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

JOSE VENEGAS, on behalf of himself and all
others similarly situated,

Plaintiffs,

vs.

MARK BEAMISH WATERPROOFING, INC.,
a California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 30-2021-01228505
Related Case No. 30-2023-01352957

[Honorable Randall J. Sherman,
Department CX105]

**JOINT STIPULATION OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT AGREEMENT**

Complaint Filed: October 27, 2021
Trial Date: Not Set

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This Joint Stipulation of Class and Representative Action Settlement Agreement (“Settlement Agreement” or “Settlement” or “Agreement”) is made by and between Plaintiffs Jose Venegas and Malo Santos Colburn (“Plaintiffs”), as individuals and on behalf of all others similarly situated, and Defendant Mark Beamish Waterproofing, Inc. (“Defendant”). The Agreement refers to Plaintiffs and Defendant collectively as “Parties,” and individually as “Party.”

1. DEFINITIONS.

- 1.1. “Actions” means *Jose Venegas v. Mark Beamish Waterproofing, Inc.*, Superior Court of the State of California, County of Orange, Case Number 30-2021-01228505 and *Malo Santos Colburn v. Mark Beamish Waterproofing, Inc.*, Superior Court of the State of California, County of Orange, Case Number 30-2023-01352957.
- 1.2. “Administrator” means the neutral entity the Parties have agreed to appoint to administer the Settlement, Simpluris, Inc.
- 1.3. “Administration Expenses Payment” means the court-approved amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses, in accordance with its “not to exceed” bid, which will be submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means all persons who are employed or have been employed by Defendant in California as hourly non-exempt employees from February 8, 2021, through April 13, 2024.
- 1.5. “Class” means all persons who are employed or have been employed by Defendant in California as hourly non-exempt employees from February 9, 2021, through April 13, 2024.
- 1.6. “Class Counsel” means Bokhour Law Group, P.C., the Finkel Firm, and Moon Law Group, P.C.
- 1.7. “Class Counsel Fees Payment” means the court-approved amount allocated to Class Counsel for reimbursement of the reasonable fees incurred to prosecute the Actions, not to exceed \$233,333.33, or one third of the Gross Settlement Amount.

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- 1.8. “Class Counsel Expenses Payment” means the court-approved amount allocated to Class Counsel for reimbursement of the reasonable expenses incurred to prosecute the Actions, not to exceed \$30,000.00.
- 1.9. “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 Workweeks and PAGA Pay Periods.
- 1.10. “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.
- 1.11. “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 tracing, and direct contact by the Administrator with Class Members.
- 1.12. “Class Notice” means the court-approved Notice of Class and Representative Action Settlement and Final Approval Hearing, to be mailed to Class Members in English and Spanish, substantially in the form attached to this Agreement as **Exhibit A** and incorporated by reference into this Agreement.
- 1.13. “Class Period” means the period from February 8, 2021, through April 13, 2024.
- 1.14. “Class Representatives” means the named Plaintiffs in the Actions, Jose Venegas and Malo Santos Colburn.
- 1.15. “Class Representative Service Payments” means the court-approved payments to the Class Representatives for initiating and providing services in support of the Actions, not to exceed \$7,500.00 per payment.
- 1.16. “Court” means the Superior Court of the State of California, County of Orange.
- 1.17. “Defendant” means the named Defendant in the Actions, Mark Beamish Waterproofing, Inc.
- 1.18. “Defense Counsel” means Hunt Ortmann Palffy Nieves Darling & Mah, Inc.

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1.19. "Effective Date" means the date 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 date of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters the Judgment; (b) if one or more Participating Class Members object(s) to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur. However, Defendant shall not be required to fund any portion of the Gross Settlement Amount and the Administrator shall not distribute or pay any monies, unless and until all such appeals have been finally resolved or dismissed with prejudice.

1.20. "Final Approval Order" means the Court's Order Granting Final Approval of the Settlement.

1.21. "Final Approval Hearing" means the Court's Hearing on Plaintiffs' Motion for Final Approval of the Settlement.

1.22. "Final Judgment" means the Judgment entered by the Court upon granting Final Approval of the Settlement.

1.23. "Gross Settlement Amount" means \$700,000.00, the total amount Defendant agrees to pay under the Settlement, except as provided in Paragraph 7 below. The Gross Settlement Amount will pay the Individual Class Payments, Individual PAGA Payments, LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Expenses Payment, Class Representative Service Payments, and Administration Expenses Payment.

1.24. "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.

1.25. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties, allocated pursuant to Labor Code section 2699(i) and calculated

- according to the number of PAGA Pay Periods worked during the PAGA Period.
- 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled under California Labor Code (“Labor Code”) section 2699(i).
- 1.27. “LWDA PAGA Payment” means the LWDA’s 75% share of the PAGA Penalties, allocated pursuant to Labor Code section 2699(i).
- 1.28. “Net Settlement Amount” means the Gross Settlement Amount less the following court-approved payments: the Individual PAGA Payments, LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Expenses Payment, Class Representative Service Payments, and Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. “Non-Participating Class Member” means a 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 February 8, 2021, through April 13, 2024.
- 1.32. “PAGA” means the Private Attorneys General Act, Labor Code sections 2698, *et seq.*
- 1.33. “PAGA Notices” means Plaintiff Jose Venegas’ August 23, 2021 letter and Plaintiff Malo Santos Colburn’s February 8, 2022 letter to Defendant and the LWDA providing written notice pursuant to Labor Code section 2699.3(a).
- 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount in settlement of the Released PAGA claims, not to exceed \$40,000.00.
- 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. “Plaintiffs” means the named Plaintiffs in the Actions, Jose Venegas and Malo Santos Colburn.
- 1.37. “Preliminary Approval Order” means the Court’s Order Granting Preliminary Approval of the Settlement.

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- 1.38. “Released Class Claims” means the claims released as described in Paragraph 5.2.
- 1.39. “Released PAGA Claims” means the claims released as described in Paragraph 5.3.
- 1.40. “Released Parties” means: Defendant and each of its officers, directors, employees, and agents.
- 1.41. “Request for Exclusion” means a Class Member’s written request to be excluded from the Settlement. For the Request for Exclusion to be valid, it must (1) include the Class Member’s full name, address, telephone number, and signature, and a written statement requesting to be excluded from the Settlement; and (2) be faxed or mailed to the specified facsimile number or physical address of the Administrator on or before the Response Deadline. The date of the fax receipt confirmation or postmark will be the exclusive means of determining whether a Request for Exclusion has been timely submitted. A Class Member who does not submit a timely and valid Request for Exclusion from the Settlement will be deemed a Class Member and will be bound by all terms of the Settlement if it is granted Final Approval.
- 1.42. "Response Deadline" means sixty (60) calendar days after the Administrator mails the Class Notice to the Class Members and shall be the last date on which Class Members may: (a) fax or mail a Request for Exclusion from the Settlement; or (b) fax or mail an Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional fourteen (14) calendar days beyond the Response Deadline. The Response Deadline may also be extended by express agreement between Class Counsel and Defendant. Under no circumstances, however, will the Administrator have the authority to unilaterally extend the deadline for Class Members to submit a Request for Exclusion or Objection.
- 1.43. “Workweek” means any week in which a Class Member was engaged in any productive work activity for which they were paid as a non-exempt employee, not including paid time off or leaves of absence.

2. **RECITALS.**

- 2.1. On August 23, 2021, Plaintiff Jose Venegas submitted to the LWDA, and sent via certified mail to Defendant, a notice of Labor Code violations pursuant to Labor Code section 2699.3(a).
- 2.2. On October 27, 2021, Plaintiff Jose Venegas commenced the Action, *Jose Venegas v. Mark Beamish Waterproofing, Inc.*, Superior Court of the State of California, County of Orange, Case Number 30-2021-01228505, by filing a Class Action Complaint against Defendant, which alleged one cause of action for civil penalties under Labor Code sections 2698, et seq., or PAGA.
- 2.3. On February 8, 2022, Plaintiff Malo Santos Colburn submitted to the LWDA, and sent via certified mail to Defendant, a notice of Labor Code violations pursuant to Labor Code section 2699.3(a).
- 2.4. On February 9, 2022, Plaintiff Malo Santos Colburn commenced the Action, *Malo Santos Colburn v. Mark Beamish Waterproofing, Inc.*, Superior Court of the State of California, County of Contra Costa, Case Number MSC22-00271, by filing a Class Action Complaint against Defendant, which alleged seven causes of action for violation of Labor Code sections 201-204, 226, et seq., 512, 1194, et. seq., 1197, 1198, and 2802 and one cause of action for violation of California Business and Professions Code sections 17200, et seq.
- 2.5. On April 19, 2022, Plaintiff Malo Santos Colburn filed a First Amended Class and Representative Action Complaint against Defendant, which alleged a ninth representative cause of action for civil penalties under PAGA.
- 2.6. On April 12, 2023, Plaintiff Malo Santos Colburn and Defendant filed a Joint Stipulation for Change of Venue, as Plaintiffs and Defendant agreed the Actions were related and that was in the best interest of all Parties to consolidate the Actions.
- 2.7. On October 6, 2023, *Malo Santos Colburn v. Mark Beamish Waterproofing, Inc.* was transferred to the Superior Court of the State of California, County of Orange and issued the following Case Number: 30-2023-01352957.

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- 2.8. On December 19, 2023, the Superior Court of the State of California, County of Orange issued a Minute Order taking notice that the Actions were related.
- 2.9. On February 13, 2024, the Parties participated in an all-day mediation presided over by the Honorable Carl West (Ret.), which led to the Settlement.
- 2.10. Prior to mediation, Plaintiffs obtained, through informal discovery, in addition to other data and documents, a twelve percent (12%) sample of the time and corresponding payroll records of the Class and the employee handbooks policies in effect during the Class Period.
- 2.11. On March 15, 2024, the Parties fully executed a Memorandum of Understanding encompassing the terms agreed on at mediation.
- 2.12. Conditional Certification. The Parties stipulate and agree to the conditional class certification of the Actions for purposes of this Settlement only. Should for any reason the Settlement not become final and effective as herein provided, the conditional class certification shall immediately be dissolved without prejudice. The fact that the Parties were willing to stipulate to conditional class certification as part of the Settlement shall have no bearing on, and shall not be admissible in or considered in connection with, the issue of whether a class should be certified in a non-settlement context in the Actions and shall have no bearing on, and shall not be admissible or considered in connection with either (i) the issue of whether a class should be certified in any other lawsuit or (ii) the issue of whether Defendant is liable to Plaintiffs or any Class Member, other than according to the Settlement's terms. Defendant expressly reserves all rights to oppose class certification should this Settlement not become final and effective.
- 2.13. Investigation. The Parties have conducted significant investigation of the facts and law. Such discovery and investigation included interviews with the Class Representatives and other percipient witnesses as well as a review of documents and data necessary to calculate potential damages. Defendant produced a large volume of documents and data concerning the Class Members prior to a mediation session. Counsel for the Parties investigated the law as applied to the facts discovered regarding the alleged claims of the

Class Members and potential defenses thereto, and the damages claimed by the Class Members.

2.14. Defendant's Denial of Wrongdoing. Defendant denies and continues to deny each of the claims and contentions alleged by Class Members in the Action. Defendant asserted, and continues to assert, defenses thereto, and expressly denied and continues to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action. Defendant also denied and continues to deny, inter alia, all allegations contained in the Complaints including but not limited to the allegations that the Class Members have suffered damage; that Defendant in any way failed to pay Class Members for all hours worked; that Defendant violated any laws regarding minimum wage; that Defendant violated any laws regarding overtime compensation; that Defendant failed to timely pay Class Members all wages owed upon termination/resignation or otherwise when due; that Defendant failed to comply with the law with respect to itemized wage statements; that Defendant failed to reimburse expenses; that Defendant violated the law regarding meal and rest periods; that Defendant engaged in any unlawful, unfair or fraudulent business practices; that Defendant misclassified Class Members as independent contractors rather than employees, that Defendant engaged in any wrongful conduct as alleged in the Action; or that Class Members were harmed by the conduct alleged in the Action. Neither this Settlement, nor any of its terms or provisions, nor any of the negotiations connected with it, will be construed as an admission or concession by Defendant of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement, this Settlement and its terms and provisions will not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law. Nothing contained in this Agreement and no documents referred to herein and no action taken to carry out this Agreement may be construed or used as an

admission by or against the Defendant and Released Parties as to the merits or lack thereof of the claims asserted.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 7 below, Defendant will pay: (1) \$700,000.00 as the Gross Settlement Amount, and (2) any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments which shall be paid separately. Defendant has no obligation to pay the Gross Settlement Amount or any payroll taxes prior to the deadline stated in Paragraph 4.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval Order:

3.2.1. To Plaintiff: Class Representative Service Payments to the Class

Representatives of not more than \$7,500.00 per payment, in addition to the Individual Class Payments and Individual PAGA Payments the Class Representatives are entitled to receive as Participating Class Members and Aggrieved Employees. Defendant will not oppose Plaintiffs' request for Class Representative Service Payments that do not exceed this amount. Plaintiffs and/or Class Counsel will file a Motion for the Class Representative Service Payments no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves of Class Representative Service Payments that are less than the amounts requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments using IRS Form 1099 and within seven (7) business days of Defendant's funding of the first installment. Plaintiffs shall be

1 solely and legally responsible for paying any and all applicable taxes on these
2 payments and shall hold Defendant harmless from any claim or liability for
3 taxes, penalties, or interest arising as a result of the payments. Defendant makes
4 no representations as to the tax treatment or legal effect of the payments called
5 for herein, and Plaintiffs are not relying on any statement or representation by
6 Defendant or its counsel in this regard.

7 3.2.2. To Class Counsel: A Class Counsel Fees Payment not to exceed \$233,333.33,
8 or one third of the Gross Settlement Amount, and a Class Counsel Expenses
9 Payment not to exceed \$30,000.00. Defendant will not oppose Plaintiffs'
10 request for Class Counsel Fees and Expenses Payments that do not exceed these
11 amounts. Plaintiffs and/or Class Counsel will file a Motion for the Class
12 Counsel Fees and Expenses Payments no later than sixteen (16) court days prior
13 to the Final Approval Hearing. If the Court approves of Class Counsel Fees
14 and/or Expenses Payments that are less than the amounts requested, the
15 Administrator will allocate the remainder to the Net Settlement Amount.
16 Released Parties shall have no liability to Class Counsel or any other Plaintiffs'
17 Counsel arising from any claim to any portion of any Class Counsel Fee
18 Payment and/or Class Counsel Expenses Payment. The Administrator will pay
19 the Class Counsel Fees and Expenses Payments using one or more IRS 1099
20 Forms. Class Counsel assume full responsibility and liability for taxes owed on
21 the Class Counsel Fees and Expenses Payments. Class Counsel holds
22 Defendant harmless, and indemnifies Defendant, from any dispute or
23 controversy regarding any division or sharing of any of these Payments.

24 3.2.3. To the Administrator: An Administration Expenses Payment of not more than
25 \$9,000.00, except for a showing of good cause and as approved by the Court.
26 Plaintiffs and/or Class Counsel will file a Motion for the Administration
27 Expenses Payment no later than sixteen (16) court days prior to the Final
28 Approval Hearing. If the Court approves an Administration Expenses Payment

less than the amount requested, or if the Administration Expense Payment is less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. To the extent the actual Administration Expenses Payment is greater than \$9,000.00, such excess amount will be taken from the Gross Settlement Amount, subject to the Court's approval.

3.2.3.1. To Each Participating Class Member: The Administrator will calculate each Individual Class Payment 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. Non-Participating Class Members will not receive an Individual Class Payment. The Administrator will retain amounts equal to their Individual Class Payment in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.3.2. Tax Allocation of Individual Class Payments. Twenty percent (20%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for wages (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. Eighty percent (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"). 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 employee taxes owed on their Individual Class Payments.

3.2.4. To the LWDA and Aggrieved Employees: PAGA Penalties of not more than \$40,000.00 to be paid from the Gross Settlement Amount, with seventy-five percent (75%) (i.e., \$30,000.00) allocated to the LWDA PAGA Payment and twenty-five percent (25%) (i.e., \$10,000.00) allocated to the Individual PAGA Payments. If the Court approves PAGA Penalties less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. One hundred percent (100%) of each Individual PAGA Payment will be allocated as penalties. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. **SETTLEMENT FUNDING AND PAYMENTS.**

4.1. Funding of Gross Settlement Amount. The Gross Settlement Amount shall be funded in two installments. The first installment shall be comprised of half of the Gross Settlement Amount, or \$350,000.00, whichever is greater; and the second installment shall be comprised of half of the Gross Settlement Amount, or \$350,000.00, whichever is greater, and Defendant's share of payroll taxes on the entire Gross Settlement Amount. The first installment shall be paid no later than March 30, 2025, and the second installment shall be paid no later than September 30, 2025, in accordance with the Effective Date. Defendant shall pay the first and second installments by transmitting the funds to the Administrator. Defendant has no obligation to deposit the funds in a separate account prior to the deadlines set forth herein.

4.2. Payments from the Gross Settlement Amount. No later than fourteen (14) calendar days after Defendant funds the entire Gross Settlement Amount and the Effective Date, the

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1 Administrator shall mail checks for the Individual Class Payments, Individual PAGA
2 Payments, LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel
3 Expenses Payment, Class Representative Service Payments, and Administration
4 Expenses Payment. Disbursement of the Class Counsel Fees Payment and Class
5 Counsel Expenses Payment shall not precede disbursement of the Individual Class
6 Payments and Individual PAGA Payments.

7 4.2.1. The Administrator will issue checks for the Individual Class Payments and/or
8 Individual PAGA Payments and send them to the Class Members via First
9 Class U.S. Mail with postage prepaid. Before mailing any checks, the
10 Administrator must update the recipient's mailing addresses using the National
11 Change of Address Database. The face of each check shall prominently state the
12 date when the check will be voided. Each check will be voided 180 days after
13 the date of mailing ("void date"). The Administrator will cancel all checks not
14 cashed by the void date. The Administrator will send checks for Individual
15 Class Payments to all Participating Class Members, including those for whom a
16 Class Notice was returned undelivered. The Administrator will send checks for
17 Individual PAGA Payments to all Aggrieved Employees, including Non-
18 Participating Class Members who qualify as Aggrieved Employees and those
19 for whom a Class Notice was returned undelivered. The Administrator may
20 send Participating Class Members a single check combining the Individual
21 Class Payment and Individual PAGA Payment.

22 4.2.2. No later than fourteen (14) calendar days after receiving a returned check, the
23 Administrator must re-mail checks to the USPS forwarding address provided or
24 to an address ascertained through the Class Member Address Search for Class
25 Members whose checks are returned undelivered without a USPS forwarding
26 address. Thereafter, the Administrator need not take further steps to deliver
27 checks to Class Members whose re-mailed checks are returned as undelivered.
28 However, the Administrator shall promptly send a replacement check to any

Class Member whose original check was lost or misplaced and who requests the replacement prior to the void date.

4.2.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, or for any Class Member whose envelope is returned and no forwarding address can be located for the Class Member after reasonable efforts have been made, including, but not limited to, skip tracing, 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 section 384(b).

4.2.4. 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. Rather, it is the Parties' intention that this Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

5. **RELEASES OF CLAIMS.** As of the Effective Date and the date Defendant fully funds the entire Gross Settlement Amount and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments, Plaintiffs, Participating Class Members, Aggrieved Employees, and Class Counsel will release claims against all Released Parties as follows:

5.1. **Plaintiffs' Release.** Plaintiffs fully, knowingly, and voluntarily release and forever discharge the Released Parties from any and all claims, demands, rights, liabilities, and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, arising out of, relating to, or in connection with any act or omission by or on the part of any of the Released Parties allegedly committed or omitted that relates in

any way to their employment with the Released Parties including, but not limited to, (i) all claims based on violation of Labor Code sections 200, 201, 202, 203, 204, 208, 210, 218.5, 218.6, 221, 222, 223, 226, 226.2, 226.3, 226.7, 227.3, 246, 256, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, any California Industrial Commission Wage Order, California Code of Regulations, Title 8, Sections 11040, et seq., Business and Professions Code sections 17200, et seq., California Code of Civil Procedure section 1021.5; (ii) all claims for or related to alleged unpaid wages, minimum wages, regular rate of pay, hours worked, overtime or double time wages, bonus and incentive pay, sick pay, timely payment of wages at separation, wage statements, meal periods and meal period premiums, rest breaks and rest break premiums, unfair competition, unfair or unlawful business practices, and claims for statutory penalties based on the facts or claims alleged in the operative Complaints at any time during the Class Period; and (iii) all claims for lost wages and benefits, emotional distress, retaliation, punitive damages, and attorneys' fees and costs arising under federal, state, or local laws for discrimination, harassment, retaliation, and wrongful termination, such as, by way of example only, (as amended) 42 U.S.C. section 1981, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, Age Discrimination in Employment Act; California Fair Employment and Housing Act; the Older Workers Benefit Protection Act; the Employment Retirement Income Security Act of 1974, as amended; the Occupational Safety and Health Act, as amended; the Sarbanes-Oxley Act of 2002; the Family and Medical Leave Act of 1993, as amended; the Fair Labor Standards Act; the California Fair Employment and Housing Act – Cal. Gov't Code § 12900 et seq.; the California Family Rights Act – Cal. Govt. Code §12945.2 et seq.; the California Unruh Civil Rights Act – Civ. Code §51 et seq.; the California Whistleblower Protection Law – Cal. Lab. Code §1102-5(a) to (c); the California Occupational Safety and Health Act, as amended, California Labor Code § 6300 et seq., and any applicable regulations thereunder; the California Labor Code; the Labor Code Private Attorneys General Act of 2004 – Cal. Lab. Code § 2698 et seq.; California Labor Code § 132a; any

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1 other federal, state, or local civil employment law, statute, regulation, or ordinance
2 capable of being released by Plaintiffs ("Plaintiffs' Release").

3 5.1.1. This General Release includes any unknown claims that Plaintiffs do not know or
4 suspect to exist in their favor at the time of the General Release, which, if known
5 by them, might have affected their settlement with, and release of, the Released
6 Parties or might have affected their decision not to object to this Settlement or the
7 General Release.

8 5.1.2. With respect to the General Release, Plaintiffs stipulate and agree that, upon the
9 Effective Date and the date Defendant funds the first half of the Gross Settlement
10 Amount, they shall be deemed to have, and by operation of the Court's Final
11 Approval Order shall have, expressly waived and relinquished, to the fullest
12 extent permitted by law, the provisions, rights and benefits of Section 1542 of the
13 California Civil Code, or any other similar provision under federal or state law,
14 which provides:

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**
17 **favor at the time of executing the release, and that if known by**
him or her would have materially affected his or her settlement
with the debtor or Released Party.

18 5.1.3. Plaintiffs' Release excludes the release of claims not permitted by law.

19 5.2. Release by Participating Class Members: All Participating Class Members fully release
20 and discharge the Released Parties of the claims stated in the operative Complaints and
21 any claims based solely upon the facts in the operative Complaints, including (i) all
22 claims based on violation of Labor Code sections 200, 201, 202, 203, 204, 208, 210,
23 218.5, 218.6, 221, 222, 223, 226, 226.2, 226.3, 226.7, 227.3, 246, 256, 510, 512, 558,
24 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, any California
25 Industrial Commission Wage Order, California Code of Regulations, Title 8, Sections
26 11040, et seq., Business and Professions Code sections 17200, et seq., California Code of
27 Civil Procedure section 1021.5, and (ii) all claims for or related to alleged unpaid wages,
28 minimum wages, regular rate of pay, hours worked, overtime or double time wages,

1 bonus and incentive pay, sick pay, timely payment of wages at separation, wage
2 statements, meal periods and meal period premiums, rest breaks and rest break
3 premiums, unfair competition, unfair or unlawful business practices, and claims for
4 statutory penalties based on the facts or claims alleged in the operative Complaints at any
5 time during the Class Period (collectively, “Released Class Claims”).

6 5.2.1. The Participating Class Members’ Release excludes the release of claims not
7 permitted by law.

8 5.3. Release by Aggrieved Employees: All Aggrieved Employees fully release and discharge
9 the Released Parties of the PAGA claims that Plaintiffs allege against the Released
10 Parties based on the facts stated in the operative Complaints and in Plaintiffs’ PAGA
11 Notices, including (i) all PAGA claims for civil penalties premised upon Labor Code
12 sections 200, 201, 202, 203, 204, 208, 210, 218.5, 218.6, 221, 222, 223, 226, 226.2,
13 226.3, 226.7, 227.3, 246, 256, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197,
14 1197.1, 1198, and 1199, et seq. and any California Industrial Commission Wage Order,
15 and (ii) all other claims for civil penalties recoverable under the Private Attorneys
16 General Act, California Labor Code sections 2698, et seq., based on the facts or claims
17 alleged in the operative Complaints at any time during the PAGA Period (collectively,
18 “Released PAGA Claims”).

19 5.3.1. The Released PAGA Claims do not release any Aggrieved Employees’ claims
20 for wages or statutory penalties, and the Aggrieved Employees may not opt out
21 of the Released PAGA Claims.

22 **6. SETTLEMENT ADMINISTRATION.**

23 6.1. Selection of Administrator. The Parties have jointly selected Simpluris, Inc. to serve as
24 the Administrator and verified that, as a condition of appointment, Simpluris, Inc., agrees
25 to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this
26 Agreement in exchange for the Administration Expenses Payment. The Parties and their
27 Counsel represent that they have no interest or relationship, financial or otherwise, with
28 the Administrator other than a professional relationship arising out of prior experiences

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administering settlements.

6.2. Class Data. No later than fourteen (14) calendar 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 purposes of the Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under the Settlement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted Class Member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

6.3. Notice of Receipt of Class Data. No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and PAGA Pay Periods in the Class Data.

6.4. Notice to Class Members. No later than fourteen (14) calendar days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice in English and Spanish, substantially in the form attached to this Agreement as **Exhibit A**. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payments payable to the Class Member and/or Aggrieved Employee, and the number of Workweeks and PAGA Pay Periods used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

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1 6.5. Remailing of Class Notice. No later than three (3) business days after its receipt of any
2 Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the
3 Class Notice using any forwarding address provided by USPS. If USPS does not provide
4 a forwarding address, the Administrator shall conduct a Class Member Address Search
5 and re-mail the Class Notice to the most current address obtained. The Administrator has
6 no obligation to make further attempts to locate or send the Class Notice to Class
7 Members whose Class Notice is returned by USPS a second time.

8 6.5.1. The deadlines for Class Members' written objections, Challenges to Workweeks
9 and/or PAGA Pay Periods, and Requests for Exclusion will be extended an
10 additional fourteen (14) calendar days beyond the sixty (60) calendar days
11 otherwise provided in the Class Notice for all Class Members whose notice is re-
12 mailed. The Administrator will inform the Class Member of the extended
13 deadline with the re-mailed Class Notice.

14 6.5.2. If the Administrator, Defendant, Defense Counsel, or Class Counsel is contacted
15 by or otherwise discovers any persons who believe they should have been
16 included in the Class Data and should have received Class Notice, the Parties will
17 expeditiously meet and confer in person or by telephone, and in good faith, in an
18 effort to agree on whether to include them as Class Members. If the Parties agree,
19 such persons will be Class Members entitled to the same rights as other Class
20 Members, and the Administrator will send, via email or overnight delivery, a
21 Class Notice requiring them to exercise options under this Agreement no later
22 than fourteen (14) calendar days after receipt of Class Notice, or the deadline
23 dates in the Class Notice, whichever is later.

24 6.6. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly
25 review on a rolling basis Requests for Exclusion to ascertain their validity. No later than
26 five (5) days after the expiration of the deadline for submitting Requests for Exclusion,
27 the Administrator shall email a list to Class Counsel and Defense Counsel containing (a)
28 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).

6.7. 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 PAGA 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.

6.8. 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. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

6.9. Administrator’s Declaration. No later than fourteen (14) calendar days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel (i) a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of the Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written Objections; and (ii) the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

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6.10. Final Report by Settlement Administrator. No later than fourteen (14) calendar days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fourteen (14) calendar days before any deadline set by the Court, the Administrator will prepare and submit to Class Counsel a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

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

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

6.13. 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, Class Notice, Motion for Final Approval, Motion for Class Counsel Fees Payment, Class Counsel Expenses Payment, and Class Representative Service Payments, and Final Approval and Judgment. The Administrator will also maintain and monitor an email address and toll-free telephone number to receive Class Member calls, faxes and emails.

6.14. Class Members' Options.

6.14.1. Requests for Exclusion (Opt-Outs). Each Class Member shall have sixty (60) calendar days after the Administrator mails the Class Notice (plus an additional fourteen (14) calendar days for Class Members whose Class Notice is re-mailed) to exclude themselves from the Settlement. A Class Member may exclude

1 himself or herself from the Settlement by sending a Request for Exclusion to the
2 Administrator. For the Request for Exclusion to be valid, it must (1) include the
3 Class Member's full name, address, telephone number, and signature, and a
4 written statement requesting to be excluded from the Settlement; and (2) be faxed
5 or mailed to the specified facsimile number or physical address of the
6 Administrator on or before the Response Deadline. The date of the fax receipt
7 confirmation or postmark will be the exclusive means of determining whether a
8 Request for Exclusion has been timely submitted. A Class Member who does not
9 submit a timely and valid Request for Exclusion from the Settlement will be
10 deemed a Class Member and will be bound by all terms of the Settlement if it is
11 granted Final Approval. If a Class Member's Request for Exclusion is defective
12 as to the requirements listed herein, that Class Member will be given an
13 opportunity to cure the defect(s). The Administrator will mail the Class Member
14 a cure letter within three (3) business days of receiving the defective submission
15 to advise the Class Member that his or her submission is defective and that the
16 defect must be cured to render the Request for Exclusion valid. The Class
17 Member will have until the later of (a) the Response Deadline or (b) fourteen (14)
18 calendar days from the date of the cure letter, whichever date is later, to postmark
19 or fax a revised Request for Exclusion. The Administrator's determination of
20 authenticity shall be final and not appealable or otherwise susceptible to
21 challenge.

22 6.15. Challenges to Calculation of Workweeks. Each Class Member shall have sixty (60)
23 calendar days after the Administrator mails the Class Notice (plus an additional fourteen
24 (14) calendar days for Class Members whose Class Notice is re-mailed) to challenge the
25 number of Workweeks and PAGA Pay Periods allocated to the Class Member and/or
26 Aggrieved Employee in the Class Notice. A Class Member and/or Aggrieved Employee
27 may challenge the allocation by communicating with the Administrator via fax or mail
28 on or before the Response Deadline. The date of the postmark or fax receipt confirmation

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will be the exclusive means to determine whether a challenge to calculation of Workweeks and/or Pay Periods has been timely submitted. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The 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 of the challenges. All such challenges are to be resolved no later than fourteen (14) calendar days after the Response Deadline.

6.16. Objections to Settlement. Each Participating Class Members shall have sixty (60) calendar days after the Administrator mails the Class Notice (plus an additional fourteen (14) calendar days for Class Members whose Class Notice is re-mailed) to 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 Payments. Only Participating Class Members may send written objections to the Administrator. To object, Participating Class Members may fax or mail his or her objection, or in the alternative, appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. For the written Objection to be valid, it must: (1) contain the objecting Class Member's full name and current address, as well as contact information for any attorney representing the objecting Class Member, if any, for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be faxed or postmarked no later than the Response Deadline.

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1 6.17. Every Class Member who does not submit a timely and valid Request for Exclusion is
2 deemed to be a Participating Class Member under this Agreement, entitled to all benefits
3 and bound by all terms and conditions of the Settlement, including the Participating
4 Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless of
5 whether the Participating Class Member actually receives the Class Notice or objects to
6 the Settlement.

7 6.18. Every Class Member who submits a valid and timely Request for Exclusion is a Non-
8 Participating Class Member and shall not receive an Individual Class Payment or have
9 the right to object to the class action components of the Settlement. Because future
10 PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-
11 Participating Class Members who are Aggrieved Employees are deemed to release the
12 claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual
13 PAGA Payment.

14 **7. ESCALATOR CLAUSE**

15 Based on its records, Defendant estimates that, as of the date of this Agreement, there are 25,160
16 total Workweeks from February 8, 2021, to February 13, 2024. If the actual number of total Workweeks
17 from February 8, 2021, to April 13, 2024 exceeds 25,160 by more than ten percent (10%), i.e., exceeds
18 27,676, Defendant, at its sole discretion, may either: (1) pay the pro rata percentage increase in excess of
19 ten percent (10%) of the Gross Settlement Amount to include the additional workweeks, e.g., an eleven
20 percent (11%) increase in Workweeks would result in a one percent (1%) increase in the Gross
21 Settlement Amount; or (2) reduce the Class Period to the date that 27,676 workweeks are met, but not
22 exceeded.

23 **8. DEFENDANT'S RIGHT TO WITHDRAW.**

24 If the number of valid Requests for Exclusion identified in the Exclusion List exceeds ten
25 percent (10%) of the total of all Class Members, Defendant may, but is not obligated to, elect to
26 withdraw from the Settlement within fourteen (14) calendar days after expiration of the Response

27 Deadline. If Defendant elects to withdraw from the Settlement, Defendant must notify Class Counsel
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and the Court of its decision no later than fourteen (14) calendar days after expiration of the Response

Deadline, and Defendant will be responsible for paying all settlement administration expenses incurred to that point. Further, the Settlement shall be void ab initio, have no force or effect whatsoever, and neither Party will have any further obligation to perform under this Agreement, except as provided in this Paragraph.

9. MOTION FOR FINAL APPROVAL.

No later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiffs 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 section 2699(l) and a Proposed Final Approval Order and Judgment (collectively “Motion for Final Approval”).

9.1. 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.

9.2. 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 obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Counsel Fees Payment, Class Counsel Expenses Payment, Class Representative Service Payments, and/or Administration Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

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

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1 9.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
2 conditions of this Agreement, specifically including the Class Counsel Fees Payment and
3 Class Counsel Expenses Payment reflected set forth in the instant Settlement, the Parties,
4 their respective counsel, and all Participating Class Members waive all rights to appeal
5 from the Judgment, including all rights to post-judgment and appellate proceedings, the
6 right to file motions to vacate judgment, motions for new trial, extraordinary writs, and
7 appeals. The waiver of appeal does not include any waiver of the right to oppose such
8 motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to
9 perform under this Agreement will be suspended until such time as the appeal is finally
10 resolved and the Judgment becomes final, except as to matters that do not affect the
11 amount of the Net Settlement Amount.

12 9.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
13 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
14 material modification of this Agreement (including, but not limited to, the scope of
15 release to be granted by Class Members), this Agreement shall be null and void. The
16 Parties shall nevertheless expeditiously work together in good faith to address the
17 appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing,
18 on a 50-50 basis, any additional administration expenses reasonably incurred after
19 remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the
20 Class Representative Service Payments or any payments to Class Counsel shall not
21 constitute a material modification of the Judgment within the meaning of this paragraph,
22 as long as the Gross Settlement Amount remains unchanged.

23 **10. AMENDED JUDGMENT.**

24 If any amended judgment is required under Code of Civil Procedure section 384, the Parties will
25 work together in good faith to jointly submit a proposed amended judgment.

26 **11. ADDITIONAL PROVISIONS.**

27 11.1. Entire Agreement. This Agreement and any attached Exhibits constitute the entirety of
28 the Parties' settlement terms.

1 11.2. No Admission of Liability. The Parties enter into this Agreement to resolve the dispute
2 that has arisen between them and to avoid the burden, expense, and risk of continued
3 litigation. In entering into this Agreement, Defendant does not admit, and specifically
4 denies, it has violated any federal, state, or local law; violated any regulations or
5 guidelines promulgated pursuant to any statute or any other applicable laws, regulations
6 or legal requirements; breached any contract; violated or breached any duty; engaged in
7 any misrepresentation or deception; or engaged in any other unlawful conduct with
8 respect to their employees. Neither this Agreement, nor any of its terms or provisions,
9 nor any of the negotiations connected with it, shall be construed as an admission or
10 concession by Defendant of any such violations or failures to comply with any applicable
11 law. Except as necessary in a proceeding to enforce the terms of this Agreement, this
12 Agreement and its terms and provisions shall not be offered or received as evidence in
13 any action or proceeding to establish any liability or admission on the part of Defendant
14 or to establish the existence of any condition constituting a violation of, or a non-
15 compliance with, federal, state, local or other applicable law. If Final Approval does not
16 occur, the Parties agree that this Agreement is void, but remains protected by California
17 Evidence Code section 1152.

18 11.3. Class Certification or Representative Manageability for Other Purposes. The Parties
19 agree to stipulate to class certification only for purposes of the Settlement. If, for any
20 reason, the Settlement is not approved, the stipulation to certification will be void. If, for
21 any reason the Court does not grant Preliminary Approval, Final Approval or enter
22 Judgment, Defendant reserves the right to contest certification of any class for any
23 reason, Defendant reserves all available defenses to the claims in the Action, Plaintiffs
24 reserve the right to move for class certification on any grounds available, and Plaintiffs
25 reserve the right to contest Defendant's defenses. The Settlement, this Agreement, and
26 the Parties' willingness to settle the Action will have no bearing on, and will not be
27 admissible in connection with any litigation, except for proceedings to enforce or
28 effectuate the Settlement and this Agreement.

- 11.4. Interim Stay of Proceedings. The Parties agree to hold all proceedings and deadlines in the Action, except such proceedings necessary to implement and complete the Settlement, in abeyance pending the Preliminary and Final Approval Hearings to be conducted by the Court. Said stay shall terminate if and when (1) the Court permanently denies approval (preliminary or final) of the Settlement or (2) the Court issues an order terminating the stay.
- 11.5. No Press Releases/Advertisements. Neither Plaintiffs nor Plaintiffs' Counsel shall issue any press release or announcement of any kind related in any way to the Settlement. Plaintiffs and Class Counsel agree to limit their statements regarding the terms of the Settlement, whether oral, written, or electronic (including the world wide web), to say the Class Action has been resolved and that Plaintiffs and Class Counsel are satisfied with the Settlement terms. Nothing in this Section is intended to interfere with Class Counsel's duties and obligations to faithfully discharge their duties as Class Counsel, including but not limited to: (1) as required by law; (2) as required under the terms of the Settlement; and/or (3) as required under counsel's duties and responsibilities as Class Counsel. This Settlement shall not be advertised or mentioned on any source, including Plaintiffs' Counsel's personal or firm website.
- 11.6. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Agreement after arm's-length negotiations and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.
- 11.7. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

- 11.8. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 11.9. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this 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.
- 11.10. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.
- 11.11. Waiver. No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.
- 11.12. 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.

- 11.13. 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.
- 11.14. No Tax Advice. Neither Plaintiffs, 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.
- 11.15. 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.
- 11.16. Agreement Binding on Successors and Assigns. This Agreement will be binding upon, and inure to the benefit of, the successors or assigns of each of the Parties.
- 11.17. 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.
- 11.18. 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.
- 11.19. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 11.20. Use and Return of Class Data. Information provided to Class Counsel pursuant to Evidence Code section 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. No later than ninety (90) days

1 after the date when the Court discharges the Administrator's obligation to provide a
2 Declaration confirming the final pay out of all Settlement funds, Plaintiffs shall destroy,
3 all paper and electronic versions of Class Data received from Defendant unless, prior to
4 the Court's discharge of the Administrator's obligation, Defendant makes a written
5 request to Class Counsel for the return, rather than the destructions, of Class Data.

6 11.21. Headings. The descriptive heading of any section or paragraph of this Agreement is
7 inserted for convenience of reference only and does not constitute a part of this
8 Agreement.

9 11.22. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall
10 be to calendar days. In the event any date or deadline set forth in this Agreement falls on
11 a weekend or federal legal holiday, such date or deadline shall be on the first business
12 day thereafter.

13 11.23. Notice. All notices, demands or other communications between the Parties in connection
14 with this Agreement will be in writing and deemed to have been duly given as of the
15 third business day after mailing by United States mail, or the day sent by email or
16 messenger, addressed as follows:

17 To Plaintiffs:

18 BOKHOUR LAW GROUP P.C.
19 Mehrdad Bokhour
20 1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Telephone: (909) 317-3443

21 THE FINKEL FIRM
22 Jake Finkel
23 3470 Wilshire Boulevard, Suite 830
Los Angeles, California 90005
Telephone: (213) 787-7411

24 MOON LAW GROUP, P.C.
25 Kane Moon
26 Allen Feghali
27 Jacquelyne VanEmmerik
28 725 South Figueroa Street, 31st Floor
Los Angeles, California 90017
Telephone: (213) 232-3128

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To Defendant:

HUNT ORTMANN PALFFY
NIEVES DARLING & MAH, INC.
JoLynn M. Scharrer
Emily Zung Manninger
301 North Lake Avenue, 7th Floor
Pasadena, California 91101-1807
Telephone: (626) 440-5200

11.24. 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.

11.25. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, intend that this Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law. Plaintiffs, and not their representative(s), must personally execute this Agreement. An authorized officer of Defendant must execute this Agreement on behalf of Defendant. This Agreement shall become binding and enforceable pursuant to California Code of Civil Procedure section 664.6.

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.

Signatures on following page.

Plaintiffs & Class Representatives:

Dated: , 2024

By: _____
Plaintiff, Jose Venegas

Dated: 7/3/2024 , 2024

By: _____
Plaintiff, Malo Santos Colburn

Plaintiffs' Counsel:

Dated: , 2024

BOKHOUR LAW GROUP P.C.

By: _____
Mehrdad Bokhour
Attorneys for Plaintiff, *Jose Venegas*

Dated: , 2024

THE FINKEL FIRM

By: _____
Jake Finkel
Attorneys for Plaintiff, *Jose Venegas*

Dated: July 3 , 2024

MOON LAW GROUP, P.C.

By: _____
Kane Moon
Allen Feghali
Jacquelyne VanEmmerik
Attorneys for Plaintiff, *Malo Santos Colburn*

Defendant:

Dated: , 2024

On behalf of Defendant, *Mark Beamish Waterproofing, Inc.*

By: _____
Print Name

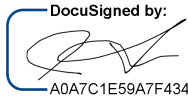
Signature

Title

1574580.1 JMS 7069.046

Plaintiffs & Class Representatives:

Dated: 7/7/2024 , 2024

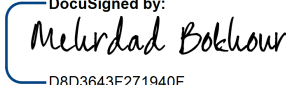
By: 
A0A7C1E59A7F434...
Plaintiff, Jose Venegas

Dated: , 2024

By: _____
Plaintiff, Malo Santos Colburn

Plaintiffs' Counsel:

Dated: 7/2/2024 , 2024

BOKHOUR LAW GROUP P.C.
By: 
D8D3643F271940F...
Mehrdad Bokhour
Attorneys for Plaintiff, Jose Venegas

Dated: 7/1/2024 , 2024

THE FINKEL FIRM
By: 
39EA0BABD22841A...
Jake Finkel
Attorneys for Plaintiff, Jose Venegas

Dated: , 2024

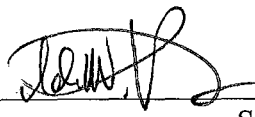
MOON LAW GROUP, P.C.
By: _____
Kane Moon
Allen Feghali
Jacquelyne VanEmmerik
Attorneys for Plaintiff, Malo Santos Colburn

Defendant:

Dated: June 17 , 2024

On behalf of Defendant, Mark Beamish Waterproofing, Inc.

By: ADAM W. BEAMISH
Print Name


Signature

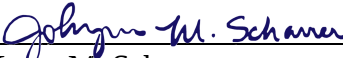
PRESIDENT
Title

1574580.1 JMS 7069.046

Defendant's Counsel:

Dated: June 17, 2024

HUNT ORTMANN PALFFY NIEVES DARLING &
MAH, INC.

By: 
JoLynn M. Scharrer
Emily Zung Manninger
Attorneys for Defendant, *Mark Beamish*
Waterproofing, Inc.

1574580.1 JMS 7069.046