

1 **LAW OFFICE OF SCOTT ERNEST WHEELER**

2 Scott Ernest Wheeler (SBN 187998)

3 Justin A. Wheeler (SBN 342226)

4 250 West First Street, Suite 216

5 Claremont, California 91711

6 Telephone: (909) 621-4988

7 Facsimile: (909) 621-4622

8 Email: sew@scottwheelerlawoffice.com

9 jaw@scottwheelerlawoffice.com

10 *Attorney for Plaintiff and the Putative Class*

11 **FISHER & PHILLIPS LLP**

12 Lonnie D. Giamela (SBN 228435)

13 Evan E. Kroll (SBN 333754)

14 444 South Flower Street, Suite 1500

15 Los Angeles, California 90071

16 Telephone: (213)330-4454

17 Facsimile: (213)330-4501

18 Email: lgiamela@laborlawyers.com

19 ekroll@fisherphillips.com

20 *Attorneys for Defendant, Invapharm, Inc.*

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

22 **COUNTY OF SAN BERNARDINO**

23 **SAN BERNARDINO JUSTICE CENTER**

24 GERARDO MARTINEZ, individually, and
25 on behalf of all others similarly situated,

26 Plaintiff,

27 v.

28 INVAPHARM, INC., a California
corporation; and DOES 1 through 50,
inclusive

Defendants.

CASE NO.: CIVSB2133820

[Hon. Joseph Ortiz, Dept. S-17]

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE**

Action Filed: December 10, 2021
Trial Date: None Set

1 This Class Action and PAGA Settlement and Release ("Settlement Agreement") is entered
2 into by and between Plaintiff Gerardo Martinez ("Plaintiff"), on behalf of himself and the Class, on
3 the one hand, and Defendant Invapharm, Inc., and the Released Parties ("Defendant"), on the other
4 hand. Plaintiff and Defendant are collectively referred to herein as "Parties" and individually referred
5 to herein as "Party."

6 In consideration of the mutual covenants, promises, and agreements set forth herein, the Parties
7 agree that, pursuant to the terms and conditions set forth herein, which are subject to approval of the
8 Court, this Action and the Released Claims shall be settled and compromised as between Plaintiff and
9 the Class on the one hand and Defendant on the other hand.

10 **DEFINITIONS**

11 1. "Action" means *Martinez v. Invapharm, Inc.*, Superior Court of the State of California
12 for the County of San Bernardino, Case No. CIVSB2133820.

13 2. "Class" means: All non-exempt employees who were employed by Invapharm, Inc., in
14 the State of California, at any time from December 10, 2017 through the date of preliminary approval.

15 3. "Class Counsel" means the Law Office of Scott Ernest Wheeler.

16 4. "Class Counsel Award" means attorneys' fees for Class Counsel's litigation and
17 resolution of this Action and Class Counsel's expenses and costs incurred in connection with this
18 Action.

19 5. "Class Information" means information regarding Class Members that Defendant will
20 in good faith compile from its records and provide to the Settlement Administrator. It shall be
21 formatted as a Microsoft Excel spreadsheet or Microsoft Word Document and shall include: each
22 Class Member's full name; social security number; last known address; last known telephone number;
23 and number of Compensable Work Weeks and Compensable PAGA Work Weeks.

24 6. "Class Member" means each person who is a member of the Class defined above and
25 who is eligible to participate in this Settlement.

26 7. "Class Period" means the time period from December 10, 2017, through the date that
27 the Court grants preliminary approval of the class action settlement.

1 8. “Class Representative Service Award” means the amount that the Court authorizes to
2 be paid to Plaintiff in recognition of, *inter alia*, Plaintiff’s efforts and risks in assisting with the
3 prosecution of the Action and in return for executing a general release with Defendant.

4 9. “Compensable Work Week” or “Compensable Work Weeks” means a reasonable
5 estimate of weeks worked by each Class Member as a non-exempt employee in California for
6 Defendant individually and collectively by all Class Members during the Class Period based on
7 Defendant’s records and used as a value to calculate Individual Settlement Payments. The number
8 of Compensable Work Weeks for each Class Member will be determined by adding all the calendar
9 days within the inclusive dates of employment for the employee and dividing that number by seven.
10 Any partial workweek will be expressed as a percentage of a full workweek. If it can be readily
11 determined, workweeks where someone was employed but did not record any hours can be excluded
12 from this calculation.

13 10. “Compensable PAGA Work Week” or “Compensable PAGA Work Weeks” means a
14 reasonable estimate of weeks worked by each PAGA Member, as a nonexempt employee in
15 California for Defendant, individually and collectively by all PAGA Members, during the period
16 from October 6, 2020, through preliminary approval of the settlement, based on Defendant’s records
17 and used as a value to calculate PAGA Payments. The number of Compensable PAGA Work Weeks
18 for each PAGA Member, will be determined by adding all the calendar days within the inclusive
19 dates of employment for the employee and dividing that number by seven. Any partial workweek
20 will be expressed as a percentage of a full workweek. If it can be readily determined, workweeks
21 where someone was employed but did not record any hours can be excluded from this calculation.

22 11. “Court” means the Superior Court for the County of San Bernardino, State of
23 California.

24 12. “Defendant” means Invapharm, Inc.

25 13. “Effective Date” means the date on which the Superior Court’s Final Approval Order
26 and Judgment becomes final and Defendant fully funds the settlement. The Superior Court’s Final
27 Approval Order and Judgment “becomes final” upon the latter of: (a) if there is no Objection to the
28 Settlement, or if there is an Objection but it is withdrawn, then, the date that the Final Approval Order

1 and Judgment is filed by the Court; (b) if there is an Objection to the Settlement that is not withdrawn,
2 but no appeal is commenced thereafter, then, sixty-five (65) calendar days following the date that the
3 Final Approval Order and Judgment is filed by the Court; or (c) if there is an Objection to the
4 Settlement, that is not withdrawn, and any appeal, writ, or other appellate proceeding opposing the
5 Settlement has been filed within sixty-five (65) calendar days following the date that the Final
6 Approval Order and Judgment is filed by the Court, then, when any such appeal, writ, or other
7 appellate proceeding opposing the validity of the Settlement has been resolved finally and
8 conclusively with no right to pursue further remedies or relief.

9 14. "Final Approval Order and Judgment" means an order and judgment that the Court
10 will file which finally approves this Settlement and enters a judgment in favor of Plaintiff.

11 15. "Gross Settlement Amount" means the maximum amount which Defendant is
12 obligated to pay under this Settlement Agreement, which is Five Hundred Thousand Dollars
13 (\$500,000.00), subject to increase under the circumstances as set forth in paragraph 58. This is an "all
14 in" non-reversionary Settlement in which Defendant is required to pay the entire Gross Settlement
15 Amount. No portion of the Gross Settlement Amount will revert to Defendant under any
16 circumstances. Payments of any appropriate and lawfully-required employer's share of the payroll
17 taxes on the taxable portion of the settlement payments shall be paid separately from the Gross
18 Settlement Amount by Defendant at the time the Gross Settlement Amount is funded.

19 16. "Individual Settlement Payment" means the amount payable from the Net Settlement
20 Amount to each Settlement Class Member.

21 17. "LWDA" means the California Labor and Workforce Development Agency.

22 18. "Net Settlement Amount" means the Gross Settlement Amount, less the Class Counsel
23 Award, Class Representative Service Award, payment to the LWDA and PAGA Members for PAGA
24 penalties, and Settlement Administration Costs.

25 19. "Notice of Class and PAGA Settlement" means the notice, substantially in the form
26 attached hereto as **Exhibit 1**, which the Settlement Administrator will mail to each Class and PAGA
27 Member, and which explains, *inter alia*, the terms of this Settlement Agreement, the settlement
28

process, and each Class Member's estimated Individual Settlement Payment. Notice of Class Settlement will be provided to the Class in English and Spanish.

20. "Operative Complaint" means the First Amended Class Action Complaint on file in this action.

21. "Objection" means a letter or other written communication submitted by a Class Member to the Settlement Administrator that contains a clear statement by the Class Member that he or she is objecting to any of the terms of the Settlement.

22. "PAGA Member" or "PAGA Members" means any Class Member who was employed or has been employed by Defendant at any time during the time period of October 6, 2020, through the date the Court grants preliminary approval of this settlement.

23. "Parties" means Plaintiff and Defendant, collectively, and "Party" means either Plaintiff or Defendant, individually.

24. "Payment Ratio" means the respective Compensable Work Weeks for each Settlement Class Member divided by the total Compensable Work Weeks for all Settlement Class Members.

25. "PAGA Payment Ratio" means the respective Compensable PAGA Work Weeks for each PAGA Member divided by the total Compensable PAGA Work Weeks for all PAGA Members.

26. "PAGA Period" means the time period from October 6, 2020, through the date that the Court grants preliminary approval of the class action settlement.

27. "Plaintiff" refers to Gerardo Martinez.

28. "Preliminary Approval Date" means the date upon which the Court files an order substantially in the form attached hereto as **Exhibit 2**, and which grants preliminary approval of the Settlement.

29. "Request for Exclusion" means a letter or other written communication submitted by a Class Member to the Settlement Administrator that contains a clear statement by the Class Member that he or she is electing to be excluded from the Settlement.

30. "Released Claims by Plaintiff" is set forth in paragraph 47 below. Plaintiff releases the "Released Claims by Plaintiff" as of the date Defendant fully funds this Settlement.

31. “Released Claims by Settlement Class Members” means: As of the date Defendant fully funds this Settlement, Settlement Class Members shall fully and finally release and discharge Released Parties, from December 10, 2017, through the date that the Court grants preliminary approval of the class action settlement, from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, or causes of action contingent or accrued for, that are pleaded, or that could have been pleaded, based on the facts and claims alleged in the Operative Complaint, including any claims for: (a) failure to provide required meal periods, California Labor Code §§ 226.7, 510 and 512; (b) failure to provide required rest periods, California Labor Code §§ 226.7 and 512; (c) failure to pay overtime wages, California Labor Code §§ 510, 1194 and 1198; (d) failure to pay minimum wages, California Labor Code §§ 1194 and 1197; (e) failure to timely pay wages §§ 204 and 210; (f) failure to timely pay all wages during employment and to discharged and quitting employees, California Labor Code §§ 201-204, 210; (f) failure to furnish accurate, itemized wage statements, California Labor Code §§ 226 and 226.3; (g) failure to reimburse necessary business expenses, California Labor California Labor Code §2802; and (h) unlawful business practices under California, Business and Professions Code §17200, et seq.; predicated on any of the violations of the California Labor Code and the applicable IWC Wage Order as alleged in the Operative Complaint including but not limited to, claims for restitution and other equitable relief, liquidated damages, or penalties; and any other benefit, wages, penalties, or other amounts claimed on account of the allegations or the primary rights asserted in the Operative Complaint. This release shall apply to any and all claims arising at any point during the Class Period. Upon entry of the Final Approval Order and funding of the total Gross Settlement Amount, all Participating Class Members will forever completely release and discharge the Released Parties from the Released Claims for the Release Period. Plaintiff and Defendants intend that the Settlement described in this Settlement Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Participating Class Members to obtain a recovery to any and all of the Released Claims. This release excludes the release of claims not otherwise permitted by law, i.e. Worker’s Compensation and unemployment insurance benefits.

32. “Released Parties” collectively mean: (i) Defendant; (ii) Defendant’s respective past, present and future heirs, executors, administrators, parents, subsidiaries and affiliates, successors and assigns; and (iii) the past, present and future shareholders, managers, officers, partners, members, agents, employees, attorneys, insurers, predecessors, successors and assigns of any of the foregoing.

33. “Response Deadline” means forty-five (45) days after the postmark date of the Notice of Class Settlement that the Settlement Administrator shall mail to Class Members, and the last date on which Class Members may: (a) submit a Request for Exclusion; or (b) submit an Objection to the Settlement.

34. “Settled PAGA Claims”, means penalties only under the Private Attorneys General Act (“PAGA”), based upon the Released Claims by PAGA Members that serves the basis for penalties only pursuant to Labor Code § 2699 *et seq.*, for : (a) failure to provide required meal periods, California Labor Code §§ 226.7, 510 and 512; (b) failure to provide required rest periods, California Labor Code §§ 226.7 and 512; (c) failure to pay overtime wages, California Labor Code §§ 510, 1194, 1197 and 1198; (d) failure to pay minimum wages, California Labor Code §§ 1194 and 1197; (e) failure to timely pay all wages due during employment and to discharged and quitting employees, California Labor Code §§ 201-204, 210; (f) failure to furnish accurate, itemized wage statements, California Labor Code §§ 226 and 226.3; (g) failure to maintain required records, California Labor Code §§ 226, 1174; (h) failure to reimburse for necessary business expenses, California Labor Code § 2802; and primary rights alleged in Plaintiff’s Operative Complaint and in Plaintiff’s PAGA Notice dated October 5, 2021.

35. “Settlement” means the disposition of the Action pursuant to this Agreement.

36. “Settlement Administration Costs” means the amount to be paid to the Settlement Administrator from the Gross Settlement Amount for administration of this Settlement.

37. “Settlement Administrator” means Phoenix Settlement Administrators (“Phoenix”), the Settlement Administrator shall be responsible for, *inter alia*: (a) performing Spanish translations of the Notice of Class Settlement; printing and mailing the Notice of Class Settlement to the Class in English and Spanish; (b) receiving and reporting the Requests for Exclusion and Objections submitted by Class Members; (c) providing declaration(s) as necessary in support of preliminary and/or final

1 approval of this Settlement; (d) processing and mailing payments to Plaintiff, Class Counsel, the
2 LWDA, and Settlement Class Members; and (e) any other tasks as the Parties mutually agree or the
3 Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the
4 Parties timely apprised of the performance of all Settlement Administrator responsibilities. The Parties
5 agree that they have no financial interest or other relationship with Phoenix that could create a conflict
6 of interest. Should a conflict of interest or other issue lead to the disqualification of the selected
7 Settlement Administrator, the Parties will meet and confer as to a suitable replacement.

8 38. "Settlement Class" or "Settlement Class Members" means all Class Members who
9 have not opted out of the Class by submitting a valid and timely Request for Exclusion.

10 RECITALS

11 39. Procedural History. On December 10, 2021, Plaintiff filed a complaint against
12 Defendant in San Bernardino Superior Court, Case No. CIVSB2133830. Defendant has filed an
13 answer to Plaintiff's complaint.

14 40. Investigation and Discovery. The Parties have conducted significant investigation of
15 the facts and law during the prosecution of this Action and before this Settlement was reached. Such
16 discovery and investigation included, *inter alia*, the exchange of information and extensive documents
17 pertaining to Plaintiff and the Class, and numerous meetings and informal conferences wherein the
18 Parties exchanged information, class data, and theories of the case. Plaintiff has also investigated the
19 law as applied to the facts of Plaintiff's claims and Defendant's potential defenses thereto.

20 41. Mediation. The Parties participated in a private mediation session with the highly
21 experienced mediator, Gig Kyriacou, Esq., on August 29, 2022. After a full day of mediation, the
22 Parties were unable to resolve the matter and the mediator made a "Mediator's Proposal". The Parties
23 did not accept the Mediator's Proposal but continued negotiations until the Parties were able to reach
24 a proposed settlement regarding the material terms for a proposed class action and PAGA settlement
25 that would fully resolve this matter.

26 42. Benefits of Settlement to Class Members. Plaintiff and Class Counsel recognize the
27 expense and length of continued proceedings necessary to litigate Plaintiff's claims through trial and
28 any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of

1 further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel
2 are also aware of the burdens of proof necessary to establish liability for the claims asserted in the
3 Action, both generally and in response to Defendant's defenses thereto, and the difficulties in
4 establishing damages for the Class. Plaintiff and Class Counsel have also taken into account
5 Defendant's agreement to enter into a settlement that confers substantial relief upon the members of
6 the Class. Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement
7 set forth in this Settlement Agreement is a fair, adequate, and a reasonable settlement, and is in the
8 best interests of the Class.

9 43. Defendant's Reasons for Settlement. Defendant has concluded that any further defense
10 of this litigation would be protracted and expensive for all Parties. Substantial amounts of Defendant's
11 time, energy, and resources have been and, unless this Settlement is completed, will continue to be
12 devoted to the defense of the claims asserted by Plaintiff. Defendant has also taken into account the
13 risks of further litigation in reaching its decision to enter into this Settlement. Even though Defendant
14 continues to contend that it is not liable for any of the claims alleged by Plaintiff in this Action,
15 Defendant has agreed, nonetheless, to settle in the manner and upon the terms set forth in this
16 Settlement Agreement to put to rest the claims in this Action.

17 **STIPULATION AND AGREEMENT**

18 44. NOW THEREFORE, in consideration of the mutual covenants, promises, and
19 agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

20 45. It is agreed by and among Plaintiff and Defendant that this Settlement shall bind the
21 Plaintiff, Settlement Class Members, and Defendant, subject to the terms and conditions hereof.

22 46. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
23 the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an
24 "other party") acknowledges and agrees that (1) no provision of this Agreement, and no written
25 communication or disclosure between or among the Parties or their attorneys and other advisers, is or
26 was intended to be, nor shall any such communication or disclosure constitute or be construed or be
27 relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31
28 CFR Part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its

own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

47. Released Claims by Plaintiff. As of the date Defendant fully funds the Settlement, Plaintiff, agrees to the Release of Claims by Settlement Class Members, which is set forth in paragraph 31 above. In addition to Release of Claims by Settlement Class Members and as a material inducement to Defendant to enter into this Settlement Agreement, Plaintiff does hereby, for himself and for his spouse, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, and assigns, forever and completely release and discharge 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 back wages, statutory penalties, civil penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever, from the beginning of time through the execution of this Settlement Agreement, whether known or unknown, suspected or unsuspected, including but not limited to all claims arising out of, based upon, or relating to Plaintiff's employment with or work for Defendant or the remuneration for or termination of such employment.

Without limiting the generality of the foregoing, Plaintiff expressly release all claims arising under the California Labor Code (including, but not limited to, sections 201, 201.3, 202, 203, 204, 210, 216, 218.6, 221, 222, 225.5, 223.2, 224, 225, 225.5, 226.7, 227.3, 246, 248.1, 248.2, 248.3, 248.6, 450, 510, 511, 512, 558, 1174, 1174.5, 118.12, 1194, 1197, 1197.1, 1197.2, 1198, 2698 et seq., and 2802); the Wage Orders of the California Industrial Welfare Commission; the California Private

1 Attorneys General Act of 2004 ("PAGA"); California Business and Professions Code section 17200
2 et seq.; the California Civil Code, to include, but not limited to, section 3336 and 3294; the California
3 common law of contract; the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.; federal common law;
4 and the Employee Retirement Income Security Act, 29 U.S.C. § 1001, et seq. Plaintiff's Released
5 Claims also include all claims for lost wages and benefits, emotional distress, retaliation, punitive
6 damages, and attorneys' fees and costs arising under federal, state, or local laws for discrimination,
7 harassment, and wrongful termination such as by way of example only, (as amended) 42 U.S.C.
8 section 1981, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age
9 Discrimination in Employment Act, and the California Fair Employment and Housing Act; and the
10 law of contract and tort. This release excludes the release of claims not permitted by law. As to the
11 Plaintiff's Released Claims only, Plaintiff expressly waives all rights and benefits under the terms
12 of section 1542 of the California Civil Code. Section 1542 reads as follows:

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

16 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full
17 and complete release and discharge of all parties, Plaintiff and Class Counsel expressly acknowledge
18 that this Settlement Agreement is intended to include in its effect, without limitation, all claims that
19 Plaintiff knew of, as well as all claims that they do not know or suspect to exist in their favor against
20 the Released Parties, or any of them, for the time period from the beginning of time to the execution
21 of this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment
22 of any such claims. Plaintiff and Plaintiff's Counsel do not currently intend to pursue any claims
23 against Defendant, including, but not limited to, any and all claims relating to or arising from
24 Plaintiff's employment with Defendant, and that Plaintiff's Counsel is not currently aware of any
25 facts or legal theories upon which any claims or causes of action could be brought against
26 Defendant, excepting those facts or legal theories alleged in the Operative Complaint in this
27 Action. This release does not include claims which cannot be released such as unemployment or
28 Worker's Compensation benefits.

1 48. Class Certification. For settlement purposes only, Defendant will stipulate that the
2 Settlement Class Members described herein who do not request exclusion from the Settlement Class
3 may be conditionally certified as a settlement class. This stipulation to certification is in no way an
4 admission that class action certification is proper and shall not be admissible in this or in any other
5 action except for the sole purposes of enforcing this Agreement. Should the Court fail to issue Final
6 Approval for any reason, the Parties' stipulation to class certification as part of the Settlement
7 Agreement shall become null and void *ab initio* and shall have no bearing on but remains protected
8 by California Evidence Code Section 1152 and shall not be admissible in connection with, the issue
9 of whether or not certification would be appropriate in a non-settlement context. Defendant expressly
10 reserves its right and declares that Defendant will continue to oppose class certification and contest
11 the substantive merits of the case should the Court fail to issue Final Approval. Plaintiff expressly
12 reserves his rights and declares that he will continue to pursue class certification and a trial should the
13 Court fail to grant Final Approval.

14 49. Approval of Settlement. Plaintiff will move the Court to grant preliminary and final
15 approval of this class action Settlement. The Parties agree to work diligently and cooperatively to
16 have this matter presented to the Court for preliminary and final approval.

17 50. Release of Claims by Settlement Class Members. Settlement Class Members release
18 the "Released Claims by Settlement Class Members," as defined, as of the date Defendant fully funds
19 the Settlement.

20 51. Release of Settled PAGA Claims. PAGA Members release the "Settled PAGA
21 Claims," as defined, as of the date Defendant fully funds the Settlement.

22 51. Settlement Administration. Within fourteen (14) calendar days after the Preliminary
23 Approval Date, Defendant shall provide the Settlement Administrator with the Class Information.

24 53. Notice to the Class. Upon receipt of the Class Information, the Settlement
25 Administrator will perform a search based on the National Change of Address Database to update and
26 correct any known or identifiable address changes. Within ten (10) calendar days after receiving the
27 Class Information, the Settlement Administrator shall mail copies of the Notice of Class Settlement
28 to all Class Members via regular First Class U.S. Mail. The Settlement Administrator shall exercise

its best judgment to determine the current mailing address for each Class Member. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member.

a. Undeliverable Notices. Any Notice of Class Settlement returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto within ten (10) calendar days. For any undeliverable Notice of Class Settlement returned for which no forwarding address is affixed, the Settlement Administrator will conduct its investigation for an updated address of the Class Member and re-mail the Notice of Class Action Settlement. If an updated address is found, the Settlement Administrator shall have seven (7) days to re-mail the Notice of Class Action Settlement from receipt of the undelivered envelope. The Settlement Administrator will provide a cover letter notifying the Class Member of the extended Response Deadline. Any Class Member who receives a re-mailed Notice of Class Settlement shall have forty-five (45) days after the postmark date of the re-mailed Notice of Class Settlement to: (a) submit a Request for Exclusion; or (b) submit an Objection to the Settlement.

(1) Verification of Class Member Employment Status. If Notice of Class Action Settlement sent to a Class Member is determined to be undeliverable, the Settlement Administrator shall verify the employment status of the Class Member with Defendant within five (5) days of receipt of the undeliverable Notice of Class Action Settlement. If the Class Member is a current employee of Defendant, Defendant shall take all reasonable efforts to obtain the current address from the Class Member and shall provide the same with seven (7) days of notice from the Settlement Administrator.

b. Disputes Regarding Individual Settlement Payments. Class Members will have the opportunity, should they disagree with Defendant's records regarding the dates of employment stated in the Notice of Class Settlement, to provide documentation and/or an explanation to show contrary information by the Response Deadline. The dispute form must: (a) contain the full name, address, and telephone number of the Class Member, and the last four digits of the Class Member's

1 social security number or full employee ID number; (b) contain the case name and case number; (c) a
2 clear statement by the Class Member that he or she is disputing the number of Compensable
3 Workweeks and the basis for the dispute; (d) any documentation demonstrating that the number of
4 Compensable Workweeks listed in the Notice of Class Settlement is incorrect; (e) be signed by the
5 Class Member; and (f) be postmarked by the Response Deadline. The date of the postmark on the
6 return mailing envelope on the dispute form shall be the exclusive means used to determine whether
7 it has been timely submitted. If there is a dispute, the Settlement Administrator will consult with the
8 Parties to determine whether an adjustment is warranted. In addition to U.S. Mail, a Class Member
9 may also submit a dispute form by facsimile or email to the Settlement Administrator within the
10 Response Deadline. The Settlement Administrator shall then determine the eligibility for, and the
11 amounts of, any Individual Settlement Payments under the terms of this Agreement. In the absence of
12 circumstances indicating fraud, manipulation or destruction, Defendant's records shall be given a
13 rebuttable presumption of accuracy.

14 c. Request for Exclusion. Class Members who wish to exclude themselves from
15 the Settlement must submit to the Settlement Administrator a Request for Exclusion by the Response
16 Deadline. The Request for Exclusion must: (a) contain the full name, address, and telephone number
17 of the Class Member, and the last four digits of the Class Member's social security number or full
18 employee ID number; (b) contain the case name and case number; (c) a clear statement by the Class
19 Member that he or she is electing to be excluded from the Settlement; (d) be signed by the Class
20 Member; and (e) be postmarked by the Response Deadline if submitted by U.S. Mail. The date of the
21 postmark on the return mailing envelope on the Request for Exclusion submitted by U.S. Mail shall
22 be the exclusive means used to determine whether it has been timely submitted. In addition to U.S.
23 Mail, a Class Member may also submit a Request for Exclusion by facsimile or email to the Settlement
24 Administrator within the Response Deadline. A Request for Exclusion shall not be presumptively
25 invalid if it does not contain the requirements of (a) through (d) if the Settlement Administrator can
26 ascertain the identity of the Class Member who wants to exclude themselves from the Settlement. Any
27 Class Member who requests to be excluded from the Settlement Class shall not be entitled to any
28 recovery under the Settlement and shall not be bound by the terms of the Settlement or have any right

1 to object, appeal or comment thereon except as to any distribution based upon PAGA penalties.
2 PAGA Members will receive their share of the PAGA Payment and the Settled PAGA Claims will be
3 released even if the Class Member submits a timely Request for Exclusion. Class Members who fail
4 to submit a valid and timely Request for Exclusion on or before the Response Deadline shall be bound
5 by all terms of the Settlement and any Final Approval Order and Judgment entered in this Action.

6 d. Objections. Class Members who wish to object to the Settlement can either
7 mail or send by facsimile or email to the Settlement Administrator a written Objection by the
8 Response Deadline. The Objection should: (a) contain the full name, address, and telephone number
9 of the Class Member, and the last four digits of the Class Member's social security number; (b)
10 contain the case name and case number; (c) the dates of employment of the Class Member; (d) be
11 signed by the Class Member; (e) state the basis for the Objection, including any legal briefs, papers
12 or memoranda in support of the Objection; and (f) be postmarked by the Response Deadline. The
13 date of the postmark on the return mailing envelope on the Objection shall be the exclusive means
14 used to determine whether the Objection has been timely submitted. Class Members who submit a
15 timely Objection will have a right to appear at the final approval hearing in order to have their
16 Objection heard by the Court. At no time shall any of the Parties or their counsel seek to solicit or
17 otherwise encourage Class Members to submit Objections to the Settlement or appeal from the Final
18 Approval Order and Judgment. Class Counsel shall not represent any Class Members with respect to
19 any such Objections. The Settlement Administrator will provide the Parties with any Objection
20 within five (5) calendar days of receipt of the Objection. Plaintiff will file any and all Objections
21 with the Court in advance of the Final Approval Hearing. Oral or written Objections may also be
22 made at the Final Approval hearing without a written objection being submitted, but only with the
23 Court's express permission. If the Court rejects the objection, the individual will be bound by the
24 terms of the Settlement.

25 e. If greater than five (5) percent of the Class Members opt out or object to this
26 Settlement Agreement or a number of Class Members whose share of the Net Settlement Amount is
27 5% or more, Defendant will have the right to rescind and terminate the Settlement without prejudice
28 to its pre-settlement positions and defenses in the litigation. In such a case, the Parties and any funds

to be awarded shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Agreement.

f. Except for those Settlement Class Members who exclude themselves in compliance with the Request for Exclusion procedures set forth above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for all purposes under this Settlement Agreement; (ii) will be bound by the terms and conditions of this Settlement Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise provided herein, will be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the Settlement.

54. Funding Gross Settlement Amount. After Final Approval by the Court, Defendant shall wire transfer the full Gross Settlement Amount along with Defendant's share of the payroll taxes to the Settlement Administrator by February 12, 2024.

55. Allocation of Settlement. Individual Settlement Payments will be paid from the Net Settlement Amount and shall be paid pursuant to the settlement formula set forth herein. Individual Settlement Payments shall be mailed by regular First Class U.S. Mail to Settlement Class Members' last known mailing address.

a. The Settlement Administrator shall calculate the total Compensable Work Weeks and Compensable PAGA Work Weeks for all Settlement Class Members based on the Class Information provided by Defendant. The respective Compensable Work Weeks for each Settlement Class Member will be divided by the total Compensable Work Weeks for all Settlement Class Members, resulting in the Payment Ratio for each Settlement Class Member; a similar calculation will apply to determining the Payment Ratio for Compensable PAGA Work Weeks. Each Settlement Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to determine his or her Individual Settlement Payment.

b. Individual Settlement Payments due to each Settlement Class Member shall be designated as follows:

1. Thirty-Three and One Third percent (33.33%) of the Individual Settlement Payment shall represent payment for alleged unpaid wages. This payment shall be

subject to the withholding of all applicable local, state, and federal taxes. Applicable payroll taxes and/or contributions will be deducted from the amount paid to Settlement Class Members. The Settlement Administrator will issue a W-2 Form to each Settlement Class Member in relation to this payment.

2. Thirty-Three and One Third percent (33.33%) of the Individual Settlement Payment shall represent payment of all penalties. These payments will not be subject to withholding of local, state, and federal taxes. The Settlement Administrator will issue an IRS Form 1099 to each Settlement Class Member in relation to these payments.

3. Thirty-Three and One Third percent (33.33%) of the Individual Settlement Payment shall represent payment of all interest. These payments will not be subject to withholding of local, state, and federal taxes. The Settlement Administrator will issue an IRS Form 1099 to each Settlement Class Member in relation to these payments.

(a). Class Members With Missing/Unverifiable Social Security Numbers and Withholdings of Taxes and Applicable Penalties. In the event that an Individual Settlement Payment exceeds the threshold amount that must be reported to the Internal Revenue Service by means of a Form 1099, Class Counsel, and the Settlement Administrator, will take all necessary and reasonable steps to obtain W-9's from Class Members and to comply with applicable IRS regulations on issuing 1099's without a social security number or tax entity identification number, and shall take all reasonable and necessary steps to avoid imposition of IRS penalties against the Gross Settlement Amount, including, but not limited to limiting payments below the reportable threshold and/or withholding of taxes and any applicable penalties. The Settlement Administrator will contact Class Members who are entitled to payments that exceed the taxable income threshold twice, with at least 30 days between the two contacts.

c. Uncashed Settlement Checks. Individual Settlement Payment checks shall remain negotiable for one hundred and eighty (180) days from the postmark date of issuance. If the Settlement Check is not cashed, deposited, or otherwise negotiated within the 180-day deadline, the check will be voided, and the funds associated with any such voided checks shall be distributed to the State of California Controller's Office, Unclaimed Property Division, in the name of the affected Class

1 Member. The Release will be binding upon all Participating Class Members, including those who do
2 not cash their checks within the 180-day period. The Parties agree that this disposition results in no
3 “unpaid cash residue,” or “unclaimed or abandoned funds” as the entire Net Settlement Amount will
4 be paid out to the Participating Class Members, whether or not they all cash their payment checks.

5 d. Certification By Settlement Administrator. The Parties have the right to
6 monitor and review administration of the Settlement. Any disputes not resolved by the Settlement
7 Administrator concerning the administration of the Settlement will be resolved by the Court, under
8 the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties
9 will confer in good faith to resolve the disputes without the necessity of involving the Court. Upon
10 completion of administration of the Settlement, the Settlement Administrator shall provide written
11 certification of such completion to counsel for the Parties, and which shall be filed with the Court as
12 necessary.

13 e. Settlement Awards Do Not Trigger Additional Benefits. All monies received
14 by Settlement Class Members shall be deemed to be income to such Settlement Class Members solely
15 in the year in which such awards actually are received by the Settlement Class Members. It is expressly
16 understood and agreed that the receipt of such Individual Settlement Payments will not entitle any
17 Settlement Class Member to additional compensation or benefits under any company compensation
18 or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle
19 any Settlement Class Member to any increased pension and/or retirement, or other deferred
20 compensation benefits. It is the intent of this Settlement that any Individual Settlement Payments
21 provided for in this Agreement are the sole payments to be made by Defendant to the Settlement Class
22 Members in connection with this Settlement, and that the Settlement Class Members are not entitled
23 to any new or additional compensation or benefits as a result of having received the Individual
24 Settlement Payments (notwithstanding any contrary language or agreement in any benefit or
25 compensation plan document that might have been in effect during the period covered by this
26 Settlement).

27 f. Class Representative Service Award. Defendant agrees not to oppose or object
28 to a Class Representative Service Award to Plaintiff of up to Six Thousand Dollars (\$6,000.00),

1 subject to Court approval. The Settlement Administrator shall issue an IRS Form 1099 – MISC to
2 Plaintiff in connection with the Class Representative Service Award payment. Plaintiff shall be solely
3 and legally responsible to pay any and all applicable taxes on his Class Representative Service Award
4 and shall hold harmless Defendant and Class Counsel from any claim or liability for taxes, penalties,
5 or interest arising as a result of the Class Representative Service Award payment. The Class
6 Representative Service Award shall be in addition to Plaintiff's Individual Settlement Payment. This
7 Settlement is not contingent upon the Court awarding Plaintiff a Class Representative Service Award
8 in any amount, and any amount requested by Plaintiff for the Class Representative Service Award that
9 is not granted by the Court shall return to the Net Settlement Amount and be distributed to Settlement
10 Class Members as provided in this Amended Agreement.

11 g. Class Counsel Award. Defendant agrees not to oppose or object to any
12 application or motion by Class Counsel for attorneys' fees not to exceed one-third from the Gross
13 Settlement Amount, or One Hundred and Sixty-Seven Thousand Dollars (\$167,000.00). Defendant
14 further agrees not to oppose any application or motion by Class Counsel for the reimbursement of any
15 costs or expenses associated with Class Counsel's prosecution of this matter from the Gross
16 Settlement Amount not to exceed Twenty Thousand Dollars (\$20,000.00). Class Counsel shall be
17 solely and legally responsible to pay all applicable taxes on the payment made pursuant to this
18 paragraph. The Settlement Administrator shall issue an IRS Form 1099 – MISC to Class Counsel for
19 the payments made pursuant to this paragraph. This Settlement is not contingent upon the Court
20 awarding Class Counsel any particular amount in attorneys' fees and costs. Any amount requested by
21 Class Counsel for the Class Counsel Award and costs that is not granted by the Court shall return to
22 the Net Settlement Amount and be distributed to Settlement Class Members as provided in this
23 Agreement.

24 h. Settlement Administration Costs. The Settlement Administrator shall be paid
25 for the costs of administration of the Settlement from the Gross Settlement Amount. The costs of
26 notice and administration for the disbursement of the Gross Settlement Amount shall not exceed
27 Twenty Thousand Dollars (\$20,000.00). Prior to the filing of a motion for final approval of this
28 Settlement, the Settlement Administrator shall provide the Parties with a statement detailing the costs

1 of administration. Any amount requested by the Settlement Administrator for administration costs that
2 is not granted by the Court shall return to the Net Settlement Amount and be distributed to Settlement
3 Class members as provided in this Amended Agreement. Defendant will pay any fees incurred by the
4 Settlement Administrator if the settlement is not approved.

5 i. PAGA Payment. Fifty Thousand dollars (\$50,000) from the Gross Settlement
6 Amount will be allocated to penalties under the Private Attorneys General Act of 2004. Seventy-five
7 percent (75%) of that amount, or \$37,500, will be paid to the LWDA and twenty-five (25%) of that
8 amount, or \$12,500, will be paid to the PAGA Members based upon Compensable PAGA Work
9 Weeks as determined by the PAGA Payment Ratio as set forth in Paragraph 26. This PAGA Payment
10 is made pursuant to California Labor Code § 2699(i).

11 56. Tax Liability: Class Counsel and Defendant make no representation as to the tax
12 treatment or legal effect of payments called for hereunder, and Plaintiff and the Settlement Class
13 Members are not relying on any statement or representation by Class Counsel or Defendant in this
14 regard. Plaintiff and Participating Class Members understand and agree that they will be solely
15 responsible for the payment of any taxes and penalties assessed on their respective payments described
16 herein. The amount of federal income tax withholding will be based upon a flat withholding rate for
17 supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or
18 supplemented. Income tax withholding will also be made pursuant to applicable state and/or local
19 withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed at times and in
20 the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this
21 Settlement Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax
22 law, is changed after the date of this Settlement Agreement, the processes set forth in this Section may
23 be modified in a manner to bring Defendant into compliance with any such changes.

24 57. Distribution of Settlement Payments. Individual Settlement Payments to Settlement
25 Class Members, the Class Representative Service Awards, the Class Counsel Award, Settlement
26 Administration Costs, Defendant's share of employer payroll taxes and PAGA Payment, shall all be
27 distributed by the Settlement Administrator within ten (10) calendar days of receipt of the full Gross
28 Settlement Amount from Defendant. Prior to distribution of Individual Settlement Payments to the

1 Settlement Class Members and PAGA Members, the Settlement Administrator shall update the Class
2 and PAGA Members addresses using the National Change of Address Database.

3 58. Work Week Differential. It is currently estimated that there were 250 Class Members
4 who collectively worked 8,200 Compensable Work Weeks through August 17, 2022. If it is
5 determined by Plaintiff's counsel and confirmed by the Settlement Administrator that more than 8,210
6 (10%) additional Class Members existed through final approval, the Gross Settlement Amount will
7 be increased on a pro rata basis according to the number of additional Class Members in excess of
8 8,210 (10%).

9 59. Final Settlement Approval Hearing and Entry of Final Judgment. Upon expiration of
10 the Response Deadline, a final approval hearing shall be conducted to determine, *inter alia*, final
11 approval of the Settlement and amounts properly payable for: (a) Individual Settlement Payments; (b)
12 the Class Counsel Award; (c) the Class Representative Service Awards; (d) PAGA Payment; and (e)
13 the Settlement Administration Costs.

14 60. Nullification of Settlement Agreement. In the event: (a) the Court does not enter the
15 Order for preliminary approval of the Settlement; (b) the Court does not finally approve the
16 Settlement; (c) the Court does not enter a Final Approval Order and Judgment as provided herein;
17 (d) the Settlement does not become final for any other reason; or (e) the Court fails or refuses to
18 approve any material condition of this Settlement Agreement which effects a fundamental change of
19 the Settlement Agreement, this entire Settlement Agreement shall be null and void and
20 unenforceable as to all Parties herein at the option of any Party but remains protected by California
21 Evidence Code Section 1152, and any order or judgment entered by the Court in furtherance of this
22 Settlement shall be treated as void from the beginning. In such cases, the Parties and any funds to be
23 awarded under this Settlement shall be returned to their respective statuses as of the date and time
24 immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as
25 if this Agreement had not been executed, except that any fees already incurred by the Settlement
26 Administrator shall be paid by Defendant. Further, if the Settlement Agreement is voided or fails
27 for any reason, Plaintiff and Defendant will have no further obligations under the Settlement
28 Agreement, including any obligation by Defendant to pay the Settlement Amount, or any amounts

1 that otherwise would have been owed under this Settlement Agreement. In the event an appeal is
2 filed from the Court's Final Approval Order and Judgment, or any other appellate review is sought,
3 administration of the Settlement shall be stayed pending final resolution of the appeal or other
4 appellate review, and any fees incurred by the Settlement Administrator prior to it being notified of
5 the filing of an appeal from the Court's Final Approval Order and Judgment, or any other appellate
6 review, shall be paid to the Settlement Administrator by the party or person that filed the appeal,
7 within thirty (30) calendar days of said notification.

8 61. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Settlement Class
9 Members pursuant to this Agreement shall be deemed not to be pensionable earnings and shall not
10 have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations,
11 holiday pay, retirement plans, etc.) of Plaintiff or Settlement Class Members.

12 62. No Admission by Defendant. Defendant denies any and all claims alleged in this
13 Action and denies all wrongdoing whatsoever. This Settlement Agreement is not a concession or
14 admission and shall not be used against Defendant as an admission or indication with respect to any
15 claim of any fault, concession, or omission by Defendant. Nonetheless, Defendant desires to settle
16 and compromise the matters at issue in the Action to avoid further substantial expense and the
17 inconvenience and distraction of protracted and burdensome litigation. Defendant also has taken into
18 account the uncertainty and risks inherent in litigation, and without conceding any infirmity in the
19 defenses that it has asserted or could assert against Plaintiff and/or any Settlement Class Member, has
20 determined that it is desirable and beneficial that the claims of Plaintiff and the Settlement Class be
21 settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

22 63. INTENTIONALLY LEFT BLANK

23 64. No Publicity. Plaintiff and Plaintiff's Counsel agree not to disclose or publicize
24 the settlement, including the Memorandum of Understanding, the fact of the Settlement, its
25 terms or contents, and the negotiations underlying the Settlement, in any manner or form,
26 directly or indirectly, to any person or entity, except potential class members and as shall be
27 contractually required to effectuate the terms of the Settlement as set forth herein. For the
28 avoidance of doubt, this section means Plaintiff and Class Counsel will not to issue press

1 releases, communicate with, or respond to any media or publication entities, publish information
2 in manner or form, whether printed or electronic, on any medium or otherwise communicate,
3 whether by print, video, recording or any other medium, with any person or entity concerning
4 the Settlement, including the fact of the Settlement, its terms or contents and the negotiations
5 underlying the Settlement, except as shall be contractually required to effectuate the terms of the
6 Settlement as set forth herein. However, for the limited purpose of allowing Class Counsel to
7 prove adequacy as class counsel in other actions, Class Counsel may disclose the name of the
8 Parties in this action and the venue/case number of this action (but not any other settlement
9 details) for such purposes.

10 65. Exhibits and Headings. The terms of this Settlement Agreement include the terms set
11 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein.
12 Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of any
13 paragraphs or sections of this Agreement are inserted for convenience of reference only and do not
14 constitute a part of this Agreement.

15 66. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
16 except such proceedings necessary to implement and complete the Settlement, holding the Action in
17 abeyance pending the final approval hearing to be conducted by the Court.

18 67. Dispute Resolution. Except as otherwise set forth herein, all disputes concerning the
19 interpretation, calculation or payment of Settlement claims, or other disputes regarding compliance
20 with this Agreement shall be resolved as follows:

21 a. If Plaintiff or Class Counsel, on behalf of Plaintiff or any Settlement Class
22 Member, or Defendant's Counsel, on behalf of Defendant, at any time believe that the other Party has
23 breached or acted contrary to the Agreement, that Party shall notify the other Party in writing of the
24 alleged violation.

25 b. Upon receiving notice of the alleged violation or dispute, the responding Party
26 shall have ten (10) calendar days to correct the alleged violation and/or respond to the initiating Party
27 with the reasons why the Party disputes all or part of the allegation.
28

1 c. If the response does not address the alleged violation to the initiating Party's
2 satisfaction, the Parties shall negotiate in good faith for up to ten (10) calendar days to resolve their
3 differences.

4 d. If Class Counsel and Defendant's Counsel are unable to resolve their
5 differences after twenty (20) calendar days, either Party shall first contact the mediator (Gig Kyriacou)
6 to try to resolve the dispute. If that proves unsuccessful, the party may file an appropriate motion for
7 enforcement with the Court. The briefing of such motion should be in letter brief form and shall not
8 exceed five (5) single-spaced pages (excluding exhibits).

9 e. Reasonable attorneys' fees and costs for work done in resolving a dispute under
10 this Section may be recovered by any Party that prevails under the standards set forth within the
11 meaning of applicable law.

12 68. Notice. Unless otherwise specifically provided herein, all notices, demands or other
13 communications given hereunder shall be in writing and shall be deemed to have been duly given as
14 of the third business day after (i) emailing and (ii) mailing by United States registered or certified
15 mail, return receipt requested, addressed:

16 To the Settlement Class:

17 LAW OFFICE OF SCOTT ERNEST WHEELER
18 Scott Ernest Wheeler
19 Justin A. Wheeler
20 250 West First Street, Suite 216
21 Claremont, California 91711
22 Telephone: (909) 621-4988
Facsimile: (909) 621-4622
Email: sew@scottwheelerlawoffice.com
jaw@scottwheelerlawoffice.com

23 To Defendant:

24 FISHER & PHILLIPS, LLP
25 Lonnie D. Giamela (SBN 228435)
26 Evan E. Kroll (SBN 333754)
27 444 South Flower Street, Suite 1500
28 Los Angeles, California 90071
Telephone: (213) 330-4454
Facsimile: (213) 330-4501
Email: lgiamela@laborlawyers.com
ekroll@fisherphillips.com

69. Amendment or Modification. This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties and approved by the Court.

70. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the entire Agreement among these Parties, and no oral or written representations, warranties, or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties, and covenants contained and memorialized in the Agreement and its Exhibits.

71. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate actions required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court or the mediator to resolve such disagreement. The persons signing this Agreement on behalf of Defendant represent and warrant that they are authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and warrants that he is authorized to sign this Agreement and that he has not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

72. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

73. No Prior Assignments. The Parties hereto 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 rights released and discharged by this Settlement Agreement.

74. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval Order and Judgment, nothing contained herein, nor the consummation of this Settlement Agreement,

1 is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the
2 part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
3 Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant
4 inconvenience and expenses. This Settlement Agreement is a settlement document, and it, along with
5 all related documents such as the notices, and motions for preliminary and final approval, shall,
6 pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
7 inadmissible as evidence in any proceeding, except an action or proceeding to approve the Settlement,
8 and/or interpret or enforce this Settlement Agreement. The stipulation for class certification as part
9 of this Settlement Agreement is for settlement purposes only and if for any reason the Settlement is
10 not approved, the stipulation will be of no force or effect.

11 75. California Law Governs. All terms of this Settlement Agreement and the Exhibits
12 hereto shall be governed by and interpreted according to the laws of the State of California.

13 76. Counterparts. This Settlement Agreement may be executed in one or more
14 counterparts. All executed counterparts and each of them shall be deemed to be one and the same
15 instrument.

16 77. This Settlement is Fair, Adequate and Reasonable. The Parties believe this Settlement
17 is a fair, adequate, and reasonable settlement of this Action and have arrived at this Settlement after
18 extensive arms-length negotiations, taking into account all relevant factors, present and potential.

19 78. Jurisdiction of the Court. Pursuant to California Code of Civil Procedure section 664.6,
20 the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement
21 of the terms of this Settlement Agreement and all orders and judgments entered in connection
22 therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes
23 of interpreting, implementing, and enforcing the settlement embodied in this Agreement and all orders
24 and judgments entered in connection therewith. All terms of this Settlement Agreement are subject to
25 approval by the Court.

26 79. Construction. The Parties hereto agree that the terms and conditions of this Settlement
27 Agreement are the result of lengthy, intensive arms'-length negotiations among the Parties and that
28 this Settlement Agreement shall not be construed in favor of or against any Party based on the extent

1 to which any Party or their counsel participated in the drafting of this Settlement Agreement. Plaintiff
2 and Defendant expressly waive the common-law and statutory rule of construction that ambiguities
3 should be construed against the drafter of an agreement and further agree, covenant, and represent that
4 the language in all parts of this Settlement Agreement shall be in all cases construed as a whole,
5 according to its fair meaning.

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

10 81. Binding On Assigns. This Settlement Agreement shall be binding upon and inure to
11 the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
12 successors and assigns.

13 82. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
14 because the members of the Settlement Class are numerous, it is impossible or impractical to have
15 each Settlement Class Member execute this Settlement Agreement. The Notice will advise all
16 Settlement Class Members of the binding nature of the release provided herein and such Release
17 shall have the same force and effect as if this Settlement Agreement were executed by each
18 Settlement Class Member.

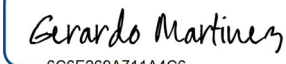
19 83. Voluntary Agreement. The Parties acknowledge that they have entered into this
20 Settlement Agreement voluntarily, on the basis of their own judgment and without coercion, duress,
21 or undue influence of any Party, and not in reliance on any promises, representations, or statements
22 made by the other Parties other than those contained in this Settlement Agreement. Each of the
23 Parties hereto expressly waves any right they might ever have to claim that this Settlement
24 Agreement was in any way induced by fraud.

25 84. Opportunity to Consult with Counsel. Prior to execution of this Settlement
26 Agreement, each Party has read this entire Settlement Agreement and has been given the
27 opportunity to consult with independent counsel of their choosing and to have such independent
28 counsel advise as to the meaning of this Settlement Agreement and its legal effect.

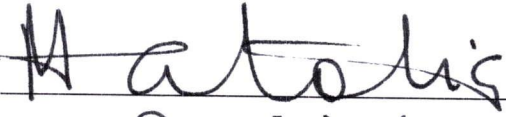
85. Counterparts. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully-signed Settlement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

86. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

Dated: 3/27/2023

DocuSigned by:

 6C6E269A711A4C6...
 By: _____
 Gerardo Martinez

Dated: 3/26/2023

Invapharm, Inc.

 By: _____
 Title: President/CEO

APPROVED AS TO FORM:

DATED: February __, 2023

LAW OFFICE OF SCOTT ERNEST WHEELER

By: _____
 Scott Ernest Wheeler
 Justin A. Wheeler

Attorneys for Plaintiff Gerardo Martinez and the Putative Class

DATED: ~~February~~ March 26, 2023

FISHER & PHILLIPS LLP


 By: _____
 Lonnie D. Giamela
 Evan Kroll

Attorneys for Defendant, Invapharm, Inc.

85. 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.

86. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

Dated: _____

By: _____
Gerardo Martinez

Invapharm, Inc.

Dated: 3/26/2023

By: M. A. T. O. L. I. S.
Title: President/CEO

APPROVED AS TO FORM:

DATED: ~~February~~ ____, 2023

March 28, 2023

LAW OFFICE OF SCOTT ERNEST WHEELER

By: [Signature]
Scott Ernest Wheeler
Justin A. Wheeler

Attorneys for Plaintiff Gerardo Martinez and the Putative Class

DATED: ~~February~~ 26, 2023

FISHER & PHILLIPS LLP

By: [Signature]
Lonnie D. Giamela
Evan Kroll

Attorneys for Defendant, Invapharm, Inc.