Plaintiff filed a class action complaint in the Court against Defendants, including allegations of: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) meal period violations, (4) rest period violations, (5) waiting time penalties, (6) wage statement violations, (7), failure to reimburse business expenses, and (8) unfair competition. On or about May 5, 2022, Plaintiff filed a First Amended Complaint to add a cause of action for PAGA penalties based on the foregoing Labor Code violations.

42. Defendants deny Plaintiff's claims and allegations and contend that the Action is not suitable for class certification and/or representative treatment.

43. Class Representative believes he can proceed with his class and representative claims, that the Action is meritorious, and that class certification is appropriate.

1 44. The Parties have conducted a thorough investigation into the facts of the Action.
2 This includes conducting extensive exchange of informal discovery, including Defendants'
3 written policies and practices and the production of payroll and timekeeping records for
4 Settlement Class Members and Aggrieved Employees. Class Counsel is both knowledgeable
5 about and has done extensive research with respect to the applicable law and potential defenses
6 to the claims of the Settlement Class Members and Aggrieved Employees. Class Counsel has
7 diligently pursued an investigation of the Class Members' claims against Defendants. Based on
8 the foregoing data and on their own independent investigation and evaluation, Class Counsel is
9 of the opinion that the settlement with Defendants for the consideration and on the terms set forth
10 in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the
11 Settlement Class Members and Aggrieved Employees in light of all known facts and
12 circumstances, including the risk of significant delay and uncertainty associated with litigation,
13 various defenses asserted by Defendants, and numerous potential appellate issues.

14 45. On May 31, 2022, the Parties participated in mediation before Tripper Ortman,
15 Esq., a highly experienced class action mediator. After a full-day mediation and the issuance of a
16 mediator's proposal, the Parties reached a settlement.

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

21 47. Stipulation for Class Certification and Representative Treatment. For settlement
22 purposes only, Defendants will stipulate that the Settlement Class Members described herein who
23 do not Request Exclusion from the Settlement Class may be conditionally certified as a settlement
24 class and that the Aggrieved Employees are appropriate for representative treatment for purposes
25 of settlement. This stipulation to certification and representative treatment is in no way an
26 admission that class action certification and/or representative treatment is proper and shall not be
27 admissible in this or in any other action except for the sole purposes of enforcing this Agreement.
28 Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to

1 class certification and representative treatment as part of the Settlement shall become null and
2 void *ab initio* and shall have no bearing on and shall not be admissible in connection with the
3 issue of whether or not class certification and/or representative treatment would be appropriate in
4 a non-settlement context. Defendants expressly reserve their right and declare that they will
5 continue to oppose class certification, representative treatment, and the substantive merits of the
6 case should the Court fail to issue Final Approval. Plaintiff expressly reserves his rights and
7 declares that he will continue to pursue class certification and representative treatment and a trial
8 should the Court fail to issue Final Approval.

9 **C. Terms of Settlement**

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

11 (a) Gross Settlement Amount: The Parties agree to settle this Action for Seven
12 Hundred Seventy-Five Thousand Dollars (\$775,000) (“the Settlement Amount”). The Settlement
13 Amount is the maximum amount that will be paid by Defendants, and includes Individual
14 Settlement Amounts, attorneys’ fees of Class Counsel, costs and expenses, the Service Payment
15 to Class Representative, all Settlement Administration Costs, and payment to the Labor
16 Workforce Development Agency (LWDA) for PAGA penalties. Defendants shall separately pay
17 the employers’ share of applicable payroll taxes.

18 (b) The Settlement is based on Defendants’ representation that there are
19 approximately 13,500 Workweeks Worked included in the Class Period. In the event that the
20 actual number of Workweeks Worked by all Settlement Class Members during this period
21 increases by 10% or more, then Defendants shall increase the QSF on a proportional basis in
22 excess of 10 percent (i.e., if there were an eleven percent (11%) increase in the number of
23 Workweeks Worked, then Defendants will increase the QSF by one percent (1%)).

24 (c) Net Settlement Amount: The “Net Settlement Amount” is defined as the
25 Settlement Amount less attorneys’ fees and litigation costs as approved and awarded by the Court,
26 the Service Payment to Class Representative as approved and awarded by the Court, the
27 Settlement Administration Costs, as approved and awarded by the Court, and the Twenty Five
28 Thousand Dollars (\$25,000.00) allocated to payment for PAGA penalties as described in

paragraph 42 below. In the event that the Court reduces the attorneys' fees and litigation costs or Service Awards, Settlement Administration Costs, or either increases or decreases the amount allocated to PAGA penalties, the Net Settlement Sum shall be increased or decreased accordingly.

(d) Individual Settlement Amounts for the Settlement Class: The Settlement Administrator will use the Class Data provided by Defendants to calculate each Participating Class Member's and Aggrieved Employee's Individual Settlement Amounts based on the following formula:

i. PAGA Amount: \$25,000 of the Gross Settlement Amount has been designated to the PAGA claims. Twenty-five percent (25%) of the \$25,000, or \$6,250, shall be paid out to Aggrieved Employees. Each Aggrieved Employee shall receive a portion of the \$6,250 proportionate to the number of Workweeks Worked by the Aggrieved Employees during the PAGA Period compared to the total number of Workweeks Worked by all Aggrieved Employees during the PAGA Period. Aggrieved Employees shall have their settlement amount for the Released PAGA claims paid one hundred percent (100%) as civil penalties for which no taxes will be withheld and for which a Form 1099 will be issued by the Settlement Administrator.

ii. Class Amount: The Net Settlement Amount shall be allocated to each Participating Class Member based on his/her/their proportionate Workweeks Worked during the Class Period. This is determined by multiplying the Net Settlement Amount by a fraction, the numerator of which is the Participating Class Member's total Workweeks Worked during the Class Period, and the denominator of which is the total Workweeks Worked by all Participating Class Members during the Class Period. If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Amounts for each Participating Class Member so that the amount actually distributed to Participating Class Members equals 100% of the Net Settlement Amount allocated toward Released Class Claims.

(e) Allocation of Individual Settlement Amounts: The Individual Settlement Amounts will be allocated for tax purposes based on the allegations in the Action as follows: one-third (33.33%) will be paid as wages subject to withholding of all applicable local, state, and federal taxes; and two-thirds (66.67%) will be paid as interest and as civil penalties (pursuant to, e.g.,

1 California Labor Code sections 203, 226) from which no taxes will be withheld. The Settlement
2 Administrator will issue to each Participating Class Member an Internal Revenue Service Form
3 W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect
4 to the civil penalties and interest allocations.

5 (f) Service Payment to Class Representative: The amount awarded to Class
6 Representative as a Service Payment will be set by the Court in its discretion, not to exceed
7 \$10,000. Defendants agree not to oppose this request. The Service Payment to Class
8 Representative will be paid out of the Gross Settlement Amount. Class Representative will be
9 issued IRS Form 1099 in connection with this payment. Plaintiff shall be solely and legally
10 responsible to pay any and all applicable taxes on this payment. The Parties agree that any amount
11 awarded by the Court as the Service Payment to Plaintiff less than the requested amount shall not
12 be a basis for Plaintiff or Class Counsel to void this Stipulation. Should the Court approve a lesser
13 amount for the Service Payment, the difference shall be added to the Net Settlement Amount to
14 be distributed to the Participating Class Members. In the event of any appeal of the amount of the
15 service awards (if any) approved by the Court, if, after the exhaustion of any such appellate
16 review, additional amounts not awarded to Class Representative shall be added to the Net
17 Settlement Amount to be distributed to the Participating Class Members.

18 (g) Attorneys' Fees and Costs: Defendants agree not to oppose a request by Class
19 Counsel to the Court for an award of attorneys' fees of one-third (33.33%) of the Settlement
20 Amount, plus reasonable litigation costs not to exceed \$20,000 ("Attorneys' Fees and Cost
21 Award"). For purposes of this Settlement, Defendants agree not to oppose any contention by Class
22 Counsel that attorneys' fees should be based on the common fund theory. The Attorneys' Fee and
23 Cost Award shall be paid from the Gross Settlement Amount, and except for this award,
24 Defendants shall have no further obligation to pay any attorneys' fees, costs, or expenses to Class
25 Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the
26 difference shall be added to the Net Settlement Amount to be distributed to the Participating Class
27 Members. Any Court order awarding less than the amount sought by Class Counsel shall not be
28 grounds to rescind the Settlement Agreement or otherwise void the Settlement. In the event of

1 any appeal of the amount of the awards of attorneys' fees and costs (if any) approved by the Court,
2 final funding and administration of the portion of the attorneys' fees and/or costs award in dispute
3 will be segregated and stayed pending the exhaustion of appellate review. If, after the exhaustion
4 of any such appellate review, additional amounts not awarded to as attorneys' fees and costs shall
5 be added to the Net Settlement Amount to be distributed to the Participating Class Members
6 and/or Aggrieved Employees. The Settlement Administrator shall issue to Class Counsel an IRS
7 Form 1099 reflecting the amount of attorneys' fees and costs awarded by the Court. Class Counsel
8 agrees that any allocation of fees between or among Class Counsel and any other attorney
9 representing or claiming to represent the Class Members shall be the sole responsibility of Class
10 Counsel.

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

14 (i) PAGA Penalties: The Parties agree that \$25,000 is allocated to PAGA Penalties
15 and is to be paid from the Gross Settlement Amount, subject to Court approval. Of this amount,
16 \$18,750 (75%) shall be paid to the LWDA in satisfaction of Plaintiff's claims for civil penalties
17 under the PAGA and \$6,250 (25%) will be included in the Individual Settlement Amounts,
18 payable to the Aggrieved Employees as set forth in Paragraph 48(d).

19 (j) Tax Liability: Class Counsel, Defendants, and Defendants' Counsel make no
20 representations as to the tax treatment or legal effect of Settlement Amounts called for hereunder,
21 and Plaintiff and the Settlement Class Members are not relying on any statement or representation
22 by Class Counsel, Defendants, or Defendants' Counsel in this regard. Plaintiff and Final
23 Settlement Class Members understand and agree that they will be solely responsible for the
24 payment of any taxes and penalties assessed on their respective Settlement Amounts described
25 herein. Income tax withholding will also be made pursuant to applicable federal, state, and/or
26 local withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed at times
27 and in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent
28 with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax

1 law, are changed after the date of this Agreement, the processes set forth in this Section may be
2 modified in a manner to bring Defendants into compliance with any such changes.

3 (k) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT (FOR
4 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
5 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
6 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
7 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
8 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
9 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
10 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
11 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31
12 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
13 EXCLUSIVELY UPON HIS, HER, THEIR, OR ITS OWN, INDEPENDENT LEGAL AND
14 TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH
15 THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON
16 THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR
17 TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
18 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
19 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
20 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
21 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
22 OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF
23 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
24 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
25 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
26 AGREEMENT.

27 49. “Non-Reversionary” Settlement. This is a “non-reversionary” settlement. Under
28 no circumstances will any portion of the Settlement Amount revert to Defendants. Final

1 Settlement Class Members will not have to make a claim to receive an Individual Settlement
2 Amount. Distributions, in the form of Individual Settlement Amounts, will be made directly to
3 each Final Settlement Class Member. The Settlement Administrator shall be responsible for
4 accurately and timely reporting any remittance obligations with respect to unclaimed funds as a
5 result of a Final Settlement Class Member not cashing an Individual Settlement Amount by the
6 check cashing deadline, as set forth herein.

7 50. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
8 adequate, and will so represent same to the Court.

9 **D. Release by Plaintiff and the Final Settlement Class**

10 51. Upon the Effective Date of this Settlement, Plaintiff and each Participating Class
11 Member, for themselves and for their respective spouses, domestic partners, marital community,
12 children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors,
13 administrators, trustees, conservators, guardians, assigns, and representatives, will forever
14 completely release and discharge the Released Parties from the Released Class Claims for the
15 Class Release Period.

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

18 53. Upon the Effective Date of this Settlement, Plaintiff, the LWDA, and each
19 Aggrieved Employee, for themselves and for their respective spouses, domestic partners, marital
20 community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees,
21 executors, administrators, trustees, conservators, guardians, assigns, and representatives, will
22 forever completely release and discharge the Released Parties from the Released PAGA Claims
23 for the PAGA Release Period.

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

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

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

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

11 57. Class Representative, on behalf of himself and the Participating Settlement Class
12 Members, acknowledges and agrees that the claims for unpaid wages and unreimbursed expenses
13 in the Action, misclassification claims, and untimely payment of wages in the Action, are
14 disputed, and that the payments set forth herein constitute payment of all sums allegedly due to
15 them. Class Representative, on behalf of himself and the Participating Settlement Class Members,
16 acknowledge and agree that California Labor Code Section 206.5 is not applicable to the Parties
17 hereto. Section 206.5 provides in pertinent part as follows:

18 An employer shall not require the execution of any release of any claim or right on
19 account of wages due, or to become due, or made as an advance on wages to be
20 earned, unless payment of those wages has been made.

21 **E. Release by Class Representative**

22 58. As a material inducement to Defendants to enter into this Settlement Agreement,
23 in addition to Class Representative's release of the Released Class Claims and Released PAGA
24 Claims, as discussed in Paragraphs 51 and 53 above, Class Representative does hereby, for
25 himself and for his respective spouses, domestic partners, marital community, children, estates,
26 trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators,
27 trustees, conservators, guardians, assigns, and representatives, forever completely release and
28 discharge the Released Parties from any and all charges, complaints, claims, liabilities,

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

9 59. Without limiting the generality of the foregoing, Class Representative also
10 expressly release all claims or rights against Released Parties arising out of or relating to alleged
11 violations of any contracts, express or implied (including but not limited to any contract of
12 employment); any contract or covenant of good faith and fair dealing (express or implied); any
13 tort, including but not limited to, negligence, fraud, misrepresentation and violation of California
14 Labor Code section 970, negligent infliction of emotional distress, intentional infliction of
15 emotional distress, defamation, "retaliation" claims and claims for violation of public policy, any
16 claim for improper or unauthorized wage deductions, failure to pay the applicable wage, unpaid
17 wages, unpaid vacation benefits, penalties, liquidated damages, other damages, overtime, and
18 alleged "off the clock" work under federal and state law, including, but not limited to, California
19 Labor Code Sections 204 and 558, waiting time penalties pursuant to California Labor Section
20 203, damages, or penalties pursuant to California Labor Code Section 226, meal period and rest
21 break payments and penalties pursuant to California Labor Code Sections 226.7 and 512, failure
22 to provide itemized wage statements pursuant to California Labor Code Section 226, statutory or
23 civil penalties pursuant to California Labor Code Sections 210, failure to indemnify for business
24 expenses pursuant to Labor Code section 2802, failure to provide one day of rest in seven pursuant
25 to California Labor Code Sections 551 and 552, unfair competition and unfair business practices
26 pursuant to Business and Professions Code Section 17200 *et seq.*, interest and costs pursuant to
27 California Civil Code Section 3287 and California Labor Code Section 218.6, statutory or
28 common law rights to attorneys' fees and costs, including those pursuant to California Labor

Code Section 1194 *et seq.*; claims under the Private Attorneys General Act of 2004, Labor Code section 2699 *et seq.*, and the alleged violation or breach of any other state or federal statute, rule, and or regulation; including all applicable Industrial Welfare Commission Wage Orders, and all similar causes of action, including but not limited to, any claim for restitution, equitable relief, interest, penalties, costs, or attorneys' fees in connection with any of the foregoing, negligent infliction of emotional distress, intentional infliction of emotional distress, and defamation; any "wrongful discharge," "constructive discharge," and "retaliation" claims; any claims relating to any breach of public policy; any legal restrictions on Defendant's right to discharge employees; and any federal, state, or other governmental statute, regulation, or ordinance, including, without limitation: (1) Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, and national origin discrimination or harassment, including retaliation for reporting discrimination or harassment); (2) 42 U.S.C. § 1981 (discrimination); (3) Equal Pay Act, 29 U.S.C. § 209(d)(1) and California Labor Code 1197.5 (equal pay); (4) Americans with Disabilities Act, 42 U.S.C. § 12100 *et seq.* (disability discrimination); (5) Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (family/medical leave); (6) California Fair Employment and Housing Act, Cal. Government Code § 12900 *et seq.* (discrimination or harassment in employment and/or housing, including discrimination or harassment based on race, religious creed, color, national origin, ancestry, disability, marital status, sex (including pregnancy), or age, including retaliation for reporting discrimination or harassment); (7) California Family Rights Act, Cal. Government Code § 12945.1 *et seq.* (family/medical leave); (8) California Labor Code, including Section 1720 *et seq.*, or any Industrial Welfare Commission Wage Order; (9) Executive Order 11246 (race, color, religion, sex, and national origin discrimination or harassment); (10) Executive Order 11141 (age discrimination); (11) Sections 503 and 504 of the Rehabilitation Act of 1973 (handicap discrimination); (12) the Fair Labor Standards Act; (13) Employee Retirement Income Security Act, 29 U.S.C. § 1000 *et seq.* (employee benefits); (14) the California Civil Code; (15) the California Labor Code; (16) the California Constitution; (17) the National Labor Relations Act; and (18) any other federal, state, or local statute or legislation.

60. Class Representative expressly waives and relinquishes all rights and benefits

1 afforded by Section 1542 of the Civil Code of the State of California and do so understanding and
2 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of
3 the State of California states:

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

10 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
11 full and complete release and discharge of all parties, Class Representative, and Class Counsel
12 expressly acknowledge that this Settlement Agreement is intended to include in its effect, without
13 limitation, all claims that Class Representatives knew of, as well as all claims that they do not
14 know or suspect to exist in their favor against the Released Parties, or any of them, for the time
15 period from the beginning of time to the execution of this Settlement Agreement, and that this
16 Settlement Agreement contemplates the extinguishment of any such Class Representative's
17 claims.

18 **F. Interim Stay of Proceedings**

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

23 **G. Notice Process**

24 62. Appointment of Settlement Administrator. The Parties have agreed to the
25 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
26 including mailing the Notice, using standard devices to obtain forwarding addresses,
27 independently reviewing and verifying documentation associated with any claims or opt-out
28 requests, resolving any disputes regarding the calculation or application of the formula for
determining the Individual Settlement Amounts, drafting and mailing the settlement checks to
Final Settlement Class Members, issuing Forms W-2 and 1099, reporting to taxing authorities,

1 due diligence, reporting and remittance obligations, and performing such other tasks as set forth
2 herein or as the Parties mutually agree or that the Court orders.

3 63. Disputes Regarding Settlement Administration. Any and all disputes relating to
4 administration of the Settlement by the Settlement Administrator (except for disputes regarding
5 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
6 over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendants notify
7 the Court that all payments and obligations contemplated by this Settlement Agreement have been
8 fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in
9 good faith to resolve the dispute without the necessity of Court intervention. The Settlement
10 Administrator shall also be responsible for issuing to Plaintiff, Final Settlement Class Members,
11 and Class Counsel any Forms W-2, Forms 1099, or other Tax Forms as may be required by law
12 for all amounts paid pursuant to this Agreement. The Settlement Administrator shall also be
13 responsible for setting up all necessary tax accounts and forwarding all payroll taxes and penalties
14 to the appropriate government authorities.

15 64. Class Data. Within fourteen (14) days after entry of the Preliminary Approval
16 Order, Defendants shall provide the Class Data to the Settlement Administrator. The Settlement
17 Administrator will run a check of the Class Members' addresses against those on file with the
18 U.S. Postal Service's National Change of Address List. The Class Data provided to the Settlement
19 Administrator will not be provided to Class Counsel and it will remain confidential, it shall be
20 used solely to administer the Settlement, and it will not be used or disclosed to anyone, except as
21 required by applicable tax authorities, pursuant to Defendants' express written consent, or by
22 order of the Court. The Settlement Administrator will be required to sign and provide to
23 Defendants a Certification Regarding Confidential Discovery Materials and to be bound by a
24 Stipulated Protective Order as entered by the Court.

25 65. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
26 Administrator to the Settlement Class Members, by first class mail, in English and Spanish, within
27 seven (7) calendar days following the Settlement Administrator's receipt of the Class Data. The
28 Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding

addresses of Settlement Class Members if any envelopes are returned.

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

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

68. Disputes Regarding Class Data. Settlement Class Members are deemed to participate in the Settlement unless they opt-out. The Notice will inform Settlement Class Members of his/her/their estimated Individual Settlement Amount and the number of Workweeks Worked during the Class Period and during the PAGA Period. Settlement Class Members may dispute their Workweeks Worked if they feel they were employed more workweeks in the Class Period in California than Defendants' records show by timely submitting evidence to the Settlement Administrator. Defendants' records will be presumed determinative absent reliable evidence to rebut Defendants' records, but the Settlement Administrator will evaluate the evidence submitted by the Settlement Class Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's actual number of Workweeks Worked and estimated Individual Settlement Amount. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the Settlement Administrator to render a final decision. Settlement Class Members will have until the Notice Response Deadline to dispute Workweeks Worked, object, or opt out, unless extended by the Court. In the event that the Settlement Administrator increases

1 the number of Workweeks Worked for any Settlement Class Member, then the Settlement
2 Administrator will recalculate the Participating Class Members' Individual Settlement Amounts;
3 accordingly, in no event will Defendants be required to increase the Gross Settlement Amount.

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

7 70. Settlement Class Members' Rights. Each Settlement Class Member will be fully
8 advised of the Settlement, the ability to object to the provisions in the Settlement related to the
9 Class Claims, and the ability to opt out or request exclusion from the Class Claims provisions of
10 the Settlement. The Notice will inform the Settlement Class Members of the Court-established
11 deadlines for filing objections or requesting exclusion from the Class Claims provisions of the
12 Settlement in accordance with the following guidelines:

13 (a) Requests for Exclusion from Participating Settlement Class. Any
14 Settlement Class Member, other than Plaintiff, may request to be excluded from the Participating
15 Settlement Class by submitting a "Request for Exclusion" to the Settlement Administrator,
16 postmarked on or before the Notice Response Deadline. The Request for Exclusion should state
17 in words to this effect:

18 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN
19 THE AYOTTE V. FRANK RIMERMAN LAWSUIT. I UNDERSTAND
20 THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT
21 CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE
22 SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT.

23 Any Request for Exclusion must include the full name, address, telephone number, last
24 four digits of the social security number or date of birth, and signature of the Settlement Class
25 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
26 Settlement Administrator at the specified address. Any such Request must be made in accordance
27 with the terms set forth in the Notice. A Request for Exclusion will be timely only if postmarked
28 by the Notice Response Deadline, unless the Parties otherwise agree in writing. Any Settlement
Class Member who timely requests exclusion in compliance with these requirements: (i) will not

1 have any rights under this Agreement with respect to the Class Claims, including the right to
2 object, appeal, or comment on the Settlement; (ii) will not be entitled to receive any payments
3 under this Agreement with respect to Class Claims; and (iii) will not be bound by this Agreement,
4 or the Judgment, with respect to the Class Claims.

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

12 (c) Objections to Settlement of Class Claims. Any Settlement Class Member,
13 other than Plaintiff, may object to the terms of this Agreement with respect to the Class Claims
14 and may appear at the Final Approval Hearing and object whether or not they have filed a written
15 objection as outlined herein. To object, a Settlement Class Member shall inform the Settlement
16 Administrator, in writing, of his/her/their objection, which must be postmarked by the Notice
17 Response Deadline at the address set forth in the Notice. Such objection shall include the full
18 name, address, telephone number, dates of employment with Defendants of the Objecting
19 Settlement Class Member, the case name and number, the basis for the objection, including any
20 legal support and each specific reason in support of the objection, as well as any documentation
21 or evidence in support thereof, and, if the Objecting Settlement Class Member is represented by
22 counsel, the name and address of his/her/their counsel. If any Objecting Settlement Class Member
23 wishes to speak at the Final Approval Hearing with respect to the Class Claims, that Objecting
24 Settlement Class Member's written submission should include a request to be heard, and the Court
25 will determine whether Objecting Settlement Class Members will be permitted to speak. The
26 Settlement Administrator shall provide objections, if any, to Class Counsel and Defense Counsel
27 within three (3) days of receipt, and the Settlement Administrator shall attach the same to its
28 declaration of due diligence it files with the Court prior to the Final Approval Hearing. Any

1 Participating Class Member who files an objection remains eligible to receive monetary
2 compensation from the Settlement. Plaintiff and Defendants shall not be responsible for any fees,
3 costs, or expenses incurred by any Class Member and/or his/her/their counsel related to any
4 objections to the Settlement. Submitting an objection does not preserve the right to appeal a final
5 judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and
6 properly intervening or filing a motion to vacate the judgment under Code of Civil Procedure
7 section 663. Settlement Class Members and Aggrieved Employees may not object to or opt out
8 of the Settlement with respect to the PAGA Claims.

9 (d) Failure to Object. Any Settlement Class Member who desires to object
10 with respect to the Class Claims but fails to timely submit a written objection waives any right to
11 object will be foreclosed from making any objection to this Settlement. Any Settlement Class
12 Member who does not timely and properly become a party of record by intervening or filing a
13 motion to vacate the judgment waives any and all rights to appeal from the Judgment, including
14 all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate
15 judgment, motion for new trial, a motion under California Code of Civil Procedure section 473,
16 and extraordinary writs.

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

20
21 71. Settlement Class Members will have until the Notice Response Deadline to object
22 or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement
23 Administrator shall disclose jointly to Class Counsel and Defendants' counsel what objections or
24 Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class
25 Counsel or Defense Counsel.

26 72. Funding of the Settlement Amount. Defendants shall make a one-time deposit into
27 the QSF of the Settlement Amount, as described in Paragraph 48(a) that is necessary to make all
28 payments required under this Settlement, within fourteen (14) days after the Effective Date, plus

1 Defendants shall separately pay its share of employer payroll taxes as calculated and directed by
2 the Settlement Administrator.

3 73. Distribution of Funds. No later than ten (10) calendar days after deposit of the
4 payment into the QSF, the Settlement Administrator will mail the payments to the Participating
5 Class Members, the payment for the attorneys' fees and costs to Class Counsel, any Service
6 Payment to the Class Representatives, the payment to the LWDA for PAGA penalties, and will
7 pay itself the Settlement Administration Costs.

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

26 75. No person shall have any claim against Defendants, Defendants' Counsel,
27 Plaintiff, Class Counsel, or the Settlement Administrator based on mailings, distributions,
28 payments, or reports made in accordance with or pursuant to this Agreement. This provision does

1 not, however, prevent a Party from seeking enforcement of this Agreement.

2 76. Without prejudice to any other remedies, the Settlement Administrator shall agree
3 to be responsible for any breach of its obligations (whether committed by the Settlement
4 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from
5 and against all liabilities, claims, causes of action, costs and expenses (including legal fees and
6 expenses) arising out of any breach committed by the Settlement Administrator or its agents.

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

8 77. Upon completion of confirmatory discovery, Plaintiff will move the Court for
9 Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
10 accomplishing the following:

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

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

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

17 (d) Preliminarily approving this Settlement; and

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

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

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

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

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

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

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

J. Voiding the Agreement

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

81. If ten percent (10%) or more of the Settlement Class Members timely submit a Request for Exclusion, Defendants shall have the option of terminating or modifying this Agreement without prejudice to its pre-settlement positions and defenses in the Action. If Defendants exercise such option under this paragraph, they shall be relieved of any obligation to pay the Settlement Amount or any other obligations from the Settlement by giving notice to Plaintiff's Counsel and the Settlement Administrator within ten (10) days of the Notice Response Deadline. If Defendants exercise their option under this paragraph, Defendants shall be solely responsible for all Settlement Administration Costs incurred.

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

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

K. Other Terms

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

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

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

10 87. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
11 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
12 such documents and to take such other action as may reasonably be necessary to implement the
13 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best
14 efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that
15 may become necessary by order of the Court, or otherwise, to effectuate this Settlement
16 Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement
17 Agreement, Class Counsel shall, with the assistance and cooperation of Defendants and
18 Defendants' Counsel, take all necessary steps to secure the Court's preliminary and final approval
19 of the settlement and the final entry of judgment.

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

24 89. No Admission. Defendants deny any and all liability to Plaintiff and/or any
25 Settlement Class Member in this Action, as to any and all causes of action that were asserted or
26 that might have been asserted in this Action. Nonetheless, Defendants wish to settle and
27 compromise the matters at issue in the Complaint to avoid further substantial expense and the
28 inconvenience and distraction of protracted and burdensome litigation. Defendants also have

1 taken into account the uncertainty and risks inherent in litigation, and without conceding any
 2 infirmity in the defenses that they have asserted or could assert against Plaintiff, have determined
 3 that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the
 4 terms and conditions set forth in this Agreement.

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

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

21 To the Settlement Class Members and Aggrieved Employees:

22 Mehrdad Bokhour
 23 *mehrdad@bokhourlaw.com*
 24 1901 Avenue of the Stars, Suite 450
 25 Los Angeles, California 90067
 Tel: (310) 975-1493; Fax: (310) 675-0861

Joshua Falakassa
josh@falakassalaw.com
 1901 Avenue of the Stars, Suite 450
 Los Angeles, California 90067
 Tel: (818) 456-6168; Fax: (888) 505-0868

26 To Defendants:

27 Jenn M. Protas
 28 *jenn.protas@hogeanton.com*

Laura C. Riparbelli
laura.riparbelli@hogefenton.com
55 South Market Street, Suite 900
San Jose, California 95113
Tel: (408) 947-2435; Fax: (408) 287-2583

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

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

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

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

96. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of

1 dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure
2 section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action
3 over all Parties to interpret, enforce, and effectuate the terms, conditions, intents, and obligations
4 of this Agreement.

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

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

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

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

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

25 102. Counterparts. This Settlement Agreement may be executed in counterparts, and
26 when each Party has signed and delivered at least one such counterpart, each counterpart shall be
27 deemed an original, and, when taken together with other signed counterparts, shall constitute one
28 fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties.

1 Electronic signatures shall have the same force and effect as an original.

2 **APPROVAL AND EXECUTION BY PARTIES:**

3 Dated: June __, 2022
4 6/27/2022

CLASS REPRESENTATIVE:

DocuSigned by:

C08C5F4576154DB...

Craig Ayotte

7 Dated: June 27, 2022

DEFENDANTS:

9 FRANK RIMERMAN + CO. LLP, FRANK, RIMERMAN
10 ADVISORS, LLC, FRANK, RIMERMAN
11 INFORMATION SECURITY, LLC



By Brian M. Kreischer, Managing Partner

1 **APPROVED AS TO FORM:**

2 **CLASS COUNSEL**

3 Dated: June __, 2022
4 6/27/2022

FALAKASSA LAW, P.C.

DocuSigned by:

Joshua Falakassa

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Joshua Falakassa
Attorneys for Plaintiff

8 Dated: June __, 2022
9 6/27/2022

BOKHOUR LAW GROUP, P.C.

DocuSigned by:

Mehrdad Bokhour

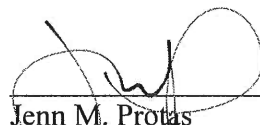
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Mehrdad Bokhour
Attorneys for Plaintiff

13 Dated: June 24, 2022

DEFENDANTS' COUNSEL:

HOGUE, FENTON, JONES & APPEL, INC.

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17 

Jenn M. Protas
Laura C. Ripabelli
Attorneys for Defendants,
Frank Rimerman + Co. LLP, Frank, Rimerman Advisors,
LLC, Frank, Rimerman Information Security, LLC