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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

CRESCENCIO REYES and GUILLERMINA
LEDEZMA, individuals on behalf of themselves,
the State of California, as private attorneys
general, and on behalf of all others similarly
situated,

Plaintiffs,

v.

VAN GRONINGEN & SONS, INC., a
California Corporation; and DOES 1 TO 50,

Defendants.

Case No.: STK-CV-UOE-2021-0009368

**Settlement Agreement and Release of Class
Action and PAGA**

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ATTORNEYS FOR DEFENDANT VAN GRONINGEN & SONS, INC.

SETTLEMENT AGREEMENT AND RELEASE OF CLASS ACTION AND PAGA

- This Settlement Agreement and Release of Class Action and PAGA (“Settlement Agreement”) is made and entered into by: **(1)** Plaintiffs Crescencio Reyes and Guillermina Ledezma (collectively “Plaintiffs”), individually and in their representative capacity on behalf of the Settlement Class, as defined below, and as private attorneys general on behalf of the State of California; and **(2)** Defendant Van Groningen & Sons, Inc. (“Defendant”). Plaintiffs and Defendant are collectively referred to herein as the “Parties.” This Settlement Agreement is subject to the approval of the Court, pursuant to California Rules of Court, rule 3.769, subdivisions (c), (d), and (e), and is made for the sole purpose of attempting to consummate settlement of the action on a class-wide basis subject to the following terms and conditions. As detailed below, if the Court does not enter an order granting final approval of this Settlement Agreement or the conditions precedent are not met for any reason, this Settlement Agreement is void and of no force or effect whatsoever.

1. DEFINITIONS

- As used in this Settlement Agreement, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Settlement Agreement are not specifically defined below, but are defined elsewhere in this Settlement Agreement, they are incorporated by reference into this definition section.

1.1. ACTION

- “Action” shall mean the following civil action: *Crescencio Reyes, et al. v. Van Groningen & Sons, Inc.*, case number STK-CV-UOE-2021-0009368, currently pending before the Superior Court of the State of California for the County of San Joaquin.

1.2. ADMINISTRATIVE EXPENSES

- “Administrative Expenses” shall include all costs and expenses associated with and paid to the third-party settlement administrator, which are estimated not to exceed \$28,000.00.

1 **1.3. APPLICABLE WAGE ORDER(S)**

- 2 • “Applicable Wage Order(s)” shall mean the California Industrial Welfare Commission
3 (“IWC”) Wage Order(s) applicable to the facts of this case, including IWC Wage Order
4 14-2001 and others that may be applicable. (Cal. Code of Regs., tit. 8, § 11140.)

5 **1.4. CLAIMS**

- 6 • “Claims” shall mean the claims asserted in the Action.

7 **1.5. CLASS ATTORNEY FEES AND EXPENSES**

- 8 • “Class Attorney Fees and Expenses” shall mean the portion of the Gross Settlement
9 Amount attributable to attorney fees and litigation expenses. The Parties agree that the
10 fee-portion of the Class Attorney Fees and Expenses shall be up to 35% of the Gross
11 Settlement Amount (i.e., \$700,000.00), as approved by the Court, and the award of costs
12 and expenses shall be up to an additional \$20,000.00. If the Escalator Provision
13 described below is triggered so as to increase the Gross Settlement Amount, the Parties
14 agree that the fee portion of the Class Attorney Fees and Expenses will increase
15 proportionally such that the total amount of attorneys’ fees remains 35% of the Gross
16 Settlement Amount *after* the upward adjustment required by the Escalator Provision is
17 implemented.

18 **1.6. CLASS COUNSEL**

- 19 • “Class Counsel” shall mean Megan Ross and Hannah Becker of Melmed Law Group
20 P.C. and Jeremy F. Bollinger, Dennis F. Moss, Ari E. Moss and Jorge A. Flores of Moss
21 Bollinger LLP.

22 **1.7. CLASS MEMBER**

- 23 • “Class Member” shall mean any person who is a prospective member of the Settlement
24 Class, or, if such person is incompetent or deceased, the person’s legal guardian,
25 executor, heir, or successor-in-interest.

26 **1.8. CLASS NOTICE**

- 27 • “Class Notice” shall mean the *Notice of Proposed Class Action Settlement*, as set forth
28 in the form of **Exhibit 1** attached hereto, or as otherwise approved by the Court.

1.9. CLASS PARTICIPANTS

- “Class Participants” shall mean all Class Members who do not timely request exclusion from the Class Settlement.

1.10. CLASS PERIOD

- “Class Period” shall mean the period from October 6, 2017, through April 1, 2023.

1.11. CLASS REPRESENTATIVES

- “Class Representatives” shall mean Plaintiffs Crescencio Reyes and Guillermina Ledezma.

1.12. CLASS SETTLEMENT

- “Class Settlement” shall mean the settlement embodied in this Settlement Agreement, which is subject to Court approval.

1.13. COMPLAINT

- “Complaint” shall mean the currently-operative complaint in the Action.

1.14. COURT

- “Court” shall mean the Superior Court of the State of California for the County of San Joaquin.

1.15. DEFENDANT

- “Defendant” shall mean Defendant Van Groningen & Sons, Inc.

1.16. DEFENSE COUNSEL

- “Defense Counsel” shall mean the attorneys representing Defendant.

1.17. EFFECTIVE DATE

- The “Effective Date” of this settlement shall be the later of: (i) if no timely objections are filed, or are withdrawn prior to final approval, then 30 calendar days after the date the Court enters Judgment; or (ii) if a Verified Settlement Class Member files an objection to the settlement, the Effective Date shall be the later of the following events: (a) five business days after the period for filing any appeal, writ, or other appellate proceeding opposing Final Approval has elapsed without any appeal, writ, or other appellate proceeding having been filed; or, (b) if any appeal, writ, or other appellate

proceeding opposing Final Approval has been filed, five business days after any appeal, writ, or other appellate proceedings opposing the settlement has finally and conclusively dismissed with no right to pursue further remedies or relief.

1.18. EMPLOYEE’S TAXES AND REQUIRED WITHHOLDING

- “Employee’s Taxes and Required Withholding” shall mean the employee’s share of any and all applicable federal, state, or local payroll taxes, including those collected under authority of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and/or the State Unemployment Tax Act (SUTA) on the portion of any Class Participant’s Individual Settlement Amount that constitutes wages. The Employee’s Taxes and Required Withholdings will be withheld from and paid out of the Individual Settlement Amounts paid from the Net Settlement Amount.

1.19. EMPLOYER’S TAXES

- “Employer’s Taxes” shall mean and refer to Defendant’s share of payroll taxes (e.g., Unemployment Insurance, Employment Training Tax, Social Security, and Medicare taxes) that is owed on the portion of any Class Participant’s Individual Settlement Amount that constitutes wages. The Employer’s Taxes shall be separately paid by Defendant and in addition to the Gross Settlement Amount.

1.20. FINAL APPROVAL AND FAIRNESS HEARING

- “Final Approval and Fairness Hearing” shall mean the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Class Settlement.

1.21. GROSS SETTLEMENT AMOUNT

- “Gross Settlement Amount” is the agreed upon non-reversionary settlement amount totaling \$2,000,000.00 to be paid by Defendant in full settlement of the Released Claims asserted in this Action, inclusive of the Administrative Expenses, the Employee’s Taxes and Required Withholdings, the Class Attorney Fees and Expenses, the Incentive Awards, and PAGA Payment. Defendant shall separately pay its share of the Employer’s Taxes and in addition to the Gross Settlement Amount on the portion of each Individual Settlement Amount allocated as wages.

1 **1.22. HEARING ON PRELIMINARY APPROVAL**

- 2 • “Hearing on Preliminary Approval” shall mean the hearing held on the motion for
3 preliminary approval of the Class Settlement.

4 **1.23. INCENTIVE AWARDS**

- 5 • “Incentive Awards” shall mean any additional monetary payment provided to the Class
6 Representatives for their efforts and risks on behalf of the Settlement Class in this
7 Action.

8 **1.24. INDIVIDUAL SETTLEMENT AMOUNT**

- 9 • “Individual Settlement Amount” shall mean the amount which is ultimately distributed
10 to each Class Participant, less any Employee’s Taxes and Required Withholdings. The
11 Individual Settlement Amount does not include any portion of the PAGA Payment.

12 **1.25. NET SETTLEMENT AMOUNT**

- 13 • “Net Settlement Amount” shall mean the Gross Settlement Amount minus:
14 Administrative Expenses; Class Attorney Fees and Expenses; the PAGA Payment; and
15 Plaintiffs’ Incentive Awards.

16 **1.26. OPT OUT**

- 17 • “Opt Out” shall refer to the process of submitting a timely and valid request for
18 exclusion from the Class Settlement in accordance with the terms of the Class Notice
19 and no later than the Response Deadline.

20 **1.27. OPT-OUTS**

- 21 • “Opt-Outs” shall mean all persons who timely and validly request exclusion from the
22 Class Settlement in accordance with the terms of the Class Notice and no later than the
23 Response Deadline.

24 **1.28. PAGA PAYMENT**

- 25 • “PAGA Payment” means the penalties pursuant to the Labor Code Private Attorney
26 General Act of 2004 (“PAGA”) that the Parties have agreed is a reasonable sum to be
27 paid in settlement of the PAGA claims included in the Action, which is \$20,000.00. The
28 PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699

and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA and twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class. Class Counsel shall give timely notice of this Settlement Agreement to the Labor and Workforce Development Agency (“LWDA”) pursuant to Labor Code section 2699, subdivision (l)(2).

1.29. PAGA PERIOD

- “PAGA Period” shall mean the period from October 6, 2020, through April 1, 2023.

1.30. PAGA SETTLEMENT CLASS

- “PAGA Settlement Class” shall mean all individuals who are or were employed by Defendant as non-exempt employees in California during the PAGA Period. Defendant represents that the PAGA Settlement Class consists of approximately 1,419 employees that worked a total of approximately 30,073 pay periods during the PAGA Period.

1.31. PARTIES

- “Parties” shall mean Plaintiffs and Defendant.

1.32. PLAINTIFFS

- “Plaintiffs” shall mean Plaintiffs Crescencio Reyes and Guillermina Ledezma.

1.33. PRELIMINARY APPROVAL DATE

- “Preliminary Approval Date” shall mean the date upon which the Court enters an order preliminarily approving this Settlement Agreement.

1.34. RELEASED CLAIMS

- “Released Claims” shall mean those claims arising out of or related to the allegations set forth in the Complaint and/or PAGA notice to the LWDA, or which could have been asserted on the allegations made in the Action, which arose during the Class Period, including claims for: **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the Applicable Wage Order(s); **(2)** failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable Wage Order(s); **(3)** failure to pay all accrued vacation time in violation of Labor Code section 201, 202, and 227.3; **(4)** failure to provide compliant

rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the Applicable Wage Order(s); **(5)** failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage Order(s); **(6)** failure to maintain accurate employment records in violation of Labor Code section 1174; **(7)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; **(8)** failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804; **(9)** failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; **(10)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); **(11)** statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698–2699.6); and **(12)** all claims for liquidated damages, penalties, interest, fees, costs based on the foregoing.

- This Settlement Agreement will not release any person, party, or entity from claims, if any, by Class Members for workers compensation, unemployment, or disability benefits of any nature. Nor does it release any claims, actions, or causes of action which may be possessed by Class Members under state or federal discrimination statutes, including, without limitation, the California Fair Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh Civil Rights Act (Civ. Code, § 51); the California Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000, et seq.); the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their implementing regulations and interpretive guidelines.

1.35. RELEASED PARTIES

“Released Parties” shall mean Defendant and all of Defendant’s past, present and future subsidiaries, dbas, parents, divisions, related entities, joint venturers, as well as each of their respective owners, co-employers, joint employers, agents, officers, directors, stockholders, shareholders, members, principles, subsidiaries, affiliates, partners, predecessors and successors in interest, insurers, reinsurers,

employees, attorneys, assigns, heirs, spouses, associates, representatives, administrators, fiduciaries, trustees, accountants, auditors, company-sponsored employee benefit plans of any nature, and all other legal entities affiliated with the foregoing.

1.36. RELEASING PARTIES

- “Releasing Parties” shall mean every Class Participant and all persons purporting to act on their behalf or purporting to assert a claim under or through them, including, but not limited to, their dependents, heirs, assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives, and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity.

1.37. RESPONSE DEADLINE

- “Response Deadline” shall mean the date forty-five (45) days following the date on which the Settlement Administrator first mails Class Notice to the Class Members and the last day on which Class Members may submit a request for exclusion and/or objection to Class Settlement.

1.38. SETTLEMENT ADMINISTRATOR

- “Settlement Administrator” shall mean ILYM Group, Inc. (or other administrator agreed on by the parties) which the Parties have agreed will be responsible for administration of the Class Settlement and related matters.

1.39. SETTLEMENT CLASS

- “Settlement Class” shall mean all individuals who are or were employed by Defendant as non-exempt employees in California during the Class Period. Defendant represents that the Settlement Class consists of approximately 2,410 Class Members that worked a total of approximately 142,538 workweeks during the Class Period.

2. FACTUAL AND PROCEDURAL BACKGROUND

2.1. PLAINTIFFS' CLAIMS

- Plaintiffs, individually and in their representative capacity on behalf of the Settlement Class, and as private attorneys general on behalf of the State of California, have alleged the following violations: **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the Applicable Wage Order(s); **(2)** failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable Wage Order(s); **(3)** failure to pay all accrued vacation time in violation of Labor Code section 201, 202, and 227.3; **(4)** failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the Applicable Wage Order(s); **(5)** failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage Order(s); **(6)** failure to maintain accurate employment records in violation of Labor Code section 1174; **(7)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; **(8)** failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804; **(9)** failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; **(10)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); and **(11)** statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698–2699.6).

2.2. DISCOVERY, INVESTIGATION, RESEARCH, AND MEDIATION

- Class Counsel has conducted significant informal discovery during the prosecution of the Action. This discovery, investigation, and prosecution has included, among other things, **(a)** over a dozen telephonic conferences with Plaintiffs; **(b)** inspection and analysis of hundreds of pages of documents and other information produced by Plaintiffs and Defendant; **(c)** analysis of employment data from a sample of Class Members; **(d)** an analysis of the legal positions taken by Defendant; **(d)** investigation

1 into the viability of class treatment of the claims asserted in the Action; (e) analysis of
2 potential class-wide damages, including information sufficient to understand
3 Defendant's potential defenses to Plaintiffs' claims; (f) research of the applicable law
4 with respect to the claims asserted in the Complaint and the potential defenses thereto;
5 and (g) assembling and analyzing of data for calculating damages.

- 6 • Class Counsel and the Class Representatives have vigorously prosecuted this case, and
7 Defendant has vigorously contested it. The Parties have engaged in sufficient
8 investigation and discovery to assess the relative merits of the claims of the Class
9 Representatives and of the defenses to them. After such discovery, investigation, and
10 prosecution, the Parties attended a full-day mediation with an experienced employment
11 law mediator, which culminated in a settlement in principle, the terms of which are
12 elaborated in this Settlement Agreement.

13 **2.3. ALLEGATIONS OF THE CLASS REPRESENTATIVES AND BENEFITS OF** 14 **CLASS SETTLEMENT**

- 15 • The document and data exchange in this matter, as well as discussions between counsel,
16 have been adequate to give the Class Representatives and Class Counsel a sound
17 understanding of the merits of their positions and to evaluate the value of the claims of
18 the Settlement Class. The informal discovery conducted in this Action and the
19 information exchanged by the Parties through pre-mediation discussions are sufficient
20 to reliably assess the merits of the Parties' respective positions and to compromise the
21 issues on a fair and equitable basis.
- 22 • The Class Representatives and Class Counsel believe that the claims, causes of action,
23 allegations, and contentions asserted in the Action have merit. However, the Class
24 Representatives and Class Counsel recognize and acknowledge the expense and delay
25 of continued lengthy proceedings necessary to prosecute the Action against Defendant
26 through trial and through appeals. Class Counsel has taken into account the uncertain
27 outcome of the litigation, the risk of continued litigation in complex actions such as this,
28 as well as the difficulties and delays inherent in such litigation, and the potential

1 difficulty of obtaining certification of the Settlement Class as well as trying the claims
2 of the class. Class Counsel is mindful of the potential problems of proof under, and
3 possible defenses to, the claims alleged in the Action.

- 4 • The Class Representatives and Class Counsel believe that the settlement set forth in this
5 Settlement Agreement confers substantial benefits upon Plaintiffs and the Settlement
6 Class and that an independent review of this Settlement Agreement by the Court in the
7 approval process will confirm this conclusion. Based on their own independent
8 investigation and evaluation, Class Counsel has determined that the settlement set forth
9 in this Settlement Agreement is in the best interests of Plaintiffs and the Class Members.

10 **2.4. DEFENDANT’S DENIALS OF WRONGDOING AND LIABILITY**

- 11 • Defendant has denied and continues to deny all allegations, claims, and contentions
12 alleged by Plaintiffs in the Action. Defendant has expressly denied and continues to
13 deny all charges of wrongdoing or liability against it arising out of any of the conduct,
14 statements, acts, or omissions alleged in the Action. Defendant contends that it complied
15 with California and federal wage and hour laws and has dealt legally and fairly with
16 Plaintiffs and the Class Members.
- 17 • Defendant further denies that, for any purpose other than settling this Action, these
18 claims are appropriate for class or representative treatment. Nonetheless, Defendant has
19 concluded that further proceedings in the Action would be protracted and expensive and
20 that it is desirable that the Action be fully and finally settled in the manner and upon the
21 terms and conditions set forth in this Settlement Agreement to dispose of burdensome
22 and protracted litigation, to permit the operation of Defendant’s respective businesses
23 without further expensive litigation and the distraction and diversion of their personnel
24 with respect to matters at issue in the Action. Defendant has also taken into account the
25 uncertainty and risks inherent in any litigation, especially in complex cases such as the
26 Action. Defendant has, therefore, determined that it is desirable and beneficial to it that
27 the Action be settled in the manner and upon the terms and conditions set forth in this
28 Settlement Agreement.

1 **2.5. INTENT OF THE CLASS SETTLEMENT**

- 2 • The Class Settlement set forth herein intends to achieve the following: **(1)** entry of an
3 order approving the Class Settlement; **(2)** entry of judgment of the Action; **(3)** discharge
4 of the Released Parties from liability for any and all of the Released Claims; and
5 **(4)** discharge of Defendant from liability for any and all claims arising out of the Action.

6 **3. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

- 7 • For the purposes of this Settlement Agreement and the Class Settlement of this Action
8 only, the Parties agree to conditional class certification of the Settlement Class. Defense
9 Counsel believes this conditional certification is appropriate because the Released
10 Claims are being compromised without need to establish the elements of those claims
11 on which liability turns. The certification of the Settlement Class shall not constitute, in
12 this or any other proceeding, an admission of any kind by Defendant, including without
13 limitation, that certification of a class for trial purposes is or would be warranted,
14 appropriate or proper; or that Plaintiffs could establish any of the requisite elements for
15 class treatment of any of the claims in the Action.
- 16 • If the Settlement Agreement is not finally approved by the Court, the Effective Date is
17 not achieved, or the Class Settlement is rejected, terminated, or otherwise rendered null
18 and void as set forth herein, then certification of the Settlement Class shall be
19 automatically vacated, shall be void *ab initio*, of no force or effect, and shall not
20 constitute evidence or a binding determination that the requirements for certification of
21 a class for trial purposes in this Action or in any other action which have been, are or
22 can be, satisfied. Further, if the Agreement does not reach the Effective Date, Plaintiffs
23 agree that Plaintiffs will not argue, claim, reference, or otherwise raise any preliminary
24 approval of the Settlement Class in connection with any later proceeding before the
25 Court.
- 26
27
28

1 **4. APPOINTMENT OF CLASS COUNSEL**

- 2 • For purposes of this Settlement Agreement and subject to the Court’s approval, the
3 Parties agree to the appointment of Class Counsel as counsel for the Settlement Class
4 and the effectuation of the Class Settlement pursuant to this Settlement Agreement.

5 **5. CONSIDERATION**

6 **5.1. SETTLEMENT AMOUNT**

- 7 • The Parties agree to settle this Action for the Gross Settlement Amount of
8 \$2,000,000.00. There shall be no reversion to Defendant. Defendant shall pay the Gross
9 Settlement Amount in installments:
- 10 • The first installment in the amount of \$1,000,000 will be paid within 15 calendar days
11 of Preliminary Approval; and
- 12 • The second installment in the amount of \$1,000,000 will be paid one (1) year after the
13 first installment is paid.
- 14 • The Gross Settlement Amount and other actions and forbearances taken by Defendant
15 shall constitute adequate consideration for the Class Settlement and will be made in full
16 and final settlement of: the Released Claims, the Class Attorney Fees and Expenses,
17 Administrative Expenses, the Incentive Awards, the PAGA Payment (and any payments
18 to individual PAGA Class Members resulting from the PAGA Payment), and any other
19 obligation of Defendant under this Settlement Agreement (other than the Employer’s
20 Taxes on the portion of the Net Settlement Amount allocated to the payment of wages).
- 21 • After the Court issues an order preliminarily approving this Class Settlement, the
22 Settlement Administrator will distribute the Class Notice to the Class Members, which
23 shall describe the terms of the Class Settlement and procedures to Opt Out, object, or
24 participate in the Class Settlement, which shall identify the Class Member, the number
25 of workweeks worked by each Class Member (“Workweeks”), as well as the estimated
26 amount of the Individual Settlement Amount the Class Member can expect to receive
27 once the Class Settlement becomes effective on the Effective Date. Class Members shall
28 be given the opportunity to challenge their Workweeks information.

1 **5.2. INCENTIVE AWARDS FOR PLAINTIFFS**

- 2 • Plaintiffs may petition the Court to approve Incentive Awards in an amount up to
- 3 \$10,000.00 for Crescencio Reyes and \$10,000.00 for Guillermina Ledezma to
- 4 acknowledge their efforts on behalf of the Settlement Class in this Action, including
- 5 assisting in the investigation and consulting with Class Counsel and providing crucial
- 6 documents to Class Counsel. Defendant shall not oppose any request by Plaintiffs for
- 7 Incentive Awards in such an amount. Any Incentive Award approved by the Court shall
- 8 be paid to Plaintiffs from the Gross Settlement Amount and shall be in addition to any
- 9 distribution to which they may otherwise be entitled as a Class Participant. Any
- 10 Incentive Award approved by the Court shall not be considered wages, and the
- 11 Settlement Administrator shall issue to Plaintiffs an IRS Form 1099 reflecting such
- 12 payment. Plaintiffs shall be responsible for the payment of all taxes with respect to any
- 13 Incentive Award approved by the Court and shall hold Defendant harmless from all
- 14 liability with regard thereto.

15 **5.3. PAYMENT TO CLASS PARTICIPANTS**

- 16 • Each Class Participant shall be eligible to receive payment of the Individual Settlement
- 17 Amount, which is a share of the Net Settlement Amount based on the pro rata number
- 18 of weeks worked by the Class Members during the Class Period as a proportion of all
- 19 weeks worked by all Class Members. Each Class Participant, including Plaintiffs, shall
- 20 be responsible for the payment of the Employee's Taxes and Required Withholding with
- 21 respect to his or her Individual Settlement Amount and shall hold Defendant harmless
- 22 from any and all liability with regard thereto.

23 **5.4. PAYMENT TO PAGA SETTLEMENT CLASS**

- 24 • Each member of the PAGA Settlement Class shall be entitled to receive a portion of the
- 25 PAGA Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA
- 26 that the Parties have agreed is a reasonable sum to be paid in settlement of the PAGA
- 27 claims included in the Action, which is \$20,000.00. The PAGA Payment must be
- 28 approved by the Court pursuant to Labor Code section 2699 and is to be distributed as

1 follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA and twenty-five
2 percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class. The portion of the PAGA
3 Payment allocated to the PAGA Settlement Class shall be distributed to the PAGA
4 Settlement Class based on the pro rata number of pay periods worked by each particular
5 PAGA Settlement Class member during the PAGA Period as a proportion of all pay
6 periods worked by all members of the PAGA Settlement Class.

7 **5.5. TAX TREATMENT AND PAYMENT**

- 8 • For the purpose of calculating Employee's Taxes and Required Withholding for the
9 Individual Settlement Amounts for Class Participants (including any payments to the
10 Class Representatives but exclusive of their Incentive Award), the Parties agree that
11 10% of each Individual Settlement Amount shall constitute payment in the form of
12 wages (and each Class Participant will be issued an IRS Form W-2 for such payment to
13 him or her), and 90% of each Individual Settlement Amount shall constitute penalties
14 and interest (and each Class Participant will be issued an IRS Form 1099 for such
15 payment to him or her). Prior to final distribution, the Settlement Administrator shall
16 calculate the total Employee's Taxes and Required Withholding due as a result of the
17 wage portion of Class Participants' anticipated Individual Settlement Amounts and such
18 actual amount will be deducted from the Net Settlement Amount. Additionally, prior to
19 the funding of the Gross Settlement Amount and final distribution, the Settlement
20 Administrator shall calculate the total Employer's Taxes due on the wage portion of the
21 Class Participants' Individual Settlement Amounts and issue instructions to Defendant
22 to separately fund these tax obligations/withholdings. The Parties understand that
23 Plaintiffs and the Class Participants who receive any payment pursuant to this
24 Settlement Agreement shall be solely responsible for all other individual tax obligations.
- 25 • With respect to the PAGA Payment and any payments made to individual members of
26 the PAGA Settlement Class, all such payments shall be treated as payments owing for
27 penalties and interest thereon and shall not be considered wages. The Settlement
28 Administrator shall issue to members of the PAGA Settlement Class an IRS Form 1099

1 reflecting such payment. Members of the PAGA Settlement Class shall be solely
2 responsible for the payment of all taxes with respect to any PAGA payments made to
3 them.

4 **5.6. NO EFFECT ON EMPLOYEE BENEFIT PLANS**

- 5 • Neither the Class Settlement nor any amounts paid under the Class Settlement will
6 modify any previously credited hours, days, or weeks of service under any employee
7 benefit plan, policy or bonus program sponsored by Defendant. Such amounts will not
8 form the basis for additional contributions to, benefits under, or any other monetary
9 entitlement under Defendant's sponsored benefit plans, policies, or bonus programs.
10 The payments made under the terms of this Settlement Agreement shall not be applied
11 retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any
12 other form of compensation for the purposes of any of Defendant's benefit plan, policy,
13 or bonus program. Defendant retains the right to modify the language of its benefits
14 plans, policies, and bonus programs to reflect this intent and to make clear that any
15 amounts paid pursuant to this Settlement Agreement are not for "weeks worked,"
16 "weeks paid," "weeks of service," or any similar measuring term as defined by
17 applicable plans, policies, and bonus programs for purpose of eligibility, vesting, benefit
18 accrual, or any other purpose, and that additional contributions or benefits are not
19 required by this Settlement Agreement. Defendant does not consider the Class
20 Settlement payments "compensation" for purposes of determining eligibility for, or
21 benefit accrual within, any benefit plans, policies, or bonus programs, or any other plan
22 sponsored by Defendant.

23 **5.7. CLASS ATTORNEY FEES AND EXPENSES**

- 24 • As part of the motion for final approval of the Class Settlement, Class Counsel may
25 apply for an award of Class Attorney Fees and Expenses with the fee portion not to
26 exceed 35% of the Gross Settlement Amount (i.e., \$700,000.00) and the award of costs
27 and expenses up to an additional \$20,000.00. Defendant agrees to not object to any such
28 fee, cost, or expense application in those amounts.

- As a condition of this Class Settlement, Class Counsel has agreed to pursue fees only in the manner reflected by this subsection. Any Class Attorney Fees and Expenses awarded by the Court shall be paid from the Gross Settlement Amount prior to arriving at the Net Settlement Amount and shall not constitute payment to any Class Members. If Class Counsel voluntarily reduces the request for Class Attorney Fees and Expenses or the Court's award of Class Attorney Fees and Expenses is less than set forth above, the Net Settlement Amount shall be recalculated to reflect the actual Class Attorney Fees and Expenses awarded.
- The Class Attorney Fees and Expenses approved by the Court shall reflect: **(a)** all work performed and costs and expenses incurred by, or at the direction of, any attorney purporting to represent the Settlement Class through the date of this Settlement Agreement; **(b)** all work to be performed and costs to be incurred in connection with approval by the Court of the Class Settlement; **(c)** all work to be performed and costs and expenses, if any, incurred in connection with administering the Class Settlement through the Effective Date and dismissal of the Action with prejudice; and **(d)** may be based on the "catalyst theory" and/or the "common fund doctrine."

6. SETTLEMENT ADMINISTRATION

6.1. COSTS AND EXPENSES

- All costs and expenses due to the Settlement Administrator in connection with its administration of the Class Settlement, including, but not limited to, providing the Class Notice, locating Class Members, processing Opt Out requests and objections, distributing the portion of the PAGA Payment payable to the LWDA, distributing the portion of the PAGA Payment payable to the members of the PAGA Settlement Class, and calculating, administering and distributing Individual Settlement Amounts to the Class Participants and related tax forms, shall be paid from the Gross Settlement Amount, and is not expected to exceed \$28,000.00.

1 **6.2. PAYMENT BY DEFENDANT**

- 2 • Defendant shall deposit the Gross Settlement Amount in a lump sum payment plus the
- 3 employer-side payroll taxes to the Settlement Administrator in installments:
- 4 • The first installment in the amount of \$1,000,000 will be paid within 15 calendar days
- 5 of Preliminary Approval; and
- 6 • The second installment in the amount of \$1,000,000 will be paid one (1) year after the
- 7 first installment is paid.
- 8 • In no event shall Defendant be obligated to pay or deposit with the Settlement
- 9 Administrator more than \$2,000,000.00 plus the Employer's Taxes, except where the
- 10 Escalator Provision is triggered.

11 **7. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS**

12 **7.1. THE SETTLEMENT ADMINISTRATOR**

- 13 • The Settlement Administrator will be responsible for: mailing the Class Notice (**Exhibit**
- 14 **1**) to Class Members; posting notice of entry of final order and judgment certifying the
- 15 Class Settlement and approving this Settlement Agreement; handling inquiries from
- 16 Class Members concerning the Class Notice; determining Individual Settlement
- 17 Amounts; determining individual payments to members of the PAGA Settlement Class;
- 18 maintaining the settlement funds in an appropriate interest-bearing account; preparing,
- 19 administering, and distributing Individual Settlement Amounts to Class Participants;
- 20 preparing, administering, and distributing individual payments to members of the
- 21 PAGA Settlement Class; distributing the portion of the PAGA Payment payable to the
- 22 LWDA; issuing a final report and performing such other duties as the Parties may direct.
- 23 Additionally, the Settlement Administrator will handle all tax document preparation and
- 24 reporting, including state and federal tax forms, if any.
- 25 • On a weekly basis, the Settlement Administrator will provide reports to Class Counsel
- 26 and Defense Counsel with summary information updating them as to the number of
- 27 validated and timely objections and Opt Out requests. The Settlement Administrator
- 28 will serve on Class Counsel and Defense Counsel via e-mail date-stamped copies of the

original Opt Out requests and objections no later than seven (7) days after their receipt. The Settlement Administrator will provide Class Counsel with proof of mailing of the Class Notice, without listing individual Class Member names which the Settlement Administrator will file with the Court at the time Class Counsel files its motion in support of the Court's Final Approval and Fairness Hearing.

- No later than thirty (30) days prior to the Final Approval and Fairness Hearing, the Settlement Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary information regarding: **(a)** the total amount of final Individual Settlement Amounts of each Class Participant, without any identifying personal information; **(b)** the number of Class Participants to receive such payments, and **(c)** the final number of Opt-Outs and objections.
- Prior to the calculation and distribution of the Individual Settlement Amounts, the Settlement Administrator shall calculate the total Administrative Expenses through the conclusion of their services and such actual amount will be deducted from the Gross Settlement Amount prior to the final calculation of the Individual Settlement Amounts.

7.2. NOTICE TO CLASS MEMBERS

- Notice shall be provided to Class Members in the following manner: Within fourteen (14) days after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with an updated list of Class Members and members of the PAGA Settlement Class containing names, social security numbers, dates of employment, last-known addresses, and phone numbers (the "Database"). The Database shall be marked "Confidential – Settlement Administrator's Eyes Only." Class Counsel shall not receive a copy of this list.
- Within twenty-eight (28) days following the Preliminary Approval Date, the Settlement Administrator shall determine the number of workweeks worked by each Class Member, populate the data for each Class Member accordingly, and send each Class Member the Class Notice via first-class, United States mail. The Class Notice shall also contain an easily-understood statement alerting the Class Members that, unless they

elect to Opt Out of the Class Settlement, the Class Member is releasing and waiving all Released Claims against the Released Parties.

- The Class Notice will inform Class Members of their estimated share of the settlement and the number of workweeks they worked during the Class Period. Class Members may dispute their workweeks if they believe they worked more weeks in the Class Period than Defendant's records show by submitting information to the Settlement Administrator no later than forty-five (45) days after being mailed the Class Notice by the Settlement Administrator, which is the defined Response Deadline. The Settlement Administrator will jointly work with Plaintiffs and Defendant to resolve the dispute in good faith. If Plaintiffs and Defendant cannot agree over the workweeks to be credited, the Settlement Administrator shall make the final decision based on the information presented by the Class Member and Defendant.

7.3. OPT OUT PROCEDURE

- Class Members who do not timely Opt Out of the Class Settlement will be deemed to participate in the Class Settlement and shall become Class Participants without having to submit a claim form or take any other action. To Opt Out of the Class Settlement, the Class Member must submit a letter or postcard to the Settlement Administrator by the Response Deadline. The Opt Out request must state the Class Member's name, address, telephone number, and signature. The request need not be in any particular form and will be considered a valid request for exclusion so long as it communicates a clear desire by the Settlement Class Member not to be included in the Settlement and/or Settlement Class, and identifies his/her/their full name and date of birth, and current address along with his/her/their signature.
- Any Opt Out request that is not postmarked by the Response Deadline will be invalid. If prior to the Response Deadline any Class Notice mailed to a Class Member is returned as having been undelivered by the United States Postal Service, the Settlement Administrator shall perform a skip trace search and seek an address correction for such

1 Class Members, and a second Class Notice will be sent to any new or different address
2 obtained.

- 3 • It will be presumed that, if an envelope containing the Class Notice has not been
4 returned within thirty (30) days of the mailing, the Class Member received the Class
5 Notice. At least twenty-one (21) days prior to the Final Approval and Fairness Hearing,
6 the Settlement Administrator shall provide Class Counsel and Defense Counsel with a
7 Declaration of Due Diligence and Proof of Mailing with regard to the mailing of the
8 Class Notice and its attempts to locate Class Members. The declaration shall specify the
9 number of Class Members to whom the Class Notice was sent and the number of Class
10 Members to whom the Class Notice was not delivered, as well as information relating
11 to the number of Opt-Outs and objectors. Class Counsel shall file this declaration with
12 the Court.
- 13 • If the Settlement Administrator determines that an Opt Out request returned by a Class
14 Member before the Response Deadline is deficient, then the Settlement Administrator
15 shall mail a deficiency letter to that Class Member identifying the problem. If a Class
16 Member submits both a dispute and an Opt Out request, the Settlement Administrator
17 shall make reasonable attempts to clarify as if the Opt Out request were deficient. If the
18 Class Member fails to cure the deficiency, the Opt Out request shall be disregarded and
19 the claim will be paid, and the Class Member will become bound by the judgment.
- 20 • Class Participants will be bound by the Release of Released Claims set forth in the
21 definition of “Released Claims” provided in this Settlement Agreement.
- 22 • A request to Opt Out of the Class Settlement shall **not** serve to exclude the Class
23 Member from participation in the PAGA Settlement Class. Opt-Outs shall still be
24 entitled to their share of the PAGA Payment. Class Members who are also members of
25 the PAGA Settlement Class shall have no right or ability to opt out of the portion of this
26 Settlement Agreement releasing PAGA claims.

1 **7.4. OBJECTION PROCEDURE**

- 2 • The Class Notice shall inform the Class Members of their right to object to the Class
- 3 Settlement if they do not Opt Out. Any Class Participants who wish to object to the
- 4 Class Settlement may submit a written objection to the Settlement Administrator no
- 5 later than the Response Deadline. Only Class Participants may object to the Settlement.
- 6 The objection should include the case name and number and must set forth, in clear and
- 7 concise terms, a statement of the reasons why the objector believes that the Court should
- 8 find that the proposed Class Settlement is not in the best interest of the Settlement Class
- 9 and the reasons why the Class Settlement should not be approved, including the legal
- 10 and factual arguments supporting the objection. If an objector also wishes to appear at
- 11 the Final Approval and Fairness Hearing, in person or through an attorney, they may do
- 12 so. The Settlement Administrator will promptly serve copies of any objection or notice
- 13 of intention to appear on Class Counsel and Defense Counsel. Class Members wishing
- 14 to make an objection may appear at the Final Approval and Fairness Hearing, either in
- 15 person or through a lawyer retained at their own expense.

16 **7.5. NOTICE OF FINAL JUDGMENT**

- 17 • Within seven (7) days after the Court has held a Final and Fairness Approval Hearing
- 18 and entered a final order certifying the Class for settlement purposes only and approving
- 19 the Class Settlement, the Settlement Administrator will give notice of judgment to Class
- 20 Members pursuant to rule 3.771(b) of the California Rules of Court, by posting a copy
- 21 of said order and final judgment on its website at a web address to be included in the
- 22 Class Notice.

23 **8. CLASS SETTLEMENT FUNDING AND DISTRIBUTION**

24 **8.1. ALLOCATION OF THE GROSS SETTLEMENT AMOUNT**

- 25 • The claims of all Class Members are settled for the Gross Settlement Amount of
- 26 \$2,000,000.00, which will be allocated as follows:
- 27 1. The Administrative Expenses not to exceed \$28,000.00;
- 28 2. Class Counsel's attorney fees not to exceed \$700,000.00;

3. Class Counsel's litigation costs and expenses not to exceed \$20,000.00;
4. The Incentive Awards, not to exceed \$20,000.00 in total; and
5. PAGA Payment of \$20,000.00.

- For purposes of calculating the estimated Individual Settlement Amounts, the Settlement Administrator shall calculate the estimated Net Settlement Amount based on the estimated values provided above prior to sending Notice to the Class Members. Prior to final distribution, the Settlement Administrator shall recalculate the final Net Settlement Amount based on the actual values of the amounts in each category.

8.2. CALCULATION OF THE INDIVIDUAL SETTLEMENT AMOUNTS FOR CLASS PARTICIPANTS

- Individual Settlement Amounts to be paid to Class Participants shall be paid from the Net Settlement Amount and calculated as follows: The Net Settlement Amount will be allocated among Participating Class Members on a proportional basis based on the number of Work Weeks worked during the Class Period, whether the Class Member signed a release of claims, whether the Class Member received per diem to be used for barracks, whether the Class Member is eligible for a wage statement penalty, and whether the Class Member experienced a termination during the Class Period. Participating Class Members shall be allocated one (1) points of credit for each Work Week they worked within the Class Period, two (2) additional points of credit if they never signed a release of claims, two (2) additional points of credit if they ever received per diem to be used for barracks, two (2) additional points of credit if they worked during the period of October 6, 2020, through April 1, 2023, and five (5) points of credit if the Participating Class Member experienced a termination between October 6, 2018, through April 1, 2023. One day worked in a given week will be credited as a Work Week for purposes of these calculations. To calculate each Class Member's proportional share, the Administrator will (i) Add all points for all Class Members to obtain the Denominator; (ii) Divide the number of points for each Class Member by the Denominator to obtain each Class Member's portion of the Net Settlement Amount; (iii)

1 Multiply each Class Member's portion of the Net Settlement Amount by the Net
2 Settlement Amount to determine each Class Member's estimated individual settlement
3 payment of the Net Settlement Amount.

- 4 • Defendant will provide the Settlement Administrator with any information reasonably
5 necessary to perform the calculation of number of Work Weeks for each Class Member,
6 and any other reasonably required information the Settlement Administrator requests to
7 perform the calculations required under this Settlement Agreement, including
8 identifying which Class Members signed releases, were paid a per diem, worked during
9 the period of October 6, 2020 and April 1, 2023, and experienced a termination between
10 October 6, 2018 and April 1, 2023. Defendant shall have no responsibility for deciding
11 the validity of the Individual Settlement Amounts or any other payments made pursuant
12 to this Settlement Agreement, shall have no involvement in or responsibility for the
13 determination or payment of Employee's Taxes and Required Withholding, and shall
14 have no liability for any errors made with respect to such Employee's Taxes and
15 Required Withholding. Although the Settlement Administrator will calculate and pay
16 the standard Employee's Taxes and Required Withholding on the portion of the
17 Individual Settlement Amounts constituting wages on their behalf, Plaintiffs and Class
18 Participants represent and understand that they shall be solely responsible for any and
19 all tax obligation associated with their respective Individual Settlement Amounts and
20 Incentive Awards.

21 **8.3. CALCULATION OF THE PAYMENTS FOR INDIVIDUAL MEMBERS OF** 22 **THE PAGA SETTLEMENT CLASS**

- 23 • Each member of the PAGA Settlement Class shall be entitled to receive a portion of the
24 PAGA Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA
25 that the Parties have agreed is a reasonable sum to be paid in settlement of the PAGA
26 claims included in the Action, which is \$20,000.00. The PAGA Payment is to be
27 approved by the Court pursuant to Labor Code section 2699 and is to be distributed as
28

1 follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA and twenty-five
2 percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class.

- 3 • The portion of the PAGA Payment allocated to the PAGA Settlement Class shall be
4 distributed to the PAGA Settlement Class based on the pro rata number of pay periods
5 worked by each particular PAGA Settlement Class member during the PAGA Period as
6 a proportion of all pay periods worked by all PAGA Settlement Class members during
7 the PAGA Period.
- 8 • Defendant will provide the Settlement Administrator with any information reasonably
9 necessary to perform the calculation of number of pay periods worked for each PAGA
10 Settlement Class member, and any other reasonably required information the Settlement
11 Administrator requests to perform the calculations required under this Settlement
12 Agreement. Defendant shall have no responsibility for deciding the validity of the
13 individual payment amounts allocated to each member of the PAGA Settlement Class
14 or any other payments made pursuant to this Settlement Agreement, shall have no
15 involvement in or responsibility for the determination or payment of Employee's Taxes
16 and Required Withholding, and shall have no liability for any errors made with respect
17 to such Employee's Taxes and Required Withholding.
- 18 • The members of the PAGA Settlement Class shall be solely responsible for any and all
19 tax obligation associated with their respective shares of the PAGA Payment.

20 **8.4. TIME FOR PAYMENT OF ATTORNEY FEES AND EXPENSES**

- 21 • The Settlement Administrator shall distribute to Class Counsel any attorney fees and
22 expenses approved by the Court no later than fourteen (14) days after the Effective Date.

23 **8.5. TIME FOR PAYMENT OF INCENTIVE AWARD**

- 24 • The Settlement Administrator shall distribute to Plaintiffs the Incentive Award
25 approved by the Court no later than fourteen (14) days after the Effective Date.

1 **8.6. TIME FOR PAYMENT OF PAGA PAYMENT TO THE LWDA**

- 2 • The Settlement Administrator shall distribute to the LWDA the portion of the PAGA
3 Payment due to it and approved by the Court no later than fourteen (14) days after the
4 Effective Date.

5 **8.7. TIME FOR PAYMENT OF TAXES AND REQUIRED WITHHOLDING AND**
6 **INDIVIDUAL SETTLEMENT AMOUNTS**

- 7 • The Settlement Administrator shall make every effort to pay the Employee's Taxes and
8 Required Withholding associated with each Class Participant's Individual Settlement
9 Amount and mail the Individual Settlement Amount to each Class Participant, by first-
10 class United States mail, to the last-known address no later than fourteen (14) days after
11 the Effective Date. If the Settlement Administrator is not able to do so within the time
12 period set forth above, it shall so inform Class Counsel and Defense Counsel and
13 provide an approximate date by which the Employee's Taxes and Required Withholding
14 shall be paid and the Individual Settlement Amounts will be mailed. Under no
15 circumstances shall the Settlement Administrator distribute checks to Class Participants
16 until all Individual Settlement Amounts have been considered, calculated, and
17 accounted for, and all of the remaining monetary obligations have been calculated and
18 accounted for.
- 19 • Within two hundred ten (210) days of mailing the Individual Settlement Amounts to
20 Class Participants, the Settlement Administrator shall file with the Court and provide to
21 Class Counsel a declaration of payment. If any Class Participant is deceased, payment
22 shall be made payable to the estate of that Class Member and delivered to the executor
23 or administrator of that estate, unless the Settlement Administrator has received an
24 affidavit or declaration pursuant to California Probate Code section 13101, in which
25 case payment shall be made to the affiant(s) or declarant(s).

26 **8.8. NON-CASHED SETTLEMENT CHECKS**

27 Any funds associated with checks that have not been cashed within one hundred eighty (180)
28 days, will become void and the Individual Settlement Amount and individual PAGA Payment

1 associated with the uncashed check will be remitted pursuant to Code of Civil Procedure section 384
2 to a cy pres agreed to by the Parties as required by Code of Civil Procedure section 384 or any other
3 method of distribution consistent with Code of Civil Procedure section 384. The cy pres recipient shall
4 be mutually agreeable by all Parties. Should the Parties not agree, the Court shall appoint a cy pres
5 recipient or may order that the funds be remitted to the Controller of the State of California to be held
6 pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq. If the Court selects the
7 latter, the Parties agree that this disposition results in no “unpaid residue” under California Civil
8 Procedure Code § 384 and therefore, Defendant shall not be required to pay any interest on said amount.
9 Defendant will be deemed to have fulfilled its obligation upon the mailing of the check to the Class
10 Member/members of the PAGA Settlement Class, regardless of whether such member subsequently
11 negotiates the check.

12 **8.9. DISPUTES REGARDING CLASS MEMBER WORKWEEKS DATA OR**
13 **PAYMENT OF INDIVIDUAL SETTLEMENT SHARES**

- 14 • Class Member Workweeks and the corresponding Individual Settlement Amount shall
15 be calculated using the employment and payroll records of Defendant, which
16 presumptively shall be deemed to be full, complete, and accurate for purposes of this
17 Settlement Agreement. To overcome that presumption, any Class Member objecting to
18 the accuracy of the number of Workweeks or amount of the Individual Settlement
19 Amount must submit documentary evidence, such as pay stubs or other written
20 employment records, to the Settlement Administrator. Each Class Member may dispute
21 the number of Workweeks or their estimated Individual Settlement Amount contained
22 on their Class Notice (“Workweeks Dispute”). Any such Workweeks Dispute must be
23 mailed or faxed to the Settlement Administrator by the Class Member, postmarked or
24 fax-stamped on or before the Response Deadline. The Settlement Administrator shall
25 immediately provide copies of all disputes to counsel for Defendant, shall inform Class
26 Counsel of the dispute without disclosing the identity of the Class Member making the
27 dispute, and shall immediately attempt to resolve all such disputes directly with relevant
28 Class Members with the assistance of Defendant, Defense Counsel, and Class Counsel.

1 If the dispute cannot be resolved, it shall be submitted to the Settlement Administrator
2 for its final, non-appealable decision. The Settlement Administrator shall use its best
3 efforts to resolve all such disputes prior to the Effective Date. If, however, a dispute
4 arises or is not resolved until after the Settlement Amount has been distributed, the
5 initial calculation shall stand (as Defendant shall be under no obligation to pay any
6 amounts in excess of the Gross Settlement Amount under this Settlement Agreement).

7 **9. NULLIFICATION OF THIS SETTLEMENT AGREEMENT**

8 **9.1. NON-APPROVAL OF THIS SETTLEMENT AGREEMENT**

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- 10 • The Class Settlement and conditional class certification shall be considered null and
11 void, and neither the Class Settlement, conditional class certification, nor any of the
12 related negotiations or proceedings, shall be of any force or effect, and all Parties to the
13 Class Settlement shall stand in the same position, without prejudice, as if the Class
14 Settlement had been neither entered into nor filed with the Court, if any of the following
15 occur: **(a)** the Court should for any reason fail to approve this Settlement Agreement in
16 the form agreed to by the Parties; **(b)** the Court should for any reason fail to enter a
17 judgment with prejudice of the Action, or **(c)** the approval of the Class Settlement and
18 judgment is reversed, modified, or declared or rendered void. Notwithstanding the
19 foregoing, the Parties may attempt in good faith to cure any perceived defects in this
20 Settlement Agreement to facilitate approval.

21 **9.2. PARTIES' RIGHTS TO VOID CLASS SETTLEMENT; ESCALATOR
22 PROVISION**

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- 24 • If 10% or more members of the Settlement Class timely submit Opt Out requests,
25 Defendant(s) shall have the right (but not the obligation) to void this Settlement
26 Agreement. Should Defendant exercise its right to void the Settlement Agreement,
27 Defendant shall be responsible for any amount incurred by the Settlement Administrator
28 at the time Defendant elects to void the Settlement Agreement.

- If the number of workweeks is greater than 5% above that represented by Defendant, as described above, then the Gross Settlement Amount shall be increased proportionally for each additional week worked.

9.3. INVALIDATION

- Invalidation of any material portion of this Settlement Agreement shall invalidate the Class Settlement in its entirety, unless the Parties subsequently agree in writing that the remaining provisions of the Class Settlement are to remain in full force and effect.

9.4. STAY ON APPEAL

- If a timely appeal from the approval of the Class Settlement and judgment, the judgment shall be stayed, and Defendant shall not be obligated to fund the Gross Settlement Amount or take any other actions required by this Settlement Agreement until all appeal rights have been exhausted by operation of law.

10. MOTIONS FOR COURT APPROVAL

10.1. PRELIMINARY APPROVAL

- As soon as practicable after execution of this Settlement Agreement, Class Counsel will submit this Settlement Agreement to the Court along with a Motion for Preliminary Approval of the Class Settlement. Each party shall cooperate to present the Class Settlement to the Court for preliminary approval in a timely fashion.

10.2. FINAL APPROVAL

- The Final Approval and Fairness Hearing shall be held before the Court. At the Final Approval and Fairness Hearing, Plaintiffs shall move the Court for the entry of the final order certifying the Settlement Class for settlement purposes only and approving the Class Settlement as being fair, reasonable, and adequate to the Class Participants within the meaning of California Rules of Court, Rule 3.769, subdivisions (c), (d) and (e), and for the entry of a final judgment of the Action consistent with the terms of the Class Settlement and rule 3.769, subdivision (h), of the California Rules of Court. Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may be required for the Court's determination.

1 **11. RELEASES AND WAIVERS**

2 **11.1. RELEASE OF CLAIMS BY THE SETTLEMENT CLASS**

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- Upon the Effective Date, the Releasing Parties shall be deemed to each release the Released Parties, and each of them, of and from any and all Released Claims arising during the Class Period. It is the desire of the Parties and the Releasing Parties to fully, finally, and forever settle, compromise, and discharge the Released Claims. Each of the Releasing Parties, including each Class Participant and each member of the PAGA Settlement Class, will be bound by the release of Released Claims as a result of the Class Settlement and to the terms of the final judgment and the satisfaction of such judgment.
 - Class Participants and the PAGA Settlement Class will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Action are disputed, and that their Individual Settlement Amount (and individual PAGA Payment) constitutes payment of all sums allegedly due to them. Class Participants will be deemed to have acknowledged and agreed that California Labor Code section 206.5 is not applicable to the Individual Settlement Amount. That section provides in pertinent part as follows:

18

19 “An employer shall not require the execution of a release of a claim or right on account

20 of wages due, or to become due, or made as an advance on wages to be earned, unless

21 payment of those wages has been made.”

22 **11.2. RELEASE OF CLAIMS BY PLAINTIFFS**

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- Plaintiffs, on behalf of themselves and their dependents, heirs and assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives, and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity, shall and does hereby forever release, discharge and agree to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities,

obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorney fees and costs), known or unknown, at law or in equity, which they may now have or may have after the signing of this Settlement Agreement, arising out of or in any way connected with their employment with Defendant including, the Released Claims, claims that were asserted or could have been asserted in the Complaint, and any and all transactions, occurrences, or matters between the Parties occurring prior to the date this Settlement Agreement is fully executed. Without limiting the generality of the foregoing, this release shall include, but not be limited to, any and all claims under: **(a)** the Americans with Disabilities Act; **(b)** Title VII of the Civil Rights Act of 1964; **(c)** the Civil Rights Act of 1991; **(d)** 42 U.S.C. § 1981; **(e)** the Age Discrimination in Employment Act; **(f)** the Fair Labor Standards Act; **(g)** the Equal Pay Act; **(h)** the Employee Retirement Income Security Act, as amended; **(i)** the Consolidated Omnibus Budget Reconciliation Act; **(j)** the Rehabilitation Act of 1973; **(k)** the Family and Medical Leave Act; **(l)** the Civil Rights Act of 1966; **(m)** the California Fair Employment and Housing Act; **(n)** the California Constitution; **(o)** the California Labor Code; **(p)** the California Government Code; **(q)** the California Civil Code; and **(r)** any and all other federal, state, and local statutes, ordinances, regulations, rules, and other laws, and any and all claims based on constitutional, statutory, common law, or regulatory grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of contract or implied contract, fraud, misrepresentation, promissory estoppel, or intentional infliction of emotional distress, negligent infliction of emotional distress, or damages under any other federal, state, or local statutes, ordinances, regulations, rules, or laws. This release is for any and all relief, no matter how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain and suffering, and attorney fees and costs, and Plaintiffs hereby forever releases, discharges and agrees to hold

harmless Defendant and the Released Parties from any and all claims for attorney fees and costs arising out of the matters released in this Settlement Agreement.

- Plaintiffs specifically acknowledge that they are aware of and familiar with the provisions of California Civil Code section 1542, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER 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.”

- Plaintiffs, being aware of California Civil Code section 1542, hereby expressly waives and relinquishes all rights and benefits they may have under section 1542 as well as any other statutes or common law principles of a similar effect. Plaintiffs may hereafter discover facts in addition to or different from those which they now knows or believes to be true with respect to the subject matter of all the claims referenced herein, but agrees that, upon the Effective Date, Plaintiffs shall and hereby does fully, finally, and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or could have been asserted upon any theory of law or equity without regard to the subsequent discovery of existence of such different or additional facts.

11.3. CIRCULAR 230 DISCLAIMER

- Each party to this Settlement Agreement (for purposes of this section, the “Acknowledging Party”; and each party to this Agreement other than the Acknowledging Party, an “Other Party”) acknowledges and agrees that **(1)** no provision of this Settlement Agreement, and no written communication or disclosure between or among the parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon

1 as, tax advice within the meaning of United States Treasury Department Circular 230
2 (31 C.F.R. Part 10); (2) the Acknowledging Party (a) has relied exclusively upon her or
3 its own independent legal and tax advisers for advice (including tax advice) in
4 connection with this Settlement Agreement, (b) has not entered into this Settlement
5 Agreement based upon the recommendation of any other party or any attorney or
6 advisor to any other party, and (c) is not entitled to rely upon any communication or
7 disclosure by any attorney or adviser to any other party to avoid any tax penalty that
8 may be imposed on the Acknowledging Party; and (3) no attorney or adviser to any
9 other party has imposed any limitation that protects the confidentiality of any such
10 attorney's or adviser's tax strategies (regardless of whether such limitation is legally
11 binding) upon disclosure by the Acknowledging Party of the tax treatment or tax
12 structure of any transaction, including any transaction contemplated by this Settlement
13 Agreement.

14 **12. DUTIES OF THE PARTIES**

15 **12.1. MUTUAL FULL COOPERATION**

- 16 • The Parties agree to cooperate fully with one another to accomplish and implement the
17 terms of this Settlement Agreement. Such cooperation shall include, but not be limited
18 to, execution of such other documents and the taking of such other actions as may
19 reasonably be necessary to fulfill the terms of this Settlement Agreement. The Parties
20 shall use their best efforts, including all efforts contemplated by this Settlement
21 Agreement and any other efforts that may become necessary by court order or otherwise,
22 to effectuate this Settlement Agreement and the terms set forth herein. As soon as
23 practicable after execution of this Settlement Agreement, Class Counsel, with the
24 cooperation of Defendant and Defense Counsel, shall take all necessary and reasonable
25 steps to secure the Court's final approval of this Settlement Agreement.
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1 **12.2. DUTY TO SUPPORT AND DEFEND THE CLASS SETTLEMENT**

- 2 • The Parties agree to abide by all of the terms of this Settlement Agreement in good faith
3 and to support the Class Settlement fully and to use their best efforts to defend this Class
4 Settlement from any legal challenge, whether by appeal or collateral attack.

5 **12.3. DUTIES PRIOR TO COURT APPROVAL**

- 6 • Class Counsel shall promptly submit this Settlement Agreement to the Court for
7 preliminary approval and determination by the Court as to its fairness, adequacy, and
8 reasonableness. Promptly upon execution of this Settlement Agreement, Class Counsel
9 shall apply to the Court for the entry of a preliminary order scheduling a hearing on the
10 question of whether the proposed Class Settlement should be approved as fair,
11 reasonable, and adequate as to the Class Members, approving as to form and content the
12 proposed Class Notice attached hereto as **Exhibit 1**, respectively, and directing the
13 mailing of the Class Notice to Class Members. While Defendant can reserve its right to
14 object to facts or assertions made in the moving papers, Defense Counsel shall file a
15 notice of non-opposition to the granting of the motion for preliminary approval or join
16 in the motion.

17 **13. MISCELLANEOUS PROVISIONS**

18 **13.1. VOIDING THIS SETTLEMENT AGREEMENT**

- 19 • Pending Court approval and other than as provided herein, if any of the conditions set
20 forth in this Settlement Agreement are not met and satisfied, this Settlement Agreement
21 may, at the option of either Plaintiffs or Defendant, be ineffective, void, and of no
22 further force and effect, and may not be used or be admissible in any subsequent
23 proceeding, either in this Court or in any other court or forum. If either Party decides to
24 void the Settlement Agreement, then the Settlement Agreement and conditional class
25 certification shall be considered void, and neither the Settlement Agreement,
26 conditional class certification, nor any of the related negotiations or proceedings, shall
27 be of any force or effect, and the Parties shall stand in the same position, without
28 prejudice, as if this Settlement Agreement had been neither entered into nor filed with

the Court. Should any Party choose to void the Class Settlement under this subsection, such Party shall be responsible for all Settlement Administrator fees and costs actually incurred.

13.2. DIFFERENT FACTS

- The Parties acknowledge that, except for matters expressly represented herein, the facts in relation to the dispute and all claims released by the terms of this Settlement Agreement may turn out to be different from the facts now known by each party and/or its counsel, or believed by such Party or counsel to be true, and each Party therefore expressly assumes the risk of the existence of different or presently unknown facts, and agrees that this Settlement Agreement shall be in all respects effective and binding despite such difference.

13.3. NO PRIOR ASSIGNMENTS

- The Parties represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right herein released and discharged except as set forth herein.

13.4. NON-ADMISSION

- Nothing in this Settlement Agreement shall be construed as or deemed to be an admission by any Party of any liability, culpability, negligence, or wrongdoing toward any other Party, or any other person, and the Parties specifically disclaim any liability, culpability, negligence, or wrongdoing toward each other or any other person. Each of the Parties has entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and contingencies. Nothing herein shall constitute any admission by Defendant of wrongdoing or liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute any admission by Defendant regarding the merits of the Claims in this Action, including but not limited to claims for unpaid wages or violations under California or federal law. Nothing herein shall constitute an admission by Defendant that the Action was properly

1 brought as a class or representative action other than for settlement purposes. To the
2 contrary, Defendant has denied and continues to deny each and every material factual
3 allegation and all Claims. To this end, the Class Settlement of the Action, the negotiation
4 and execution of this Settlement Agreement, and all acts performed or documents
5 executed pursuant to or in furtherance of this Settlement Agreement or the Class
6 Settlement are not, shall not be deemed to be, and may not be used as, an admission or
7 evidence of any wrongdoing or liability on the part of Defendant or of the truth of any
8 of the factual allegations in the Complaint in the Action; and are not, shall not be deemed
9 to be, and may not be used as, an admission or evidence of any fault or omission on the
10 part of Defendant in any civil, criminal, or administrative proceeding in any court,
11 administrative agency, or other tribunal.

12 **13.5. NON-EVIDENTIARY USE**

- 13 • Neither this Agreement nor any of its terms, nor any statements or conduct in the
14 negotiation or drafting of it, shall be offered or used as evidence by Plaintiffs, any Class
15 Member (including any individual who requested to be excluded from the Settlement
16 Class), Defendant, or its, her, his, or their respective counsel, in the Action, except as is
17 reasonably necessary to effectuate the Settlement Agreement's purpose and terms. This
18 Settlement Agreement may, however, be used by Defendant and the Released Parties to
19 prove or defend against any claim released herein by any Class Member in any judicial,
20 quasi-judicial, administrative, or governmental proceeding.

21 **13.6. MEDIA OR PRESS**

- 22 • Plaintiffs and Defendant, and their respective counsel, recognize, accept, and agree that
23 the Parties to this Settlement Agreement desire that the terms of this Settlement
24 Agreement, the fact of the Class Settlement embodied in this Settlement Agreement, the
25 disposition of the Action, the Action, and all matters relating to the litigation of the
26 Action, including discovery proceedings therein, and evidence obtained during the
27 course of the Action, shall not be discussed with or presented to the media or press. If
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asked about the disputes between the Parties, Plaintiff and Class Counsel shall provide no other statement than “the matter has been resolved” or “the matter has settled.”

13.7. NON-RETALIATION

- Defendant understands and acknowledges that it has a legal obligation to not retaliate against any Class Member who elects to participate in the Class Settlement or elects to Opt Out of the Class Settlement. Defendant will refer any inquiries regarding this Class Settlement to the Settlement Administrator or Class Counsel and will not discourage Class Members who are employees, directly or indirectly, from making claims, opting out, or objecting to the Class Settlement. None of the Parties, or their respective attorneys or agents, shall solicit or encourage any Class Members, directly or indirectly, to Opt Out of the Class Settlement.

13.8. CONSTRUCTION

- The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arms-length, non-collusive negotiations between the Parties and that this Settlement Agreement is not to be construed in favor of or against any party by reason of the extent to which any party or its counsel participated in the drafting of this Settlement Agreement. If any of the dates in this Settlement Agreement fall on a weekend, bank or court holiday, the time to act shall be extended to the next business day.

13.9. GOVERNING LAW

- This Settlement Agreement is intended to and shall be governed by the laws of the State of California, without regard to conflict of law principles, in all respects, including execution, interpretation, performance, and enforcement.

13.10. NOTICES

- Except for Class Member notices required to be made by the Settlement Administrator, all notices or other communications required or permitted under this Settlement Agreement shall be in writing and shall be sufficiently given if delivered in person to the party or their counsel by U.S. certified mail, postage prepaid, e-mail, facsimile, or

overnight delivery addressed to the address of the party appearing in this Settlement Agreement.

13.11. CAPTIONS AND INTERPRETATIONS

- Section titles or captions contained herein are inserted as a matter of convenience and for reference only and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision thereof.

13.12. MODIFICATION

- This Settlement Agreement may not be changed, altered, or modified, except in writing signed by the Parties or the Parties' counsel on their behalf. If preliminary or final approval of this Settlement Agreement has been granted by the Court, then any such amendments or modifications to this Settlement Agreement shall be 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 the Parties.

13.13. INTEGRATION CLAUSE

- This Settlement Agreement contains the entire agreement between the Parties relating to the Class Settlement of the Action and the transactions contemplated thereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written, and whether by a party or such party's legal counsel, are hereby superseded. No rights under this Settlement Agreement may be waived except in writing as provided above.

13.14. SUCCESSORS AND ASSIGNS

- This Settlement Agreement shall be binding on and inure to the benefit of the Parties and Class Members (excluding only persons who timely Opt Out) and their respective present and former heirs, trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors, consultants, pension plans, welfare benefit plans, fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors, successors, and assigns.

13.15. CORPORATE SIGNATORIES

- Any person executing this Settlement Agreement or any such related document on behalf of a corporate signatory or on behalf of a partnership hereby warrants and promises, for the benefit of all Parties hereto, that such person has been duly authorized by such corporation or partnership to execute this Settlement Agreement or any such related document.

13.16. EXECUTION IN COUNTERPARTS

- This Settlement Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall have the same force and effect as if all Settling Parties had signed the same instrument.

13.17. ATTORNEY FEES, COSTS, AND EXPENSES

- Except as otherwise specifically provided for herein, each party shall bear her or its own attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other party to this Settlement Agreement.

13.18. ACTION TO ENFORCE AGREEMENT

- In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover her or its attorney fees and costs.

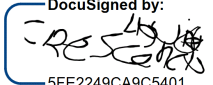
14. EXECUTION

- The Parties and their counsel have executed this Settlement Agreement on the date below their signatures or the signature of their representatives. The date of this Settlement Agreement shall be the date of the latest signature.

APPROVAL AND EXECUTION BY PARTIES

- Class Representatives:

Dated: 4/20/2023 _____

DocuSigned by:

 5FE2249CA9C5401...

Crescencio Reyes
 Plaintiff and Class Representative

1 Dated: _____

Guillermina Ledezma
Plaintiff and Class Representative

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- 3
- 4 • Defendant:

5 Dated: _____

Van Groningen & Sons, Inc.

7 *Ryan Van Groningen*

8 By: Ryan Van Groningen

9 Title: President

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11 **APPROVED AS TO FORM BY COUNSEL**

- 12 • Class Counsel:

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14 Dated: April 27, 2023

Melmed Law Group P.C.

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16 _____
Megan E. Ross
Attorneys for Plaintiffs

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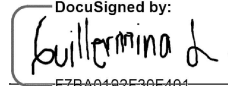
20 Dated: _____

Moss Bollinger LLP

21 _____
Jeremy F. Bollinger
Attorneys for Plaintiffs

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- 26 • Defendant's Counsel:

1 Dated: 4/27/2023

DocuSigned by:

FTBA0192F30F401...
Guillermina Ledezma
Plaintiff and Class Representative

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- 3
- 4 • Defendant:

5 Dated: _____

Van Groningen & Sons, Inc.

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7 _____

8 By: _____

9 Title: _____

10

11 **APPROVED AS TO FORM BY COUNSEL**

- 12 • Class Counsel:

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14 Dated: April 27, 2023

Melmed Law Group P.C.

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Megan E. Ross
Attorneys for Plaintiffs

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20 Dated: 4/27/2023

Moss Bollinger LLP

DocuSigned by:



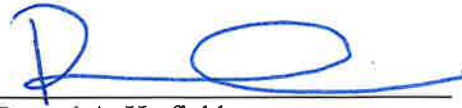
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Jeremy F. Bollinger
Attorneys for Plaintiffs

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- 25
- 26 • Defendant's Counsel:

1 Dated:

5/9/2023

HENDERSON HATFIELD, APC



Raquel A. Hatfield
Attorneys for Defendant

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