

1 **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT**

2 This Class Action and PAGA Settlement Agreement is entered into by and between Plaintiff
3 Santiago Melgar, individually and on behalf of all others similarly situated, and Defendant Pro-Tek
4 Manufacturing, Inc. subject to the terms and conditions hereof and the Court's approval.

5 **A. Definitions**

6 1. "Action" or "Lawsuit" means and refers to the case entitled *Melgar v. Pro-Tek*
7 *Manufacturing, Inc.*, Case No. 21CV002665, filed in Alameda Superior Court.

8 2. "Aggrieved Employees" include all persons who are or were previously employed by
9 Defendant in California classified as a non-exempt or hourly employee at any time from November
10 15, 2020, until November 10, 2022.

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

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

20 5. "Class Counsel" refers to Mehrdad Bokhour of Bokhour Law Group, P.C. and
21 Michelle Eshaghian of Eshaghian Law, PC.

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

1 7. “Class Period” and “Class Release Period” shall mean November 15, 2017, until
2 November 10, 2022.

3 8. “Class Representative” or “Plaintiff” means and refers to Santiago Melgar.

4 9. “Complaint” refers to the Complaint filed in the Alameda County Superior Court
5 action entitled *Melgar v. Pro-Tek Manufacturing, Inc.*, Case No. 21CV002665.

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

8 11. “Defendant” means and refers to Pro-Tek Manufacturing, Inc.

9 12. “Defendant’s Counsel” or “Defense Counsel” mean and refer to Sandra McMullan of
10 Littler Mendelson P.C.

11 13. “Effective Date” means the latter of (a) The Court’s final approval of the settlement if
12 no objections by or on behalf of Class Members have been filed and not withdrawn; (b) the time for
13 all appeals relating to objections to Settlement and the Final Approval Order has expired; or (c) if an
14 appeal, review or writ is sought, the date on which the highest reviewing court renders its decision
15 denying any petition (where the immediately lower court affirmed the final judgment) or affirming
16 the final judgment. “Final” means that the Settlement has been granted, the Court has issued a “Final
17 Approval Order,” and the “Effective Date” has occurred.

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

22 15. “Final Settlement Class” means, collectively, all Participating Class Members and all
23 Aggrieved Employees.

24 16. “Individual Settlement Amount” shall have the meaning ascribed to it in Paragraph
25 47(d) below.

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

1 18. “Notice” means the notice of settlement of class action and PAGA Settlement that will
2 be sent to the Settlement Class Members.

3 19. “Notice Response Deadline” is forty-five (45) calendar days from the date the Notice
4 is mailed to the Settlement Class Members.

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

8 21. “PAGA” shall refer to the California Labor Code Private Attorneys General Act of
9 2004, California Labor Code sections 2698 *et seq.*

10 22. “PAGA Claims” or “Released PAGA Claims” shall include any and all claims for
11 civil penalties pursuant to PAGA based on the allegations stated in the PAGA Notice and that were
12 or could have been pled in the Complaint based on the facts alleged therein, including claims for
13 failure to pay minimum wages, failure to pay overtime wages and/or failure to pay such wages at the
14 correct rate(s) of pay, meal and rest break violations, failure to provide accurate itemized wage
15 statements, failure to timely pay wages, failure to pay final wages, and unfair and unlawful business
16 practices.

17 23. “PAGA Notice” shall refer to the notices sent by Plaintiff, by and through counsel, on
18 or about November 15, 2021 to the LWDA and to Defendant, alleging that Defendant engaged in
19 violations of the California Labor Code and California Wage Order(s).

20 24. “PAGA Period” and “PAGA Release Period” shall mean November 15, 2020, until
21 November 15, 2022.

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

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

27 27. “Preliminary Approval Date” means the date the Court preliminarily approves the
28 Settlement Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

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

7 29. “QSF” means the Qualified Settlement Fund set up by the Settlement Administrator
8 for the benefit of the Final Settlement Class, and from which the settlement payments shall be made,
9 and which is intended to be a fund that qualifies under Internal Revenue Code Section 468.

10 30. “Release” shall mean the release and discharge of the Class Claims by Plaintiff and
11 all of the Participating Class Members and the release and discharge of the PAGA Claims by Plaintiff
12 and all of the Aggrieved Employees.

13 31. “Released Parties” shall refer to Defendant, together with its current and former
14 officers, directors, members, managers, shareholders, agents, insurers, charitable organizations,
15 parents, subsidiaries, affiliates, operators, partners, attorneys, successors, and assignees.

16 32. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 70(a)
17 below.

18 33. “Service Payment” or “Service Award” means the amount approved by the Court to
19 be paid to Class Representative in addition to his Individual Settlement Amount as a Participating
20 Class Member.

21 34. “Settlement Administration Costs” means the costs payable from the Settlement
22 Amount to the Settlement Administrator for administering this Settlement, including, but not limited
23 to, printing, distributing, and tracking documents for this Settlement, tax reporting, due diligence,
24 reporting and remittance obligations, distributing the Settlement Amount, and providing necessary
25 reports and declarations, as requested by the Parties. The Settlement Administration Costs shall be
26 paid from the Settlement Amount.

27 35. “Settlement Administrator” means and refers to ILYM Group, Inc., which the Parties
28 have mutually agreed will provide the Notice to the Class Members and distribute the settlement

1 amounts as described in this Agreement.

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

4 37. "Settlement Class Member" or "Class Member" refers to individual members of the
5 Settlement Class.

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

9 39. "Workweeks Worked" for each Settlement Class Member and Aggrieved Employee
10 means any workweek during the Class Period and/or the PAGA Period, as applicable, in which the
11 Settlement Class Member and/or Aggrieved Employee was employed by Defendant as a non-exempt
12 employee in California and worked at least one shift during the workweek for or on behalf of
13 Defendant. Workweeks Worked shall not include weeks where a Settlement Class Member and/or
14 Aggrieved Employee only had sick time, vacation time, was on leave, or otherwise did not record
15 any actual work time in Defendant's timekeeping system. Workweeks Worked will be calculated
16 based on Defendant's business records.

17 **B. General Terms**

18 40. On or about November 15, 2021, Plaintiff filed a class action complaint in the Court
19 against Defendant, including allegations of: (1) failure to pay all minimum wages, (2) failure to pay
20 overtime wages, (3) meal period violations, (4) rest period violations, (5) waiting time penalties, and
21 (6) failure to provide accurate and itemized wage statements, (7) unfair competition, and (8) PAGA
22 penalties.

23 41. Defendant denies Plaintiff's claims and allegations and contends that the Action is not
24 suitable for class certification and/or representative treatment.

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

27 43. The Parties have conducted a thorough investigation into the facts of the Action. This
28 includes conducting extensive exchange of informal discovery, including Defendant's written

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

12 44. On October 28, 2022, the Parties participated in mediation before Tripper Ortman,
13 Esq., a highly experienced class action mediator. Although the parties did not reach a settlement on
14 that date, they continued their extensive and at times contentious arms-length negotiations, through
15 Mr. Ortman, and reached a settlement several weeks after the day of the mediation.

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

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

1 have no bearing on and shall not be admissible in connection with the issue of whether or not class
2 certification and/or representative treatment would be appropriate in a non-settlement context.
3 Defendant expressly reserves its rights and declares that it will continue to oppose class certification,
4 representative treatment, and the substantive merits of the case should the Court fail to issue Final
5 Approval. Plaintiff expressly reserves his rights and declares that he will continue to pursue class
6 certification and representative treatment and a trial should the Court fail to issue Final Approval.

7 **C. Terms of Settlement**

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

9 (a) Gross Settlement Amount: The Parties agree to settle this Action for Six Hundred
10 Thousand Dollars (\$600,000.00) (“the Settlement Amount”). The Settlement Amount is the
11 maximum amount that will be paid by Defendant, and includes Individual Settlement Amounts,
12 attorneys’ fees of Class Counsel, costs and expenses, the Service Payment to Class Representative,
13 all Settlement Administration Costs, and payment to the Labor Workforce Development Agency
14 (LWDA) for PAGA penalties. Defendant shall separately pay the employers’ share of applicable
15 payroll taxes.

16 (b) The Settlement is based on Defendant’s representation that there are approximately
17 15,590 workweeks within in the time-period included in the information provided to Class Counsel.
18 In the event that the actual number of workweeks worked by all Class Members during the time
19 period covered by the information provided to Class Counsel, Class Period increases by 5% or more,
20 then Defendant shall increase the Maximum Settlement Amount on a proportional basis (i.e., if there
21 was a 6% increase in the number of workweeks, Defendant will increase the maximum settlement
22 amount by 6%).

23 (c) Net Settlement Amount: The “Net Settlement Amount” is defined as the Settlement
24 Amount less attorneys’ fees and litigation costs as approved and awarded by the Court, the Service
25 Payment to Class Representative as approved and awarded by the Court, the Settlement
26 Administration Costs, as approved and awarded by the Court, and the Twenty Thousand Dollars
27 (\$20,000.00) allocated to payment for PAGA penalties as described in paragraph 47(d)(i) below. In
28 the event that the Court reduces the attorneys’ fees and litigation costs or Service Awards, Settlement

Administration Costs, or either increases or decreases the amount allocated to PAGA penalties, the Net Settlement Sum shall be increased or decreased accordingly. Any change to the Net Settlement Sum shall have no effect on the Settlement Amount.

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

i. PAGA Amount: \$20,000.00 of the Gross Settlement Amount has been designated to the PAGA claims. Twenty-five percent (25%) or \$5,000, shall be paid out to Aggrieved Employees, while seventy-five percent (75%), or \$15,000.00, will be paid to the LWDA. Each Aggrieved Employee shall receive a portion of the \$5,000.00 proportionate to the number of Workweeks Worked by the Aggrieved Employees during the PAGA Period compared to the total number of Workweeks Worked by all Aggrieved Employees during the PAGA Period. Aggrieved Employees shall have their settlement amount for the Released PAGA claims paid one hundred percent (100%) as civil penalties for which no taxes will be withheld and for which a Form 1099 will be issued by the Settlement Administrator.

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

(e) Allocation of Individual Settlement Amounts: The Individual Settlement Amounts will be allocated for tax purposes based on the allegations in the Action as follows: twenty percent (20%) will be paid as wages subject to withholding of all applicable local, state, and federal taxes

1 and, eighty percent (80%) will be paid as interest and as civil penalties (pursuant to, *e.g.*, California
2 Labor Code sections 203, 226) from which no taxes will be withheld. The amounts apportioned as
3 interest and penalties will be reported on an IRS Form 1099. The Settlement Administrator will issue
4 to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state
5 forms with respect to the wage allocation and a Form 1099 with respect to the civil penalties and
6 interest allocations.

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

20 (g) Attorneys' Fees and Costs: Defendant agrees not to oppose a request by Class Counsel
21 to the Court for an award of attorneys' fees of one-third (33.33%) of the Settlement Amount
22 (approximately \$200,000), plus reasonable litigation costs not to exceed \$15,000 ("Attorneys' Fees
23 and Cost Award"). For purposes of this Settlement, Defendant agrees not to oppose any contention
24 by Class Counsel that attorneys' fees should be based on the common fund doctrine. The Attorneys'
25 Fee and Cost Award shall be paid from the Gross Settlement Amount, and except for this award,
26 Defendant shall have no further obligation to pay any attorneys' fees, costs, or expenses to Class
27 Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the
28 difference shall be added to the Net Settlement Amount to be distributed to the Participating Class

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

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

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

27 (k) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT (FOR
28 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO

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

22 48. No Credit Towards Benefit Plans. The Individual Settlement Payments and Individual
23 PAGA Payments made to Participating Class Members and/or Aggrieved Employees under this
24 Settlement, as well as any other payment made pursuant to this Settlement, will not be utilized to
25 calculated any additional benefits under any benefit plans to which any Class Members and/or
26 Aggrieved Employees may be eligible, including but not limited to: profit-sharing plans, bonus plans,
27 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit
28 plan. Rather, it is the Parties’ intention that this Settlement Agreement will not affect the rights,

1 contributions, or amounts to which any Class Member and/or Aggrieved Employees may be entitled
2 under benefit plans.

3 49. “Non-Reversionary” Settlement. This is a “non-reversionary” settlement. Under no
4 circumstances will any portion of the Settlement Amount revert to Defendant. Final Settlement Class
5 Members will not have to make a claim to receive an Individual Settlement Amount. Distributions,
6 in the form of Individual Settlement Amounts, will be made directly to each Final Settlement Class
7 Member. The Settlement Administrator shall be responsible for accurately and timely reporting any
8 remittance obligations with respect to unclaimed funds as a result of a Final Settlement Class Member
9 not cashing an Individual Settlement Amount by the check cashing deadline, as set forth herein.

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

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

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

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

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

26 54. The LWDA will be deemed to have made the foregoing Release as if by manually
27 signing it.

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

8 56. Plaintiff and Defendant intend that the Settlement described in this Agreement will
9 release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration,
10 demand, or other action of any kind, by the LWDA to obtain a recovery based on, arising out of,
11 and/or related to any and all of the Released PAGA Claims.

12 57. Class Representative, on behalf of himself and the Participating Settlement Class
13 Members, acknowledges and agrees that the claims for (1) unpaid minimum wages, (2) unpaid
14 overtime wages; (3) meal break violations; (4) rest break violations; (5) waiting time penalties; (6)
15 failure to provide accurate and itemized wage statements, (7) unfair competition; and (8) PAGA
16 penalties are disputed, and that the payments set forth herein constitute payment of all sums allegedly
17 due to him. Class Representative, on behalf of himself and the Participating Settlement Class
18 Members, acknowledges and agrees that California Labor Code Section 206.5 is not applicable to the
19 Parties hereto. Section 206.5 provides in pertinent part as follows:

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

23 **E. Release by Class Representative**

24 58. As a material inducement to Defendant to enter into this Settlement Agreement, in
25 addition to Class Representative's release of the Released Class Claims and Released PAGA Claims,
26 as discussed in Paragraphs 53 and 55 above, Class Representative does hereby, for himself and for
27 his respective spouses, domestic partners, marital community, children, estates, trusts, attorneys,
28 heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators,

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

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

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

27 60. Class Representative expressly waives and relinquishes all rights and benefits afforded
28 by Section 1542 of the Civil Code of the State of California and does so understanding and

1 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of the
2 State of California states:

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

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

16 **F. Interim Stay of Proceedings**

17 61. Pending completion of all of the prerequisites necessary to effectuate this Settlement,
18 the Parties agree, subject to Court approval, to a stay of all proceedings in the Action except such as
19 are necessary to effectuate the Settlement.

20 **G. Notice Process**

21 62. Appointment of Settlement Administrator. The Parties have agreed to the appointment
22 of the Settlement Administrator to perform the duties of a settlement administrator, including mailing
23 the Notice, using standard devices to obtain forwarding addresses, independently reviewing and
24 verifying documentation associated with any claims or opt-out requests, resolving any disputes
25 regarding the calculation or application of the formula for determining the Individual Settlement
26 Amounts, drafting and mailing the settlement checks to Final Settlement Class Members, issuing
27 Forms W-2 and 1099, reporting to taxing authorities, due diligence, reporting and remittance
28 obligations, and performing such other tasks as set forth herein or as the Parties mutually agree or
that the Court orders.

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

12 64. Class Data. Within fifteen (15) days after entry of the Preliminary Approval Order,
13 Defendant shall provide the Class Data to the Settlement Administrator. The Settlement
14 Administrator will run a check of the Class Members' addresses against those on file with the U.S.
15 Postal Service's National Change of Address List. The Class Data provided to the Settlement
16 Administrator shall not share Class Data with Class Counsel and it will remain confidential, it shall
17 be used solely to administer the Settlement, and it will not be used or disclosed to anyone, except as
18 required by applicable tax authorities, pursuant to Defendant's express written consent, or by order
19 of the Court. This information shall be immediately and permanently destroyed following the
20 Settlement Administrator's payment of the Non-PAGA Settlement Amounts to the Non-PAGA
21 Settlement Class Members.

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

27 66. Returned Notices. The Settlement Administrator will take steps to ensure that the
28 Notice is received by all Settlement Class Members, including utilization of the National Change of

1 Address Database maintained by the United States Postal Service to review the accuracy of and, if
2 possible, update a mailing address. If no forwarding address is provided, the Settlement
3 Administrator will promptly attempt to determine the correct address using a skip-trace, or other
4 search using the name, address, and/or Social Security number of the Class Member involved and
5 will then perform a single re-mailing. In the event the procedures in this Paragraph are followed and
6 the intended recipient of a Notice Packet still does not receive the Notice Packet, the Class Member
7 shall be bound by all terms of the Settlement and any Judgment entered by the Court if the Settlement
8 is approved by the Court. Notices will be re-mailed to any Settlement Class Member for whom an
9 updated address is located within ten (10) calendar days following both the Settlement Administrator
10 learning of the failed mailing and its receipt of the updated address. The Notice shall be identical to
11 the original Notice, except that it shall notify the Settlement Class Member that the exclusion (opt-
12 out) request or objection must be returned by the later of the Notice Response Deadline or fifteen
13 (15) days after the remailing of the Notice.

14 67. Presumption Regarding Receipt of Notice. It will be conclusively presumed that if an
15 envelope has not been returned within thirty (15) days of the mailing that the Settlement Class
16 Member received the Notice.

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

1 Administrator to render a final decision. All disputes will be decided within ten (10) business days
2 of the Notice Response Deadline. Settlement Class Members will have until the Notice Response
3 Deadline to dispute Workweeks Worked, object, or opt out, unless extended by the Court. In the event
4 that the Settlement Administrator increases the number of Workweeks Worked for any Settlement
5 Class Member, then the Settlement Administrator will recalculate the Participating Class Members'
6 Individual Settlement Amounts; accordingly, in no event will Defendant be required to increase the
7 Gross Settlement Amount.

8 69. Declaration of Due Diligence. The Settlement Administrator shall provide counsel for
9 the Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of due
10 diligence and proof of mailing with regard to the mailing of the Notice, including the number of
11 notices sent and returned, an explanation of efforts to resend undeliverable notices, and copies of all
12 Requests for Exclusion, which declaration shall be filed with the Court by Class Counsel along with
13 their papers requesting final approval of the Settlement.

14 70. Sufficient Notice. Compliance with the procedures described in this Section IV.B.
15 shall constitute due and sufficient notice to Non-PAGA Settlement Class Members of this Settlement
16 and of the Final Fairness and Approval Hearing, shall satisfy the requirements of due process, and
17 nothing else shall be required of the Representative Plaintiff, Class Counsel, Defendant, Defendant's
18 Counsel, or the Settlement Administrator to provide notice of the Settlement and the Final Fairness
19 and Approval Hearing.

20 71. Settlement Class Members' Rights. Each Settlement Class Member will be fully
21 advised of the Settlement, the ability to object to the provisions in the Settlement related to the Class
22 Claims, and the ability to opt out or request exclusion from the Class Claims provisions of the
23 Settlement. The Notice will inform the Settlement Class Members of the Court-established deadlines
24 for filing objections or requesting exclusion from the Class Claims provisions of the Settlement in
25 accordance with the following guidelines:

26 (a) Requests for Exclusion from Participating Settlement Class. Any Settlement
27 Class Member, other than Plaintiff, may request to be excluded from the Participating Settlement
28 Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on or

1 before the Notice Response Deadline. The Request for Exclusion should state in words substantially
2 similar to the below:

3 I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE
4 MELGAR V. PRO-TEK LAWSUIT. I UNDERSTAND THAT IF I ASK TO
5 BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT
6 RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS
7 CLAIMS IN THIS LAWSUIT.

8 Any Request for Exclusion must include the full name (and former names, if any), address,
9 telephone number, last four digits of the social security number or date of birth, and signature of the
10 Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by mail
11 to the Settlement Administrator at the specified address. Any such Request must be made in
12 accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if
13 postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing. Any
14 Settlement Class Member who timely requests exclusion in compliance with these requirements: (i)
15 will not have any rights under this Agreement with respect to the Class Claims, including the right to
16 object, appeal, or comment on the Settlement; (ii) will not be entitled to receive any payments under
17 this Agreement with respect to Class Claims; and (iii) will not be bound by this Agreement, or the
18 Judgment, with respect to the Class Claims.

19 Any Non-PAGA Settlement Class Member who fails to submit a timely, complete, and valid
20 Request for Exclusion shall be barred from opting out of the Settlement. It shall be conclusively
21 presumed that, if a Request for Exclusion is not postmarked on or before the expiration of the period
22 to submit a Request for Exclusion, the Non-PAGA Settlement Class Member did not make the request
23 in a timely manner. Under no circumstances shall the Settlement Administrator have the authority to
24 extend the deadline for Non-PAGA Settlement Class Members to file a Request for Exclusion.

25 Unless a Non-PAGA Settlement Class Member submits a timely, complete, and valid Request
26 for Exclusion, he or she shall be bound by the terms and conditions of this Agreement. The releases
27 provided for in this Agreement shall conclusively preclude any Non-PAGA Settlement Class Member
28 from asserting any of the Non-PAGA Released Claims against any of the Released Parties in any

1 judicial, administrative, or arbitral forum.

2 Plaintiff agrees to execute this Settlement Agreement and, by his execution, is hereby bound
3 by the terms herein. For good and valuable consideration, Plaintiff further agrees that he will not
4 request to be excluded from the Settlement Agreement, nor object to any terms of it. Any such request
5 for exclusion or objection or other efforts by Plaintiff to circumvent the terms of this paragraph will
6 be void and of no force or effect.

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

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

1 and the Settlement Administrator shall attach the same to its declaration of due diligence it files with
2 the Court prior to the Final Approval Hearing. Any Participating Class Member who files an objection
3 remains eligible to receive monetary compensation from the Settlement. Plaintiff and Defendant shall
4 not be responsible for any fees, costs, or expenses incurred by any Class Member and/or his/her/their
5 counsel related to any objections to the Settlement. Submitting an objection does not preserve the
6 right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record
7 by timely and properly intervening or filing a motion to vacate the judgment under Code of Civil
8 Procedure section 663. Settlement Class Members and Aggrieved Employees may not object to or
9 opt out of the Settlement with respect to the PAGA Claims. At no time will any of the Parties or their
10 counsel seek to solicit or otherwise encourage Class Members to submit written objections to the
11 Settlement or appeal from the Judgment. To the extent a timely Notice of Objection is withdrawn
12 before final approval, such an objection shall be treated as though no objection has been made.

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

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

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

1 73. Funding of the Settlement Amount. Defendant shall make a one-time deposit into the
2 QSF of the Settlement Amount, as described in Paragraph 47(a) that is necessary to make all
3 payments required under this Settlement, within fourteen (14) days after the Effective Date.
4 Defendant shall separately pay its share of employer payroll taxes as calculated and directed by the
5 Settlement Administrator within fourteen (14) days of its receipt of the employer payroll tax
6 statement.

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

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

1 check.

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

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

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

12 78. Within 30 days of execution of this Agreement, Plaintiff will move the Court for
13 Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing
14 the following:

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

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

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

21 (d) Preliminarily approving this Settlement; and

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

23 79. In conjunction with the Preliminary Approval Hearing, Plaintiff will submit this
24 Settlement Agreement, and will include the proposed Notice Packet, which will include the Notice
25 of Class Action Settlement document and proposed Mailing Envelope.

26 80. In accordance with section 2699(1)(2) of the California Labor Code, Plaintiff shall
27 provide a copy of this Settlement Agreement to the LWDA on the same day that Plaintiff files his
28 motion for Preliminary Approval of this Settlement with the Court.

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

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

6 82. In connection with the Final Approval Hearing provided for in this Settlement
7 Agreement, Class Counsel shall submit a proposed Final Approval Order:

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

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

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

17 **J. Voiding the Agreement**

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

22 84. If more than seven percent (7%) of the Settlement Class Members timely submit a
23 Request for Exclusion, Defendant shall have the option of terminating or modifying this Agreement
24 without prejudice to its pre-settlement positions and defenses in the Action. If Defendant exercises
25 such option under this paragraph, it shall be relieved of any obligation to pay the Settlement Amount
26 or any other obligations from the Settlement by giving notice to Plaintiff's Counsel and the Settlement
27 Administrator within three (3) days of the Notice Response Deadline. If Defendant exercise its option
28 under this paragraph, Defendant shall be solely responsible for all Settlement Administration Costs

1 incurred.

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

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

8 **K. Other Terms**

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

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

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

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

27 91. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they
28 have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or

1 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action,
2 or rights released and discharged by this Settlement Agreement.

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

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

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

To the Settlement Class Members and Aggrieved Employees:

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

Michelle Eshaghian
michelle@eshlegal.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (310) 531-8090 Fax: (310) 531-8070

To Defendant:

Sandra J. McMullan
SMcMullan@littler.com
333 Bush Street, 34th Floor
San Francisco, California 94104
Tel: (415) 677-3151; Fax: (415) 651-9244

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

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

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

98. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide written

1 notice to the other Party and allow an opportunity to cure the alleged deficiencies, and Plaintiff and
2 Defendant agree to seek the help of the mediator identified in this Agreement to resolve any dispute
3 they are unable to resolve informally. During this period, the Parties shall bear their own attorneys'
4 fees and costs. This provision shall not apply to any legal action or other proceeding instituted by any
5 person or entity other than Plaintiff or Defendant.

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

10 100. Enforceability. Pursuant to California Evidence Code section 1123(a) and (b), this
11 Agreement is intended by the Parties to be, and shall be, enforceable, binding and admissible in a
12 court of law.

13 101. Choice of Law. This Settlement Agreement shall be governed by and construed,
14 enforced, and administered in accordance with the laws of the State of California, without regard to
15 its conflicts-of-law rules.

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

21 103. Binding On Assigns. This Settlement Agreement shall be binding upon and inure to
22 the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
23 successors, and assigns.

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

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

6
7 **APPROVAL AND EXECUTION BY PARTIES:**

8 Dated: February __, 2023

CLASS REPRESENTATIVE:

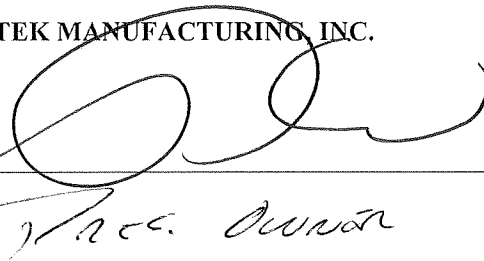
9
10 _____
SANTIAGO MELGAR

11 Dated: February 24, 2023

DEFENDANT:

12 **PRO-TEK MANUFACTURING, INC.**

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15 _____
By
16 Its


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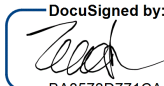
105. Counterparts. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Settlement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

APPROVAL AND EXECUTION BY PARTIES:

2/23/2023

Dated: February __, 2023

CLASS REPRESENTATIVE:

DocuSigned by:

BA8573D771CA4A8...
SANTIAGO MELGAR

Dated: February __, 2023

DEFENDANT:

PRO-TEK MANUFACTURING, INC.

By
Its