

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 Jeffrey Ellingson, individually and on behalf of all others similarly  
4 situated, and Defendant Mueller Nicholls, and is approved by their respective counsel of record,  
5 subject to the terms and conditions hereof and the Court's approval.

6 **A.     Definitions**

7                    1.        "Action" or "Lawsuit" means and refers to the case entitled *Jeffrey Ellingson v.*  
8 *Mueller Nicholls, Inc.*, Case No. RG21114800, filed in Alameda Superior Court.

9                    2.        "Aggrieved Employees" include all persons who are or were previously employed  
10 by Defendant in California classified as a non-exempt or hourly employee at any time from  
11 September 28, 2020 through July 1, 2022.

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

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

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

22                   6.        "Class Data" means a complete list of all Settlement Class Members that  
23 Defendant will diligently and in good faith compile from its records and provide to the Settlement  
24 Administrator on one spreadsheet and shall include the Settlement Class Members' full names;  
25 last known addresses; telephone numbers; Social Security Numbers; dates of employment and/or  
26 number of Workweeks as non-exempt or hourly employees of Defendant during the Class Period  
27 and the PAGA Period for each Settlement Class Member; and the amount paid to any Settlement  
28 Class Members during a Pick Up Stix Campaign conducted in May-June 2022.

1           7.     “Class Period” and “Class Release Period” shall mean October 4, 2017 through  
2 July 1, 2022.

3           8.     “Class Representative” or “Plaintiff” means and refers to Jeffrey Ellingson.

4           9.     “Complaint” refers to the First Amended Complaint filed in the Alameda County  
5 Superior Court action entitled *Jeffrey Ellingson v. Mueller Nicholls*, Case No. RG21114800.

6           10.    “Court” means the California Superior Court, County of Alameda or any Court of  
7 competent jurisdiction.

8           11.    “Defendant” means and refers to Mueller Nicholls, Inc.

9           12.    “Defendant’s Counsel” or “Defense Counsel” mean and refer to Joseph R. Lordan  
10 and Sumy Kim of Lewis Brisbois Bisgaard and Smith.

11          13.    “Effective Date” means the latest of the following dates: (i) if no Class Member  
12 timely and properly intervenes or files a motion to vacate the judgment approving the Settlement  
13 Agreement under Code of Civil Procedure § 663, the date the Court enters an order granting Final  
14 Approval of the Settlement Agreement; (ii) if a Class Member intervenes or files a motion to  
15 vacate the judgment approving the Settlement Agreement, sixty-one (61) calendar days following  
16 the date the Court enters an order granting final approval, assuming no appeal is filed; or (iii) if a  
17 Class Member intervenes or files a motion to vacate the judgment approving the Settlement  
18 Agreement, and if a timely appeal is filed, the date of final resolution of that appeal (including  
19 any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of  
20 the Settlement.

21          14.    “Final” means that the Settlement has been granted “Final Approval” by the Court  
22 and the “Effective Date” has occurred.

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

27          16.    “Individual Settlement Amount” shall have the meaning ascribed to it in Paragraph  
28 47(d) below.

1           17.     “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 47(c)  
2 below.

3           18.     “Notice” means the notice of the proposed settlement of class action and PAGA  
4 Settlement and setting of a Final Approval Hearing that will be sent to the Settlement Class  
5 Members.

6           19.     “Notice Response Deadline” is 45 calendar days from the date the Notice is mailed  
7 to the Settlement Class Members.

8           20.     “Objecting Settlement Class Member” means a Settlement Class Member, other  
9 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with  
10 respect to the Class Claims pursuant to Paragraph 68(a) below.

11           21.     “PAGA” shall refer to the California Labor Code Private Attorneys General Act  
12 of 2004, California Labor Code Sections 2698-2699.5.

13           22.     “PAGA Claims” or “Released PAGA Claims” shall include any and all claims for  
14 civil penalties pursuant to PAGA based on the allegations stated in the PAGA Notice and that  
15 were pled in the operative First Amended Complaint based on the facts alleged therein, including  
16 claims for meal and rest break violations, failure to reimburse business expenses, failure to  
17 provide accurate itemized wage statements, failure to timely pay all wages upon separation of  
18 employment, and unfair and unlawful business practices.

19           23.     “PAGA Notice” shall refer to the notice sent by Plaintiff, by and through counsel,  
20 on or about September 28, 2021, to the LWDA and to Defendant, alleging that Defendant engaged  
21 in violations of the California Labor Code and California Wage Order(s).

22           24.     “PAGA Period” and “PAGA Release Period” shall mean September 28, 2020  
23 through July 1, 2022.

24           25.     “Participating Class Member” means any and all Settlement Class Members who  
25 do not opt-out of the settlement of the Class Claims by timely submitting valid Requests for  
26 Exclusion.

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

1           27.     “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           28.     “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           29.     “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           30.     “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           31.     “Released Parties” shall refer to Defendant, together with its current and former  
17 officers, directors, members, managers, shareholders, agents, parents, principals, heirs, insurers,  
18 subsidiaries, affiliates, operators, partners, attorneys, successors, and assignees.

19           32.     “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 68(a)  
20 below.

21           33.     “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           34.     “Settlement Administration Costs” means the actual and direct fees and expenses  
25 reasonably incurred by the Settlement Administrator for administering this Settlement, including,  
26 but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting,  
27 due 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.

35. “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 perform all duties relating to the administration of the Settlement as described in this Agreement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs shall be paid from the Settlement Amount, including, if necessary, any such costs in excess of the amount represented by the Settlement Administrator as being the maximum costs necessary to administer the Settlement.

36. “Settlement Amount” or “Gross Settlement Amount” shall have the meaning ascribed to it in Paragraph 47(a) below.

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

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

39. “Workweeks” 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 Defendant as a non-exempt employee in California and worked at least one shift during the workweek for or on behalf of Defendant for which a prior release of claims has not been signed. Workweeks will be calculated based on Defendant’s business records. This information shall be treated as confidential. Workweeks of Non-Participating Class Members will not be included in the total number of Workweeks that are reported to the Settlement Administrator for purposes of calculating and distributing Individual Settlement Payments to Participating Class Members. The number of full workweeks that a Participating Class Member was on a leave of absence, sick time, or vacation during the Class Period shall be excluded from the total number of Workweeks.

1 **B. General Terms**

2 40. On or about September 28, 2021, Plaintiff filed a class action complaint in the  
3 Court against Defendant, including allegations of: (1) meal period violations, (2) rest period  
4 violations, (3) waiting time penalties, (4) wage statement violations, (5), failure to reimburse  
5 business expenses, and (6) unfair competition. On or about December 2, 2021, Plaintiff filed a  
6 First Amended Complaint to add a cause of action for PAGA penalties based on the foregoing  
7 Labor Code violations.

8 41. Defendant denies Plaintiff's claims and allegations and contend that the Action is  
9 not suitable for class certification and/or representative treatment.

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

12 43. The Parties have conducted a thorough investigation into the facts of the Action.  
13 This includes conducting extensive exchange of informal discovery, including Defendant's  
14 written policies and practices and the production of payroll and timekeeping records for  
15 Settlement Class Members and Aggrieved Employees. Class Counsel is both knowledgeable  
16 about and has done extensive research with respect to the applicable law and potential defenses  
17 to the claims of the Settlement Class Members and Aggrieved Employees. Class Counsel has  
18 diligently pursued an investigation of the Class Members' claims against Defendant. Based on  
19 the foregoing data and on their own independent investigation and evaluation, Class Counsel is  
20 of the opinion that the settlement with Defendant for the consideration and on the terms set forth  
21 in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the  
22 Settlement Class Members and Aggrieved Employees in light of all known facts and  
23 circumstances, including the risk of significant delay and uncertainty associated with litigation,  
24 various defenses asserted by Defendant, and numerous potential appellate issues.

25 44. On June 1, 2022, the Parties participated in mediation before Hon. Carl J. West  
26 (Ret.), a highly experienced class action mediator. After a full-day mediation and subsequent  
27 negotiations, the Parties reached a settlement.

28 / / /

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

5           46.     Stipulation for Class Certification and Representative Treatment. For settlement  
6 purposes only, Defendant will stipulate that the Settlement Class Members described herein who  
7 do not Request Exclusion from the Settlement Class may be conditionally certified as a settlement  
8 class and that the Aggrieved Employees are appropriate for representative treatment for purposes  
9 of settlement. This stipulation to certification and representative treatment is in no way an  
10 admission that class action certification and/or representative treatment is proper and shall not be  
11 admissible in this or in any other action except for the sole purposes of enforcing this Agreement.  
12 Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to  
13 class certification and representative treatment as part of the Settlement shall become null and  
14 void *ab initio* and shall have no bearing on and shall not be admissible in connection with the  
15 issue of whether or not class certification and/or representative treatment would be appropriate in  
16 a non-settlement context. Defendant expressly reserve their right and declare that they will  
17 continue to oppose class certification, representative treatment, and the substantive merits of the  
18 case should the Court fail to issue Final Approval. Plaintiff expressly reserves his rights and  
19 declares that he will continue to pursue class certification and representative treatment and a trial  
20 should the Court fail to issue Final Approval.

21 **C.     Terms of Settlement**

22           47.     The financial terms of the Settlement are as follows:

23           (a)     Gross Settlement Amount: The Parties agree to settle this Action for Three  
24 Hundred Ninety-Five Thousand Dollars (\$395,000) which will be paid in addition to the Seventy  
25 Thousand (\$70,000) previously paid to approximately 62 class members for a maximum  
26 Settlement Amount of Four Hundred Sixty-Five Thousand Dollars (\$465,000) ("the Settlement  
27 Amount"). The Settlement Amount is the maximum amount that will be paid by Defendant, and  
28 includes Individual Settlement Amounts, attorneys' fees of Class Counsel, costs and expenses,

1 the Service Payment to Class Representative, all Settlement Administration Costs, and payment  
2 to the Labor Workforce Development Agency (LWDA) for PAGA penalties. Defendant shall  
3 separately pay the employers' share of applicable payroll taxes.

4 (b) The Settlement is based on Defendant's representation that there are  
5 approximately 13,360 Workweeks included in the Class Period. In the event that the actual  
6 number of Workweeks by all Settlement Class Members during this period increases by 10% or  
7 more, then Defendant shall increase the QSF on a proportional basis in excess of 10 percent (i.e.,  
8 if there were an eleven percent (11%) increase in the number of Workweeks, then Defendant will  
9 increase the QSF by one percent (1%)).

10 (c) Net Settlement Amount: The "Net Settlement Amount" is defined as the  
11 Settlement Amount less attorneys' fees and litigation costs as approved and awarded by the Court,  
12 the Service Payment to Class Representative as approved and awarded by the Court, the  
13 Settlement Administration Costs, as approved and awarded by the Court, and the Twenty Five  
14 Thousand Dollars (\$25,000.00) allocated to payment for PAGA penalties as described in  
15 paragraph 41 below. In the event that the Court reduces the attorneys' fees and litigation costs or  
16 Service Awards, Settlement Administration Costs, or either increases or decreases the amount  
17 allocated to PAGA penalties, the Net Settlement Sum shall be increased or decreased accordingly.

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

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

1 which a Form 1099 will be issued by the Settlement Administrator.

2           ii.     Class Amount: The Net Settlement Amount shall be allocated to each  
3 Participating Class Member based on his/her/their proportionate Workweeks during the Class  
4 Period. This is determined by multiplying the Net Settlement Amount by a fraction, the numerator  
5 of which is the Participating Class Member's total Workweeks during the Class Period, and the  
6 denominator of which is the total Workweeks by all Participating Class Members during the Class  
7 Period. To the extent the Participating Class Member previously received a payment as a result  
8 of the Pick Up Stix Campaign conducted in May-June 2022 in exchange for signing a release  
9 agreement, the Participating Class Member's Individual Settlement Payment shall be reduced by  
10 the amount already paid to the Participating Class Member. If there are any timely submitted  
11 Requests for Exclusion, the Settlement Administrator shall proportionately increase the  
12 Individual Settlement Amounts for each Participating Class Member so that the amount actually  
13 distributed to Participating Class Members equals 100% of the Net Settlement Amount allocated  
14 toward Released Class Claims.

15           (e)     Allocation of Individual Settlement Amounts: The Individual Settlement Amounts  
16 will be allocated for tax purposes based on the allegations in the Action as follows: twenty percent  
17 (20%) will be paid as wages subject to withholding of all applicable local, state, and federal taxes;  
18 and eighty percent (80%) will be paid as interest and as civil penalties (pursuant to, e.g., California  
19 Labor Code sections 203, 226) from which no taxes will be withheld. The Settlement  
20 Administrator will issue to each Participating Class Member an Internal Revenue Service Form  
21 W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect  
22 to the civil penalties and interest allocations.

23           (f)     Service Payment to Class Representative: The amount awarded to Class  
24 Representative as a Service Payment will be set by the Court in its discretion, not to exceed  
25 \$10,000. Defendant agrees not to oppose this request. The Service Payment to Class  
26 Representative will be paid out of the Gross Settlement Amount. Class Representative will be  
27 issued IRS Form 1099 in connection with this payment. Plaintiff shall be solely and legally  
28 responsible to pay any and all applicable taxes on this payment. The Parties agree that any amount

1 awarded by the Court as the Service Payment to Plaintiff less than the requested amount shall not  
2 be a basis for Plaintiff or Class Counsel to void this Stipulation. Should the Court approve a lesser  
3 amount for the Service Payment, the difference shall be added to the Net Settlement Amount to  
4 be distributed to the Participating Class Members. In the event of any appeal of the amount of the  
5 service awards (if any) approved by the Court, if, after the exhaustion of any such appellate  
6 review, additional amounts not awarded to Class Representative shall be added to the Net  
7 Settlement Amount to be distributed to the Participating Class Members.

8 (g) Class Counsel's Attorneys' Fees and Costs: Defendant agree not to oppose a  
9 request by Class Counsel to the Court for an award of attorneys' fees of one-third (33.33%) of  
10 the Settlement Amount, plus reasonable litigation costs not to exceed \$20,000 ("Attorneys' Fees  
11 and Cost Award"). For purposes of this Settlement, Defendant agrees not to oppose any  
12 contention by Class Counsel that attorneys' fees should be based on the common fund theory.  
13 The Attorneys' Fee and Cost Award shall be paid from the Gross Settlement Amount, and except  
14 for this award, Defendant shall have no further obligation to pay any attorneys' fees, costs, or  
15 expenses to Class Counsel. Should the Court approve a lesser amount than what is sought by  
16 Class Counsel, the difference shall be added to the Net Settlement Amount to be distributed to  
17 the Participating Class Members. Any Court order awarding less than the amount sought by Class  
18 Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the  
19 Settlement. In the event of any appeal of the amount of the awards of attorneys' fees and costs (if  
20 any) approved by the Court, final funding and administration of the portion of the attorneys' fees  
21 and/or costs award in dispute will be segregated and stayed pending the exhaustion of appellate  
22 review. If, after the exhaustion of any such appellate review, additional amounts not awarded to  
23 as attorneys' fees and costs shall be added to the Net Settlement Amount to be distributed to the  
24 Participating Class Members and/or Aggrieved Employees. The Settlement Administrator shall  
25 issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs  
26 awarded by the Court. Class Counsel agrees that any allocation of fees between or among Class  
27 Counsel and any other attorney representing or claiming to represent the Class Members shall be  
28 the sole responsibility of Class Counsel.

1 (h) Settlement Administration Costs: The fees and other charges of the Settlement  
2 Administrator will be paid from the Gross Settlement Amount, not to exceed \$6,000 subject to  
3 Court approval, unless approved by all Parties and the Court.

4 (i) PAGA Penalties: The Parties agree that \$25,000 is allocated to PAGA Penalties  
5 and is to be paid from the Gross Settlement Amount, subject to Court approval. Of this amount,  
6 \$18,750 (75%) shall be paid to the LWDA in satisfaction of Plaintiff's claims for civil penalties  
7 under the PAGA and \$6,250 (25%) will be included in the Individual Settlement Amounts,  
8 payable to the Aggrieved Employees as set forth in Paragraph 47(d).

9 (j) Tax Liability: Class Counsel, Defendant, and Defendant's Counsel make no  
10 representations as to the tax treatment or legal effect of Settlement Amounts called for hereunder,  
11 and Plaintiff and the Settlement Class Members are not relying on any statement or representation  
12 by Class Counsel, Defendant, or Defendant's Counsel in this regard. Plaintiff and Final Settlement  
13 Class Members understand and agree that they will be solely responsible for the payment of any  
14 taxes and penalties assessed on their respective Settlement Amounts described herein. Income tax  
15 withholding will also be made pursuant to applicable federal, state, and/or local withholding codes  
16 or regulations. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner  
17 required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement.  
18 If the Code, the regulations promulgated thereunder, or other applicable tax law, are changed after  
19 the date of this Agreement, the processes set forth in this Section may be modified in a manner to  
20 bring Defendant into compliance with any such changes.

21 (k) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT (FOR  
22 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY  
23 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER  
24 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS  
25 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR  
26 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS  
27 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE  
28 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN

1 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31  
2 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED  
3 EXCLUSIVELY UPON HIS, HER, THEIR, OR ITS OWN, INDEPENDENT LEGAL AND  
4 TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH  
5 THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON  
6 THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR  
7 TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY  
8 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY  
9 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE  
10 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER  
11 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY  
12 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF  
13 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE  
14 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY  
15 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS  
16 AGREEMENT.

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

25 49. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and  
26 adequate, and will so represent same to the Court.

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

28 50. Upon the Effective Date of this Settlement, Plaintiff and each Participating Class

1 Member, for themselves and for their respective spouses, domestic partners, marital community,  
2 children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors,  
3 administrators, trustees, conservators, guardians, assigns, and representatives, will forever  
4 completely release and discharge the Released Parties from the Released Class Claims for the  
5 Class Release Period.

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

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

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

16 54. Plaintiff and Defendant intend that the Settlement described in this Agreement will  
17 release and preclude any further claim, whether by lawsuit, administrative claim or action,  
18 arbitration, demand, or other action of any kind, by each and all of the Participating Class  
19 Members to obtain a recovery based on, arising out of, and/or related to any and all of the Released  
20 Class Claims. The Settlement Class Members shall be so notified in the Notice. This paragraph  
21 does not apply to any Settlement Class Member who timely and validly opt out of the Settlement  
22 for purposes of Class Claims.

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

1           56.     Class Representative, on behalf of himself and the Participating Settlement Class  
2 Members, acknowledges and agrees that the claims for unpaid wages and unreimbursed expenses  
3 in the Action, inaccurate wage statements, and untimely payment of wages in the Action, are  
4 disputed, and that the payments set forth herein constitute payment of all sums allegedly due to  
5 them. Class Representative, on behalf of himself and the Participating Settlement Class Members,  
6 acknowledge and agree that California Labor Code Section 206.5 is not applicable to the Parties  
7 hereto. Section 206.5 provides in pertinent part as follows:

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

11 **E.     Release by Class Representative**

12           57.     With the exception of Plaintiff's individual non-wage-and-hour claims which are  
13 expressly excluded from Plaintiff's release against Defendant, as well as claims that cannot be  
14 released as matter of law, such as claims for workers' compensation, and in addition to Class  
15 Representative's release of the Released Class Claims and Released PAGA Claims, as discussed  
16 in Paragraphs 50 and 52 above, Class Representative does hereby, for himself and for his  
17 respective spouses, domestic partners, marital community, children, estates, trusts, attorneys,  
18 heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees,  
19 conservators, guardians, assigns, and representatives, forever completely release and discharge  
20 the Released Parties from any and all charges, complaints, claims, liabilities, obligations,  
21 promises, agreements, contracts, controversies, damages, actions, causes of action, suits, rights,  
22 demands, costs, losses, debts, and expenses (including for back wages, statutory penalties, civil  
23 penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and costs) of any  
24 nature whatsoever, from the beginning of time through the execution of this Stipulation, whether  
25 known or unknown, suspected or unsuspected, concealed or hidden, including but not limited to  
26 all claims arising out of, based upon, or relating to Class Representative's employment with  
27 Defendant or the remuneration for or termination of such employment (collectively, the "Class  
28 Representative's Claims").

1           58.     Class Representative expressly waives and relinquishes all rights and benefits  
2     afforded by Section 1542 of the Civil Code of the State of California and do so understanding and  
3     acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of  
4     the State of California states:

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

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

19          **F.     Interim Stay of Proceedings**

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

24          **G.     Notice Process**

25          60.     Appointment of Settlement Administrator. The Parties have agreed to the  
26          appointment of the Settlement Administrator to perform the duties of a settlement administrator,  
27          including mailing the Notice, using standard devices to obtain forwarding addresses,  
28          independently reviewing and verifying documentation associated with any claims or opt-out  
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

1 Final Settlement Class Members, issuing Forms W-2 and 1099, reporting to taxing authorities,  
2 due diligence, reporting and remittance obligations, and performing such other tasks as set forth  
3 herein or as the Parties mutually agree or that the Court orders.

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

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

26 63. Notice. The Notice, as approved by the Court, shall be sent by the Settlement  
27 Administrator to the Settlement Class Members, by first class mail, in English and Spanish, within  
28 fourteen (14) calendar days following the Settlement Administrator's receipt of the Class Data.

1 The Settlement Administrator shall use standard devices, including a skip trace, to obtain  
2 forwarding addresses of Settlement Class Members if any envelopes are returned.

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

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

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

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

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

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

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

19 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN  
20 THE ELLINGSON V. MUELLER NICHOLLS LAWSUIT. I  
21 UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE  
22 SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM  
THE 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

1 Class Member who timely requests exclusion in compliance with these requirements: (i) will not  
2 have any rights under this Agreement with respect to the Class Claims, including the right to  
3 object, appeal, or comment on the Settlement; (ii) will not be entitled to receive any payments  
4 under this Agreement with respect to Class Claims; and (iii) will not be bound by this Agreement,  
5 or the Judgment, with respect to the Class Claims.

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

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

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

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

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

21 69. 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 Defendant's 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 70. Funding of the Settlement Amount. Defendant shall make a one-time deposit into  
27 the QSF of the Settlement Amount, as described in Paragraph 47(a) that is necessary to make all  
28 payments required under this Settlement, within ten (10) days after the Effective Date, plus

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

3 71. Qualified Settlement Fund. The Qualified Settlement Fund shall be established at  
4 a federally insured bank that is acceptable to Defendant and the Settlement Administrator. The  
5 Parties agree that the Qualified Settlement Fund is intended to be a “Qualified Settlement Fund”  
6 under section 468B of the Code and Treas. Reg. §1.468B-1, 26 CFR § 1.468B-1, et seq., and will  
7 be administered by the Settlement Administrator as such. With respect to the Qualified  
8 Settlement Fund, the Settlement Administrator shall: (1) open and administer a Settlement  
9 Account in such a manner as to qualify and maintain the qualification of the Qualified Settlement  
10 Fund as a “Qualified Settlement Fund” under Section 468B of the Code and Treas. Reg. §1.468B-  
11 1; (2) calculate, withhold, remit and report each Participating Class Member’s share of applicable  
12 payroll taxes (including, without limitation, federal, state and local income tax withholding,  
13 FICA, Medicare and any state or local employment taxes), and indemnify Defendant for any  
14 penalty arising out of any error or incorrect calculation and/or interest with respect to any late  
15 deposit of the same; (3) calculate and cooperate with Defendant to remit and to permit Defendant  
16 to report Defendant’s share of applicable taxes (including, without limitation, federal, state and  
17 local income tax withholding, FICA, Medicare, unemployment insurance, employment training  
18 tax, state disability insurance and any state or local employment taxes), and indemnify Defendant  
19 for any penalty arising out of any error or incorrect calculation and/or interest with respect to the  
20 same; (4) satisfy all federal, state and local income and other tax reporting, return, and filing  
21 requirements with respect to the Qualified Settlement Fund and any interest or other income  
22 earned by the Qualified Settlement Fund; and (5) satisfy out of the Qualified Settlement Fund all  
23 (i) taxes (including any estimated taxes, interest or penalties) with respect to the interest or other  
24 income earned by the Qualified Settlement Fund, if any, and (ii) fees, expenses and costs incurred  
25 in connection with the opening and administration of the Qualified Settlement Fund and the  
26 performance of its duties and functions as described in this Agreement. The aforementioned  
27 taxes, fees, costs and expenses shall be treated as and included in the costs of administering the  
28 Qualified Settlement Fund and as Settlement Administration Costs. The Parties and the

1 Settlement Administrator shall treat the Qualified Settlement Fund as coming into existence as a  
2 Qualified Settlement Fund on the earliest date permitted as set forth in 26 CFR §1.468B-1(j)(2)(i),  
3 and such election statement shall be attached to the appropriate returns as required by 26 CFR  
4 §1.468B-1(j)(2)(ii). The Parties agree to cooperate with the Settlement Administrator and one  
5 another to the extent reasonably necessary to carry out the provisions of this Section.

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

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

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

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

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

76. Upon completion of the execution of this Settlement Agreement, Plaintiff will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

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

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

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

(d) Preliminarily approving this Settlement; and

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

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

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

78. In connection with the Final Approval Hearing provided for in this Settlement

1 Agreement, Class Counsel shall submit a proposed Final Approval Order:

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

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

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

11 **J. Voiding the Agreement**

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

16 80. If ten percent (10%) or more of the Settlement Class Members timely submit a  
17 Request for Exclusion, Defendant shall have the option of terminating or modifying this  
18 Agreement without prejudice to its pre-settlement positions and defenses in the Action. If  
19 Defendant exercise such option under this paragraph, they shall be relieved of any obligation to  
20 pay the Settlement Amount or any other obligations from the Settlement by giving notice to  
21 Plaintiff's Counsel and the Settlement Administrator within ten (10) days of the Notice Response  
22 Deadline. In such event, the Parties shall be restored to their respective positions in all respects  
23 as though the contemplated settlement never occurred. In the event of such a termination, no  
24 party may use the fact that the Parties agreed to settle or the terms provided herein as an admission,  
25 as evidence, or for any other purpose, including, without limitation, to prove any liability or the  
26 amount of any sum allegedly owed by any Party. All parties and their counsel shall not encourage  
27 opt-outs or objections to this Agreement. The parties specifically agree not to solicit opt-outs,  
28 directly or indirectly, through any means.

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

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

8 **K. Other Terms**

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

13           84. Waiver. The waiver by one Party of any breach of this Agreement by another Party  
14 shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

15           85. Parties' Authority. The signatories hereto represent that they are fully authorized  
16 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions  
17 hereof.

18           86. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to  
19 accomplish the terms of this Settlement Agreement, including but not limited to, execution of  
20 such documents and to take such other action as may reasonably be necessary to implement the  
21 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best  
22 efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that  
23 may become necessary by order of the Court, or otherwise, to effectuate this Settlement  
24 Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement  
25 Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and  
26 Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval  
27 of the settlement and the final entry of judgment.

28           87. No Prior Assignments. The Parties hereto represent, covenant, and warrant that

1 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,  
2 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,  
3 cause of action, or rights released and discharged by this Settlement Agreement.

4 88. No Admission. Defendant denies any and all liability to Plaintiff and/or any  
5 Settlement Class Member in this Action, as to any and all causes of action that were asserted or  
6 that might have been asserted in this Action. Nonetheless, Defendant wish to settle and  
7 compromise the matters at issue in the Complaint to avoid further substantial expense and the  
8 inconvenience and distraction of protracted and burdensome litigation. Defendant also have taken  
9 into account the uncertainty and risks inherent in litigation, and without conceding any infirmity  
10 in the defenses that they have asserted or could assert against Plaintiff, have determined that it is  
11 desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms and  
12 conditions set forth in this Agreement.

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

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

To the Settlement Class Members and Aggrieved Employees:

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

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

To Defendant:

Joseph R. Lordan  
*Joseph.Lordan@lewisbrisbois.com*  
 Sumy Kim  
*Sumy.Kim@lewisbrisbois.com*  
 333 Bush Street, Suite 1100  
 San Francisco, California 94104  
 Tel: (415) 438-5923; Fax: (415) 434-0882

91. 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 Defendant 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.

92. 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.

93. 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.

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

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

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

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

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

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

27           100.   Signatures of All Class Members Unnecessary to be Binding. It is agreed that,  
28 because the members of the Settlement Class are numerous, it is impossible or impractical to have

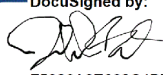
each Final Class Member execute this Settlement Agreement. The Notice will advise all Settlement Class Members of the binding nature of the releases provided herein and such shall have the same force and effect as if this Settlement Agreement were executed by each Final Settlement Class Member.

101. Counterparts. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

**APPROVAL AND EXECUTION BY PARTIES:**

Dated: July \_\_, 2022  
7/3/2022

**CLASS REPRESENTATIVE:**

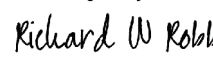
DocuSigned by:  
  
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Jeffrey Ellingson

Dated: July \_\_, 2022

**DEFENDANT:**

MUELLER NICHOLLS, INC.

DocuSigned by:  
  
574BF71EFB3E403...

By: Richard W. Robb  
Its: CEO

1 **APPROVED AS TO FORM:**

2 **CLASS COUNSEL**

3 Dated: July \_\_\_, 2022  
4 7/1/2022

**FALAKASSA LAW, P.C.**

5 DocuSigned by:  
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7 15A628B2C5A149C...  
8 Joshua Falakassa  
9 Attorneys for Plaintiff

10 Dated: July \_\_\_, 2022  
11 7/1/2022

**BOKHOUR LAW GROUP, P.C.**

12 DocuSigned by:  
13 *Mehrdad Bokhour*  
14 D8D3643F271940F...  
15 Mehrdad Bokhour  
16 Attorneys for Plaintiff

17 Dated: July 8, 2022

**DEFENDANT'S COUNSEL:**

**LEWIS BRISBOIS**

18 *Stacy Kim*  
19 Stacy Kim  
20 Attorneys for Defendant,  
21 Mueller Nicholls, Inc.