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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

BERT RYAN BENTON, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

HOT LINE CONSTRUCTION, INC., a Delaware
corporation; and DOES 1 through 10, inclusive,

Defendant.

Case No.: 21STCV47377

[Honorable Lawrence P. Riff,
Department 7]

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

Complaint Filed: December 29, 2021
Trial Date: Not Set

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JOINT STIPULATION OF CLASS AND PAGA ACTION SETTLEMENT AGREEMENT

This Joint Stipulation of Class and PAGA Action Settlement Agreement (“Settlement” or “Agreement” or “Settlement Agreement”) is made by and between plaintiff Bert Ryan Benton (“Plaintiff”) and defendant Hot Line Construction, Inc. (“Defendant,” the “Company” or “Hot Line”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. **DEFINITIONS.**

- 1.1. “Action” means *Bert Ryan Benton v. Hot Line Construction, Inc.*, Superior Court of the State of California, County of Los Angeles, Case No. 21STCV47377.
- 1.2. “Administrator” means Simpluris, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with its “not to exceed” bid.
- 1.4. “Aggrieved Employee” means all current and former hourly paid or non-exempt employees of Defendant who worked for Defendant in California at any time from December 24, 2020, through the earlier of ninety (90) days after full execution of this Agreement or preliminary approval.
- 1.5. “Class” means all current and former hourly paid or non-exempt employees of Defendant who worked for Defendant in California at any time from December 29, 2017, through the earlier of ninety days after full execution of this Agreement or preliminary approval.
- 1.6. “Class Counsel” means Moon Law Group, P.C.
- 1.7. “Class Counsel Fees Payment” means the amount allocated to Class Counsel for reimbursement of reasonable fees incurred to prosecute the Action and to settle the matter, including any attorneys’ fees related to an appeal or collateral attack of the Settlement.
- 1.8. “Class Counsel Litigation Expenses Payment” means the amount allocated to Class Counsel for reimbursement of reasonable expenses incurred to prosecute the Action and to settle the matter, including any attorneys’ costs related to an appeal or collateral attack of the Settlement.

- 1.9. “Class Data” means Class Member identifying information in Defendant’s possession, including the Class Member’s name, last-known mailing address, Social Security number, and number of Workweeks and PAGA Workweeks. The Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 1.10. “Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member, including a Non-Participating Class Member who qualifies as an Aggrieved Employee.
- 1.11. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods, and means, including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.12. “Class Notice” means the court-approved Notice of Class and PAGA Action Settlement and Final Approval Hearing, to be mailed to Class Members in English and Spanish, substantially in the form attached to this Agreement as **Exhibit A**, as approved by the Court, and incorporated by reference into this Agreement.
- 1.13. “Class Period” means the period from December 29, 2017, through the earlier of ninety (90) days after full execution of this Agreement or preliminary approval.
- 1.14. “Class Representative” means Bert Ryan Benton, the named Plaintiff in the Operative Complaint in the Action seeking Court approval to serve as the Class Representative.
- 1.15. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and his full release and waiver of claims under Civil Code § 1542.
- 1.16. “Court” means the Superior Court of California, County of Los Angeles.
- 1.17. “Defendant” means named Defendant Hot Line Construction, Inc.
- 1.18. “Defense Counsel” means McKINLEY, CONGER, JOLLEY & GALARNEAU, LLP and LITTLER MENDELSON, P.C.

1.19. “Effective Date” means the date both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final on the latest of the following: (a) if no Participating Class Member objects to the Settlement, sixty-one (61) days after the order granting final approval and entry of the order; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment or other collateral attack; or if a timely appeal from the Judgment is filed, the Effective Date is the day after the appellate court affirms the Judgment and issues a remittitur and the Judgment becomes final, supporting all material aspects of the appeal and is no longer subject to appeal or collateral attack.

1.20. “Final Approval Order” means the Court’s Order Granting Final Approval of the Settlement and entering Final Judgment.

1.21. “Final Approval Hearing” means the Court’s Hearing on the Motion for Final Approval of the Settlement.

1.22. “Final Judgment” means the Court’s Judgment Granting Final Approval of the Settlement.

1.23. “Gross Settlement Amount” means Two Million Forty-One Thousand Dollars and Zero Cents (\$2,041,000.00), the total amount Defendant agrees to pay under the Settlement Agreement, except as provided in Paragraph 7 below and in addition to any and all employer payroll taxes owed on the Wage Portions (defined below) of the Individual Class Payments. The Gross Settlement Amount will be used to pay the Individual Class Payments, Individual PAGA Payments, LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and Administration Expenses Payment.

1.24. “Individual Class Payment” means each Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

- 1.25. "Individual PAGA Payment" means each Aggrieved Employee's pro rata share of twenty five percent (25%) of the PAGA Penalties calculated according to the number of PAGA Workweeks worked during the PAGA Period.
- 1.26. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699(i).
- 1.27. "LWDA PAGA Payment" means the seventy-five percent (75%) of the PAGA Penalties paid to the LWDA under Labor Code section 2699(i).
- 1.28. "Net Settlement Amount" means the Gross Settlement Amount less the following payments in the amounts approved by the Court: (a) the Individual PAGA Payments, (b) LWDA PAGA Payment, (c) Class Representative Service Payment, (d) Class Counsel Fees Payment, (e) Class Counsel Litigation Expenses Payment, and (f) Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. "Non-Participating Class Member" means a Class Member who submits a valid and timely Request for Exclusion from the Settlement.
- 1.30. "PAGA Workweek" means any Workweek during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.31. "PAGA Period" means the period from December 24, 2020, through the earlier of ninety (90) days after full execution of this Agreement or preliminary approval.
- 1.32. "PAGA" means the California Labor Code Private Attorneys General Act.
- 1.33. "PAGA Notice" means the written notice Plaintiff submitted to the LWDA, and sent to Defendant, on December 24, 2021, informing them of the Labor Code violations he alleged against Defendant, pursuant to Labor Code section 2699.3(a).
- 1.34. "PAGA Penalties" means One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00), the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated twenty-five percent (25%) (i.e., \$37,500.00) to the Aggrieved Employees and seventy-five percent (75%) (i.e., \$112,500.00) to the LWDA in settlement of the PAGA claims.

- 1.35. “Participating Class Member” or “Settlement Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36. “Plaintiff” means Bert Ryan Benton, the named Plaintiff in the Action.
- 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.38. "Preliminary Approval Order" means the Court’s Order Granting Preliminary Approval of the Settlement, Approval of PAGA Settlement, and Approval of the Class Notice.
- 1.39. “Released Class Claims” means the claims being released as described in Paragraph 5.2, below, which includes all claims, allegations and assertions that were alleged, or reasonably could have been alleged, based on the facts, allegations, assertions and claims in the Operative Complaint and ascertained in the course of the Action, which arose and/or existed during the Class Period, including, (a) failure to pay minimum wages (Labor Code §§ 204, 218.5, 218.6, 1194, 1194.2 and 1197); (b) failure to pay overtime wages (§§204, 510, 1174, 1194 and 1198); (c) failure to provide meal periods (§§226.7, 512); (d) failure to authorize rest breaks (§226.7, 512); (e) failure to indemnify necessary business expenses (§2802); (g) failure to timely pay final wages at termination (§§201-203, 218.5, 218.6, 1194); (h) failure to provide accurate, itemized wage statements (§226); and (i) unfair Business Practices (California Business and Professions Code §17200, et seq.). Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.
- 1.40. “Released PAGA Claims” means the claims being released as described in Paragraph 5.3, below, which includes all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts, allegations, and assertions in the Operative Complaint and PAGA Notice filed by Plaintiff on December 24, 2021, which arose and/or existed during the PAGA Period, including (a) failure to pay minimum wages (Labor Code §§ 204, 1194, 1194.2 and 1197); (b) failure to pay overtime wages (§§1194 and

1198); (c) failure to provide meal periods (§§226.7, 512); (d) failure to authorize rest breaks (§226.7); (e) failure to indemnify necessary business expenses (§2802); (f) failure to timely pay final wages at termination (§§201-203); and (g) failure to provide accurate, itemized wage statements (§226).

1.41. “Released Parties” means Defendant and its respective future, present and former parents, owners, subsidiaries, and any affiliated or related persons or entities and each of their respective directors, officers, shareholders, owners, members, partners, attorneys and agents, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.

1.42. “Request for Exclusion” means a timely and valid written request to be excluded from the Settlement, sent to the Administrator and signed by the Class Member.

1.43. "Response Deadline" means sixty (60) days after the Administrator mails the Class Notice to the Class and the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement to the Settlement Administrator, or (b) fax, email, or mail his or her Objection to the Settlement to the Settlement Administrator. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional fourteen (14) calendar days beyond the Response Deadline has expired.

1.44. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.45. “Workweek” means any week during which a Class Member worked for Defendant for at least one day during the Class Period.

2. **RECITALS.**

2.1. On December 24, 2021, Plaintiff submitted to the LWDA, and sent to Defendant, timely written notice of the Labor Code violations he alleged against Defendant, pursuant to Labor Code section 2699.3(a).

2.2. On December 29, 2021, Plaintiff filed a Class Action Complaint alleging eight causes of action against Defendant for Labor Code and Business and Professions Code violations, commencing this Action.

- 2.3. On or around June 2022, the Parties expressed a mutual interest in mediating the Action.
- 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, in addition to other data documents and information, a sample of the time and corresponding payroll records of the Class and the employee handbooks in effect during the Class Period. This discovery, and Plaintiff's ensuing investigation, was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*, 48 Cal. App. 4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129-130 (2008) ("*Dunk/Kullar*").
- 2.5. On August 31, 2023, the Parties participated in an all-day mediation presided over by Mark Rudy, Esq., which led to this Agreement to settle the Action.
- 2.6. On November 30, 2023, the Parties filed a Joint Stipulation for Leave to File First Amended Complaint, and the Court signed an Order thereon.
- 2.7. In December 2023, Plaintiff filed a First Amended Class and Representative Action Complaint ("Operative Complaint") alleging a ninth cause of action against Defendant for Civil Penalties under PAGA.
- 2.8. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint, and denies any and all liability for the causes of action alleged.
- 2.9. The Court has not granted class certification, as the Parties reached this Agreement before Plaintiff moved for certification.
- 2.10. The Parties, Class Counsel, and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. The Gross Settlement Amount means Two Million Forty-One Thousand Dollars and Zero Cents (\$2,041,000.00), the total amount Defendant agrees to pay under the Settlement Agreement, except as provided in Paragraph 7 below and in addition to any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement

1 Amount or any employer payroll taxes prior to the deadline stated in Paragraph 4.3 of this
2 Agreement.

3 3.1.1. The Administrator will disburse the Gross Settlement Amount without asking or
4 requiring Participating Class Members or Aggrieved Employees to submit any
5 claim as a condition of payment.

6 3.1.2. None of the Gross Settlement Amount will revert to Defendant.

7 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct
8 the following payments from the Gross Settlement Amount, in the amounts specified by
9 the Court in the Final Approval Order:

10 3.2.1. To Plaintiff: A Class Representative Service Payment to the Class
11 Representative of not more than Seven Thousand Five Hundred Dollars and
12 Zero Cents (\$7,500.00), in addition to any Individual Class Payment and
13 Individual PAGA Payment the Class Representative is entitled to receive as a
14 Participating Class Member and Aggrieved Employee. Defendant will not
15 oppose a request for this payment provided it does not exceed this amount. As
16 part of the motion for the Class Counsel Fees Payment and Class Counsel
17 Litigation Expenses Payment, Plaintiff will seek Court approval for the Class
18 Representative Service Payment no later than sixteen (16) court days prior to the
19 Final Approval Hearing. As set out below, Plaintiff agrees to a general release of
20 all claims, whether known or unknown, as of the date of Preliminary Approval.
21 The general release shall include a waiver pursuant to California Code of Civil
22 Procedure section 1542. However, the general release will not include claims
23 that cannot be waived and released as a matter of law. Three Thousand Five
24 Hundred Dollars (\$3,500.00) shall be deemed payment for serving as the lead
25 Plaintiff in the Action and (\$4,000.00) shall be deemed payment for the general
26 release of all claims. If the Court approves a Class Representative Service
27 Payment less than the amount requested, the Administrator will retain the
28 remainder in the Net Settlement Amount. The Administrator will report the

1 Class Representative Service Payment using IRS Form 1099. Plaintiff assumes
2 full responsibility and liability for employee taxes owed on the Class
3 Representative Service Payment. To the maximum extent permitted by law,
4 other than in proceedings with the Court necessary to effectuate approval of the
5 settlement, and as necessary to discharge his duties as the proposed Class
6 Representative, Plaintiff agrees to a non-disparagement and non-publication
7 clause, with a liquidated damages clause of One Thousand Dollars (\$1,000.00).

8 3.2.2. To Class Counsel: A Class Counsel Fees Payment to Class Counsel of not more
9 than Six-Hundred Eighty Thousand, Three-Hundred, Thirty-Three Dollars and
10 Thirty-Three Cents (\$680,333.33), or one-third (33 1/3%) of the Gross
11 Settlement Amount; and a Class Counsel Litigation Expenses Payment to Class
12 Counsel of not more than Twenty Thousand Dollars and Zero Cents
13 (\$20,000.00). These fees and costs shall be the sole payments for Class
14 Counsel's work on this case, including carrying out the settlement process and
15 defending the settlement on any appeal or other collateral attack. Other than the
16 payments in this Paragraph, the Parties shall bear their own fees and costs.
17 Defendant will not oppose requests for these payments provided they do not
18 exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class
19 Counsel Fees Payment and Class Counsel Litigation Expenses Payment no later
20 than sixteen (16) court days prior to the Final Approval Hearing. If the Court
21 approves a Class Counsel Fees Payment and/or Class Counsel Litigation
22 Expenses Payment less than the amounts requested, the Administrator will retain
23 the remainder in the Net Settlement Amount. Released Parties shall have no
24 liability to Class Counsel or any other counsel arising from any claim to any
25 portion of the Class Counsel Fees Payment and/or Class Counsel Litigation
26 Expenses Payment. The Administrator will report the Class Counsel Fees
27 Payment and Class Counsel Litigation Expenses Payment using one or more IRS
28 1099 Forms.

3.2.2.1. Class Counsel assume full responsibility and liability for taxes owed on the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment and hold Defendant harmless, and indemnify Defendant, from any dispute regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment to the Administrator of not more than Twenty-Three Thousand Dollars and Zero Cents (\$23,000.00), except for a showing of good cause and as approved by the Court. If the Court approves the Administrator Expenses Payment less than the amount requested, or to the extent the Administration Expense Payment is less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment to each Participating Class Member calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. Twenty Percent (20%) of each Individual Class Payment will be allocated to the settlement of claims for wages (the "Wage Portion"). The Wage Portion is subject to tax withholding and will be reported on an IRS W-2 Form. Eighty Percent (80%) of each Individual Class Payment will be allocated to the settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portion is not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive

Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.4.3. The Parties acknowledge and agree that the formula used to calculate Workweeks, Individual Class Payments, and PAGA Penalties (below) does not imply that all of the elements of damages covered by the release are not being taken into account. The above formula was devised as a practical and logistical tool to simplify the payment process.

3.2.5. To the Aggrieved Employees: An Individual PAGA Payment to each Aggrieved Employee calculated by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$37,500.00) by the total number of PAGA Workweeks worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Workweeks.

3.2.5.1. Tax Allocation of Individual Class Payments. One Hundred Percent (100%) of each Individual PAGA Payment will be allocated to the settlement of claims for penalties and interest. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.6. To the LWDA: An LWDA PAGA Payment to the LWDA of not more than One Hundred Twelve Thousand, Five Hundred Dollars and Zero Cents (\$112,500.00), representing the LWDA's Seventy-Five Percent (75%) share of PAGA Penalties. If the Court approves PAGA Penalties less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and PAGA Workweeks. Based on a review of its records to date, Defendant estimates there are approximately 1,506 Class Members who collectively worked a total of approximately 157,000 Workweeks through August 31, 2023.

1 4.2. Class Data. Not later than fifteen (15) days after the Court grants Preliminary Approval
2 of the Settlement, Defendant will simultaneously deliver the Class Data to the
3 Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members'
4 privacy rights, the Administrator must maintain the Class Data in confidence, use the
5 Class Data only for purposes of this Settlement and for no other purpose, and restrict
6 access to the Class Data to Administrator employees who need access to the Class Data
7 to effect and perform under this Agreement.

8 4.2.1. Defendant has a continuing duty to immediately notify Class Counsel if it
9 discovers the Class Data omitted Class Member identifying information and to
10 provide corrected or updated Class Data as soon as reasonably feasible. Without
11 any extension of the deadline by which Defendant must send the Class Data to
12 the Administrator, the Parties and their counsel will expeditiously use best
13 efforts, in good faith, to reconstruct or otherwise resolve any issues related to
14 missing or omitted Class Data.

15 4.3. Funding of Gross Settlement Amount. No later than fourteen (14) days after the Effective
16 Date, Defendant shall fully fund one half (1/2) of the Gross Settlement Amount ("First
17 Payment") by transmitting the funds to the Administrator; and no later than sixty (60)
18 days after the First Payment, Defendant shall fully fund the remaining amount of the
19 Gross Settlement Amount, along with an amount necessary to fully pay Defendant's
20 share of payroll taxes, by transmitting the funds to the Administrator ("Final Payment").

21 4.4. Payments from the Gross Settlement Amount. No later than fourteen (14) days after
22 Defendant funds the Gross Settlement Amount with the First Payment and Final
23 Payment, the Administrator will mail checks for the Individual Class Payments,
24 Individual PAGA Payments, LWDA PAGA Payment, Administration Expenses
25 Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and
26 Class Representative Service Payment. Disbursement of the Class Counsel Fees
27 Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service
28 Payment shall not precede disbursement of the Individual Class Payments and Individual

PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than One Hundred Eighty [180] days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members, including those for whom Class Notice was returned undelivered.

4.4.2. To comply with California Rules of Court, rule 3.771, a copy of the Order will be included on the claims administrator's website through the check cashing deadline (as described in the next subparagraph) and the settlement checks may include the following language on the check: "A Court has approved settlement of the class action and PAGA representative actions and entered judgment for claims asserted in *Benton v. Hotline*, Los Angeles Superior Court Case No. 21STCV47377."

4.4.3. The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees, including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and Individual PAGA Payment.

4.4.4. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without a USPS forwarding address. No later than seven (7) days of receiving a returned check, the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need

not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced and who requested a replacement prior to the void date.

4.4.5. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure section 384(b) , or as otherwise directed by the Court. Should a cy pres fund be required, subject to Court instruction, the Settlement Administrator shall alternatively forward the entire amount of any amounts remaining from uncashed checks, plus any interest that has accrued thereon, to CASA (see <https://nationalcasagal.org/>).

4.4.6. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. **RELEASES OF CLAIMS.** Effective on the date Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Participating Class Members, Aggrieved Employees and Class Counsel will release, waive, settle and discharge the Released Class Claims against all Released Parties as follows:

5.1. **Plaintiff's Release.** Plaintiff and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release, waive, settle and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint, including, without limitation, claims for

1 unpaid wages, including minimum, overtime, and regular rate wages; missed meal and
2 rest periods; unreimbursed business expenses; waiting time penalties; pay stub
3 violations; and unfair business practices; and (b) all PAGA claims that were, or
4 reasonably could have been, alleged based on facts contained in the Operative
5 Complaint and PAGA Notice, and (c) any and all charges, complaints, claims, liabilities,
6 obligations, promises, agreements, controversies, damages, actions, causes of action,
7 suits, rights, demands, costs, losses, debts, and expenses (including back wages,
8 statutory penalties, civil penalties, liquidated damages, exemplary damages, interest,
9 attorneys' fees, and costs) of any nature whatsoever, from the beginning of time through
10 the execution of this Agreement, whether known or unknown, suspected or unsuspected,
11 including but not limited to all claims arising out of, based upon, or relating to Plaintiff's
12 employment with Defendant or the remuneration for or termination of such employment
13 ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to
14 enforce this Agreement, or to any claims for vested benefits, unemployment benefits,
15 disability benefits, social security benefits, workers' compensation benefits that arose at
16 any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that
17 he may discover facts or law different from, or in addition to, the facts or law that
18 Plaintiff now knows or believes to be true, but agrees, nonetheless, that Plaintiff's
19 Release shall be and remain effective in all respects, notwithstanding such different or
20 additional facts or Plaintiff's discovery of them.

21 5.1.1. Plaintiff's Non-Disparagement and Non-Publication Agreement: Except as it
22 may relate to Plaintiff's Release, and any applicable exceptions under state and
23 federal law, Plaintiff promises not to do or say anything, verbally or in writing,
24 directly or indirectly, that disparages, reflects negatively on or otherwise
25 detrimentally affects any Releasee. In the instance Plaintiff violates Section 5.1.1
26 of this Agreement, Plaintiff shall pay liquidated damages to Defendant in the
27 amount of One Thousand Dollars (\$1,000.00).
28

1 5.1.2. Plaintiff's Waiver of Rights Under California Civil Code section 1542. For
2 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the
3 provisions, rights, and benefits, if any, of Section 1542 of the California Civil
4 Code, which reads:

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

10 5.2 Participating Class Members' Release: All Participating Class Members, on behalf of
11 themselves and their respective former and present representatives, agents, attorneys,
12 heirs, administrators, successors, and assigns, shall be deemed to have fully, finally, and
13 forever waive, settle, compromise, discharge and release Released Parties from any and
14 all Released Claims, which includes all claims, allegations and assertions that were
15 alleged, or reasonably could have been alleged, based on the facts, allegations, assertions
16 and claims in the Operative Complaint and ascertained in the course of the Action, which
17 arose and/or existed during the Class Period, including, (a) failure to pay minimum wage
18 (Labor Code sections 204, 218.5, 218.6, 1194, 1194.2 and 1197); (b) failure to pay
19 overtime wages (Labor Code sections 204, 510, 1174, 1194 and 1198); (c) failure to
20 provide meal periods (§§226.7, 512); (d) failure to authorize rest breaks (Labor Code
21 sections 226.7, 512); (e) failure to indemnify necessary business expenses (Labor Code
22 section 2802); (g) failure to timely pay final wages at termination (Labor Code sections
23 201-203, 218.5, 218.6, 1194); (h) failure to provide accurate, itemized wage statements
24 (Labor Code section 226); and (i) unfair business practices (California Business and
25 Professions Code sections 17200, *et seq.*). Participating Class Members do not release
26 any other claims, including claims for vested benefits, wrongful termination, violation of
27 the Fair Employment and Housing Act, unemployment insurance, disability, social
28 security, workers' compensation, or claims based on facts occurring outside the Class
Period. The Parties hereby agree to a release by Plaintiff and the Participating Class
Members of the Released Parties of all claims which were or could have been asserted in

Plaintiff's Complaint in this Action based on the facts alleged therein. Plaintiff agrees not to object to or seek exclusion from the settlement and further agrees to not appeal any orders preliminarily or finally approving the settlement.

5.3 PAGA Release by the State of California, including the LWDA and Aggrieved Employees: The LWDA, the State of California, and all Aggrieved Employees, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns (to the extent they have any interest in the claims or right to pursue such claims on a representative basis), shall be deemed to have fully, finally, and forever waive, settle, compromise, discharge and release Released Parties from all PAGA Claims, which includes all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts, allegations, and assertions contained in the Operative Complaint and the PAGA Notice filed by Plaintiff on December 24, 2021, which arose and/or existed during the PAGA Period, including (a) failure to pay minimum wage (Labor Code §§ 204, 1194, 1194.2 and 1197); (b) failure to pay overtime wages (§§1194 and 1198); (c) failure to provide meal periods (§§226.7, 512); (d) failure to authorize rest breaks (§226.7); (e) failure to indemnify necessary business expenses (§2802); (f) failure to timely pay final wages at termination (§§201-203); and (g) failure to provide accurate, itemized wage statements (§226).

6. **MOTION FOR PRELIMINARY APPROVAL.** Plaintiff shall prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") and shall provide Defendant the opportunity to provide input five (5) days prior to filing, and Defendant shall provide needed information.

6.1. Defendant's Declaration in Support of Preliminary Approval. Defendant will prepare and deliver to Class Counsel a signed declaration from Defendant and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In their declarations, Defendant and Defense Counsel shall also aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

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6.2. Plaintiff's Responsibilities. Plaintiff will prepare all documents necessary for obtaining Preliminary Approval, including: (a) a draft of the notice and memorandum in support of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code section 2699, subd. (f)(2)); (b) a draft proposed of the Order Granting Preliminary Approval and Approval of PAGA Settlement; (c) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel, Defendant, or Defense Counsel; (d) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members and Administrator; (e) a signed declaration from Class Counsel attesting to their competency to represent the Class Members; (f) their timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)) and the Class Notice; and (g) all facts relevant to any actual or potential conflict of interest with the Class Members and Administrator. In their declarations, Plaintiff and Class Counsel shall also aver they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

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6.3. The amounts of the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Administration Expenses Payment, and Class Representative Service Payment shall be determined by the Court, and the Court's determination on these amounts shall be final and binding. The Court's approval or denial of any amount

requested for these items is a not material condition of this Agreement. Any order or proceeding relating to an application for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Administration Expenses Payment, and Class Representative Service Payment shall not operate to terminate or cancel this Agreement.

6.4. If the Court declines to conditionally certify the Class or to Preliminarily Approve all material aspects of the Agreement with prejudice, the Agreement will be null and void, and the Parties will have no further obligations under the Agreement.

6.5. Defendant agrees it will not oppose Plaintiff's Motion for Preliminary Approval of the Settlement Agreement so long as the motion is consistent with the terms of the Parties' Settlement Agreement.

6.6. Responsibilities of Counsel. Class Counsel, with input and assistance from Defense Counsel, is responsible for: (a) expeditiously finalizing and filing the Motion for Preliminary Approval no later than thirty (30) calendar days after the full execution of this Agreement; (b) obtaining a prompt hearing date for the Motion for Preliminary Approval; and (c) appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

6.7. Duty to Cooperate. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Settlement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone or email, to make a good faith effort to reasonably modify the Settlement consistent with its material terms and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1. Selection of Administrator. The Parties have jointly selected Simpluris, Inc. to serve as the Administrator and verified that, as a condition of appointment, Simpluris, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of its administration expenses.

1 The Parties and their Counsel represent that they have no interest or relationship,
2 financial or otherwise, with the Administrator other than a professional relationship
3 arising out of prior experiences administering settlements. The Administrator (along
4 with any of its agents) shall represent and warrant that it will: (a) provide reasonable
5 and appropriate administrative, physical and technical safeguards for any personally
6 identifiable information ("PII"), which it receives from Defendant; (b) not disclose the
7 PII to Class Counsel, Plaintiffs, any party or third parties, including agents or
8 subcontractors, without Defendant's consent; (c) not disclose or otherwise use the PII
9 other than to carry out its duties as set forth herein; (d) promptly provide Defendant
10 with notice if PII is subject to unauthorized access, use, disclosure, modification, or
11 destruction; and (e) continue to protect the PII upon termination of its services.

12 7.2. Employer Identification Number. The Administrator shall have and use its own
13 Employer Identification Number for purposes of calculating payroll tax withholdings and
14 providing reports to state and federal tax authorities.

15 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that
16 meets the requirements of a Qualified Settlement Fund ("QSF") under U.S. Treasury
17 Regulation § 468B-1.

18 7.4. Notice to Class Members. No later than three (3) business days after receipt of the Class
19 Data, the Administrator shall notify Class Counsel that the list has been received and
20 state the number of Class Members, PAGA Members, Workweeks, and PAGA
21 Workweeks in the Class Data.

22 7.4.1. No later than fourteen (14) days after receiving the Class Data, and using best
23 efforts to perform as soon as possible, the Administrator will send to all Class
24 Members identified in the Class Data, via first-class United States Postal Service
25 ("USPS") mail, the Class Notice, with Spanish translation, substantially in the
26 form attached to this Agreement as **Exhibit A**. The first page of the Class Notice
27 shall prominently estimate the dollar amounts of any Individual Class Payment
28 and/or Individual PAGA Payment payable to the Class Member, and the number

1 of Workweeks and PAGA Workweeks used to calculate these amounts. Before
2 mailing Class Notices, the Administrator shall update Class Member addresses
3 using the National Change of Address database.

4 7.4.2. Not later than three (3) business days after its receipt of any Class Notice
5 returned by the USPS as undelivered, the Administrator shall re-mail the Class
6 Notice using any forwarding address provided by USPS. If USPS does not
7 provide a forwarding address, the Administrator shall conduct a Class Member
8 Address Search, and re-mail the Class Notice to the most current address
9 obtained. The Administrator has no obligation to make further attempts to locate
10 or send the Class Notice to Class Members whose Class Notice is returned by
11 USPS a second time.

12 7.4.3. The deadlines for Class Members' written objections, challenges to Workweeks
13 and/or PAGA Workweeks, and Requests for Exclusion will be extended an
14 additional fourteen (14) days beyond the sixty (60) days otherwise provided in
15 the Class Notice for all Class Members whose notice is re-mailed. The
16 Administrator will inform the Class Member of the extended deadline with the
17 re-mailed Class Notice.

18 7.4.4. If the Administrator, Defendant, Defense Counsel, or Class Counsel is contacted
19 by or otherwise discovers any person who believes he or she should have been
20 included in the Class Data and should have received the Class Notice, the Parties
21 will expeditiously meet and confer by email, in person or by telephone, and in
22 good faith, in an effort to agree on whether to include them as a Class Member. If
23 the Parties agree, such persons will be Class Members entitled to the same rights
24 as other Class Members, and the Administrator will send, via email or overnight
25 delivery, a Class Notice requiring them to exercise options under this Agreement
26 not later than fourteen (14) days after submission of the Class Notice, or the
27 deadline dates in the Class Notice, which ever are later.
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7.5. Requests for Exclusion (Opt-Outs).

No later than sixty (60) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed), Class Members who wish to exclude themselves from the Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion. A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

7.5.1. The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

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

7.5.3. Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class

1 Payment or have the right to object to the class action components of the
2 Settlement. Because future PAGA claims are subject to claim preclusion upon
3 entry of the Judgment, Non-Participating Class Members who are Aggrieved
4 Employees are deemed to release the claims identified in Paragraph 5.3 of this
5 Agreement and are eligible for an Individual PAGA Payment.

6 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have sixty (60) days
7 after the Administrator mails the Class Notice (plus an additional fourteen (14) days for
8 Class Members whose Class Notice is re-mailed) to challenge the number of Class
9 Workweeks and PAGA Workweeks allocated to the Class Member in the Class Notice.
10 The Class Member may challenge the allocation by communicating with the
11 Administrator via fax, email or mail. The Administrator must encourage the challenging
12 Class Member to submit supporting documentation. In the absence of any contrary
13 documentation, the Administrator is entitled to presume that the Workweeks contained in
14 the Class Notice are correct so long as they are consistent with the Class Data. The
15 Administrator will evaluate the evidence submitted by the Class Member and provide the
16 evidence to Class Counsel and Defense Counsel who agree to meet and confer in good
17 faith about the evidence to determine the Class Member's actual number of Workweeks
18 and estimated Individual Settlement Payment. If Class Counsel and Defense Counsel are
19 unable to agree, they agree to submit the dispute to the Administrator to render a final
20 decision. The Administrator's determination of each Class Member's allocation of
21 Workweeks and/or PAGA Workweeks shall be final and not appealable or otherwise
22 susceptible to challenge. The Administrator shall promptly provide copies of all
23 challenges to calculation of Workweeks and/or PAGA Workweeks to Defense Counsel
24 and Class Counsel and the Administrator's determination the challenges.

25 7.7. Objections to Settlement. Only Participating Class Members may object to the class
26 action components of the Settlement and/or this Agreement, including contesting the
27 fairness of the Settlement and/or amounts requested for the Class Counsel Fees Payment,
28 Class Counsel Litigation Expenses Payment and Class Representative Service Payment.

1 7.7.1. Participating Class Members may send written objections to the Administrator,
2 by fax, email, or mail. In the alternative, Participating Class Members may
3 appear in Court (or hire an attorney to appear in Court) to present verbal
4 objections at the Final Approval Hearing. A Participating Class Member who
5 elects to send a written objection to the Administrator must do so not later than
6 sixty (60) days after the Administrator's mailing of the Class Notice (plus an
7 additional fourteen (14) days for Class Members whose Class Notice was re-
8 mailed).

9 7.7.2. Non-Participating Class Members have no right to object to any of the class
10 action components of the Settlement.

11 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
12 performed or observed by the Administrator contained in this Agreement or otherwise.

13 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will establish
14 and maintain and use an internet website to post information of interest to Class
15 Members including the date, time and location for the Final Approval Hearing
16 and copies of the Settlement Agreement, Motion for Preliminary Approval, the
17 Preliminary Approval, the Class Notice, the Motion for Final Approval, the
18 Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses
19 Payment, and Class Representative Service Payment, the Final Approval and the
20 Judgment. The Administrator will also maintain and monitor an email address
21 and a toll-free telephone number to receive Class Member calls, faxes and emails.

22 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. No later than five (5) days
23 after the expiration of the deadline for submitting Requests for Exclusion, the
24 Administrator shall email a list to Class Counsel and Defense Counsel containing
25 (a) the names and other identifying information of Class Members who have
26 timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names
27 and other identifying information of Class Members who have submitted invalid
28 Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement

submitted (whether valid or invalid).

7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or PAGA Workweeks received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

7.8.4. Workweek Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or PAGA Workweeks. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

7.8.5. Administrator’s Declaration. No later than seven (7) days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

7.8.6. Final Report by Settlement Administrator. Within ten (10) days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fifteen (15) days before any deadline set by the Court, the Administrator will prepare and submit to Class Counsel and Defense Counsel a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE

For purposes of this Settlement, Defendant estimated that there were 157,000 total Workweeks worked by all Participating Class Members from December 29, 2017 through August 31, 2023, i.e., through the date of mediation (the "Escalator Clause Period"). Should the actual number of total Workweeks for all Participating Class Members during the Class Period exceed 157,000 by more than ten percent (10%), then the Gross Settlement Amount shall be increased on a *pro rata* basis for Workweeks above 10%. For example, if the total Workweeks for all Participating Class Members during the Class Period exceeds 157,000 by 16%, Defendant shall owe an additional amount equal to 6% of the Gross Settlement Amount, to proportionately increase the Workweek rate of each Participating Class Member due to the increase in Workweeks. The additional payments in this Section will not be used to increase, calculate or determine enhancement payments, or impact the amount of PAGA Penalties. Additional amounts paid pursuant to this Section will be used to increase payments to Participating Class Members. Alternatively, Defendant shall have the option of modifying the Class Period to start later, i.e., on the date at which the number of Workweeks for the modified Class Period equals or does not exceed 172,700 workweeks (157,000 + 10% of 157,000).

9. DEFENDANT'S RIGHT TO WITHDRAW.

No later than fifteen (15) days after the Administrator sends the final Exclusion List to Defense Counsel, Defendant may, but is not obligated, to elect to withdraw from the Settlement if the total number of valid Requests for Exclusion identified in the Exclusion List exceeds three percent (3%) of

the total of all Class Members. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement. However, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Late elections will have no effect.

10. MOTION FOR FINAL APPROVAL.

Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a Motion for Final Approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699(l), a Proposed Final Approval Order and Judgment (collectively “Motion for Final Approval”). Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than [five] court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval, provided however that the Parties have no duty to alter the agreement in a way that materially alters the agreement (including materially altering the scope of the release, consideration, etc.). The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administration Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

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

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

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

1 **11. AMENDED JUDGMENT.**

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

4 **12. ADDITIONAL PROVISIONS.**

5 12.1. No Admission of Liability, Class Certification or Representative Manageability for Other
6 Purposes. This Agreement represents a compromise and settlement of highly disputed
7 claims. Nothing in this Agreement is intended or should be construed as an admission by
8 Defendant that any of the allegations in the Operative Complaint have merit or that
9 Defendant has any liability for any claims asserted; nor should it be intended or
10 construed as an admission by Plaintiff that Defendant's defenses in the Action have
11 merit. The Parties agree that class certification and representative treatment is for
12 purposes of this Settlement only. If, for any reason the Court does grant Preliminary
13 Approval, Final Approval or enter Judgment, Defendant reserves the right to contest
14 certification of any class for any reasons, and Defendant reserves all available defenses
15 to the claims in the Action, and Plaintiff reserves the right to move for class certification
16 on any grounds available and to contest Defendant's defenses. The Settlement, this
17 Agreement and the Parties' willingness to settle the Action will have no bearing on, and
18 will not be admissible in connection with, any litigation, except for proceedings to
19 enforce or effectuate the Settlement and this Agreement.

20 12.2. Confidentiality Prior to Preliminary Approval. Plaintiff and Class Counsel separately
21 agree that, until the Motion for Preliminary Approval of Settlement is filed, they and
22 each of them will not disclose, disseminate and/or publicize, or cause or permit another
23 person to disclose, disseminate or publicize, any of the terms of the Agreement directly
24 or indirectly, specifically or generally, to any person, corporation, association,
25 government agency, or other entity except: (1) to the Parties' attorneys, accountants, or
26 spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel
27 in a related matter; (3) to the extent necessary to report income to appropriate taxing
28 authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry

1 or subpoena issued by a state or federal government agency. Plaintiff and Class Counsel
2 agree to immediately notify each other Party of any judicial or agency order, inquiry, or
3 subpoena seeking such information. Plaintiff and Class Counsel separately agree not to,
4 directly or indirectly, initiate any conversation or other communication, before the filing
5 of the Motion for Preliminary Approval, any with third party regarding this Agreement
6 or the matters giving rise to this Agreement except to respond only that “the matter was
7 resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s
8 communications with Class Members in accordance with Class Counsel’s ethical
9 obligations owed to Class Members, nor their ability to make necessary filings and take
10 necessary actions to effect the Settlement. To the extent permitted by law, all agreements
11 made, and orders entered during Action and in this Agreement relating to the
12 confidentiality of information shall survive the execution of this Agreement.

13 12.3. No Solicitation. The Parties separately agree that they and their respective counsel and
14 employees will not solicit any Class Member to opt out of or object to the Settlement, or
15 appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
16 Counsel’s ability to communicate with Class Members in accordance with Class
17 Counsel’s ethical obligations owed to Class Members.

18 12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
19 together with its attached exhibits shall constitute the entire agreement between the
20 Parties relating to the Settlement, superseding any and all oral representations,
21 warranties, covenants, or inducements made to or by any Party.

22 12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
23 represent that they are authorized by Plaintiff and Defendant, respectively, to take all
24 appropriate action required or permitted to be taken by such Parties pursuant to this
25 Agreement to effectuate its terms, and to execute any other documents reasonably
26 required to effectuate the terms of this Agreement including any amendments to this
27 Agreement.
28

- 12.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution. Neither Plaintiff nor Plaintiff's Counsel shall directly or indirectly encourage Class Members to opt out of or object to the Settlement. The Parties agree to use their best efforts to carry out the terms of this Settlement Agreement. At no time shall any of the Parties or their counsel, solicit, seek to solicit or otherwise encourage Class Members to exclude themselves from the settlement, to submit written objections to the Settlement Agreement, or to appeal from the Court's Final Judgment.
- 12.7. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

- 12.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.12. Cooperation in Drafting. The Parties agree to work together in good faith to execute this Agreement, obtain Preliminary and Final Approval of the Settlement, and carry out the terms of the Settlement.
- 12.13. Use and Return of Class Data. Information provided to Class Counsel pursuant to Evidence Code § 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than ninety (90) days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data. Notwithstanding the foregoing, the Administrator shall retain records sufficient to show the identity of individuals included in the Settlement, the amounts paid, and proof of sending notice and payment of amounts pursuant to this Agreement.
- 12.14. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.15. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

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

To Plaintiff:

MOON LAW GROUP, P.C.
Kane Moon
Allen Feghali
Jacquelyne VanEmmerik
1055 West Seventh Street, Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128

To Defendant:

McKINLEY, CONGER, JOLLEY & GALARNEAU, LLP
John R. Conger
303 1 West March Lane, Suite 230
Stockton, California 95219
Telephone: (209) 477-8171
Facsimile: (209) 477-2549

LITTLER MENDELSON, P.C.
James E. Hart
Ian G. Robertson
18565 Jamboree Road, Suite 800
Irvine, California 92612
Telephone: (949) 705-3000
Facsimile: (949) 724-1201

12.17. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.18. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to Code of Civil Procedure section 583.330 to extend the date to bring a case to trial under Code of Civil

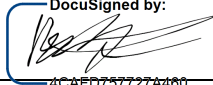
1 Procedure section 583.310 for the entire period of this settlement process.

2 12.19. Counsel for all Parties warrant and represent they are expressly authorized by the Parties
3 whom they represent to negotiate this Settlement Agreement and to take all appropriate
4 action required or permitted to be taken by such Parties pursuant to this Settlement
5 Agreement to effectuate its terms, and to execute any other documents required to
6 effectuate the terms of this Settlement Agreement.

7 *Signatures on following page.*
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Plaintiff & Class Representative:

Dated: December ^{12/6/2023}____, 2023

By: 
Plaintiff, Bert Ryan Benton

Plaintiff's Counsel:

Dated: December 6, 2023

MOON LAW GROUP, P.C.

By: 
Kane Moon
Allen Feghali
Jacquelyne VanEmmerik
Attorneys for Plaintiff, Bert Ryan Benton

Defendant:

Dated: December ____, 2023

Hot Line Construction, Inc.

By: _____
Title

AS TO FORM ONLY:

Defendant's Counsel:

Dated: December ____, 2023

McKINLEY, CONGER, JOLLEY & GALARNEAU,
LLP

By: _____
John R. Conger
*Attorneys for Defendant, Hot Line Construction,
Inc.*

AS TO FORM ONLY:

Defendant's Counsel:

Dated: December ____, 2023

LITTLER MENDELSON, P.C.

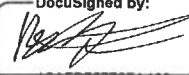
By: _____
James E. Hart
Ian G. Robertson
James P. Van
*Attorneys for Defendant, Hot Line Construction,
Inc.*

Plaintiff & Class Representative:

Dated: December ^{12/6/2023}____, 2023

By: _____

Plaintiff, Bert Ryan Benton

DocuSigned by:

4CAF0757127A460...

Plaintiff's Counsel:

Dated: December 6, 2023

MOON LAW GROUP, P.C.

By: _____

Kane Moon
Allen Feghali
Jacquelyne VanEmmerik
Attorneys for Plaintiff, Bert Ryan Benton



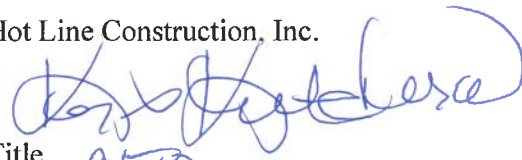
Defendant:

Dated: December 7, 2023

Hot Line Construction, Inc.

By: _____

Title


CEO

AS TO FORM ONLY:

Defendant's Counsel:

Dated: December ____, 2023

McKINLEY, CONGER, JOLLEY & GALARNEAU,
LLP

By: _____

John R. Conger
*Attorneys for Defendant, Hot Line Construction,
Inc.*

AS TO FORM ONLY:

Defendant's Counsel:

Dated: December ____, 2023

LITTLER MENDELSON, P.C.

By: _____

James E. Hart
Ian G. Robertson
James P. Van
*Attorneys for Defendant, Hot Line Construction,
Inc.*