

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiffs Florencio Chavez Quiroz and Leonardo Basurto (collectively, “Plaintiffs”) and Defendants Prestige Gunite, LP and West Coast Gunite Management, LLC (collectively, “Defendants”). The Agreement refers to Plaintiffs and Defendants collectively as “Parties” or individually as “Party.”

1. DEFINITIONS.

- 1.1. **“Action” means Plaintiffs’ lawsuit alleging wage and hour violations against Defendants captioned *Quiroz, et al. v. Prestige Gunite, LP, et al.*, Case No. C22-00724, initiated on March 14, 2022 and pending in the Superior Court of the State of California, County of Contra Costa, including any amendments to the Complaint as may be filed following execution of this Agreement**
- 1.2. **“Administrator” means Apex Class Action Settlement Administration, 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 the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.**
- 1.4. **“Class” means all current and former non-exempt employees of Defendants who were employed by Defendants in the State of California at any time during the Class Period.**
- 1.5. **“Class Counsel” means Graham S.P. Hollis, Hali M. Anderson, and Erik A. Dos Santos of GrahamHollis APC.**
- 1.6. **“Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.**
- 1.7. **“Class Data” means Class Member identifying information in Defendants’ possession, including the Class Member/ PAGA employee’s name, last-known mailing address, start and end dates of employment, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.**
- 1.8. **“Class Member” or “Settlement 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 a PAGA Employee).**
- 1.9. **“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, Accurant or substantially similar skip traces, and direct contact by the Administrator with Class**

Members.

- 1.10. **“Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL**, to be mailed to Class Members in English and Spanish in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.11. **“Class Period” means the period from September 17, 2017 to March 23, 2023, inclusive.**
- 1.12. **“Class Representatives” means Florencio Chavez Quiroz and Leonardo Basurto**, the named Plaintiffs in the Operative Complaint in the Action seeking Court approval to serve as Class Representatives.
- 1.13. **“Class Representative Service Payments” means the payments to the Class Representatives** for initiating the Action and providing services in support of the Action.
- 1.14. **“Court” means the Superior Court of California, County of Contra Costa.**
- 1.15. **“Defendants” means Prestige Gunitite, LP and West Coast Gunitite Management, LLC.**
- 1.16. **“Defense Counsel” means James J. Ficenec, Tara C. Dudum, and Gabriella N. Stevens of Newmeyer & Dillion, LLP.**
- 1.17. **“Effective Date” means the date by when both of the following have occurred:** (a) the Court enters a Judgment on its Order Granting Final Approval of Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one of more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur. In this regard, it is the intention of the Parties that the Settlement shall not become effective until the Court's order approving the Settlement is completely final, and there is no further recourse by an appellant or objector who seeks to contest the Settlement.
- 1.18. **“Final Approval” means the Court’s order granting final approval of the Settlement.**
- 1.19. **“Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement including any continuation thereof.**
- 1.20. **“Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.**
- 1.21. **“Gross Settlement Amount” means \$480,637.19**, which is the total amount Defendants agree to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Litigation Expenses, Class Representative Service Payments, and the Administrator’s Expenses.

- 1.22. **“Individual Class Payment”** means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked by the Participating Class Member during the Class Period, excluding any workweeks covered by a Prior Release Payment.
- 1.23. **“Individual PAGA Payment”** means the PAGA Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of pay periods worked by the PAGA Employee during the PAGA Period.
- 1.24. **“Judgment”** means the judgment entered by the Court based upon the Final Approval.
- 1.25. **“LWDA”** means the California Labor and Workforce Development Agency, the agency to receive a share of PAGA Penalties under Labor Code § 2699, subd. (i).
- 1.26. **“LWDA PAGA Payment”** means the 75% of the PAGA Penalties paid to the LWDA under Labor Code § 2699, subd. (i).
- 1.27. **“Net Settlement Amount”** means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.28. **“Non-Participating Class Member”** means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.29. **“Operative Complaint”** means Plaintiffs’ First Amended Complaint.
- 1.30. **“PAGA”** means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.31. **“PAGA Employees”** means all current and former non-exempt employees who were employed by Defendants in the State of California at any time between July 14, 2020 and March 23, 2023, inclusive.
- 1.32. **“PAGA Notices” or “LWDA Exhaustion Letters”** means Plaintiff Florencio Chavez Quiroz’s December 3, 2021 letter to Defendants and the LWDA, Plaintiff Florencio Chavez Quiroz’s first amended letter to Defendants and the LWDA, dated November 9, 2022, and Plaintiffs Florencio Chavez Quiroz’s and Leonardo Basurto’s second amended (as to Plaintiff Florencio Chavez Quiroz letter to Defendants and the LWDA, dated December 12, 2022, providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.33. **“PAGA Pay Period”** means any pay period during which a PAGA Employee worked for Defendants for at least one day during the PAGA Period.
- 1.34. **“PAGA Penalties”** means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount in the amount of \$5,000, allocated 25% to the PAGA Employees (\$1,250) and 75% to the LWDA (\$3,750) in settlement of PAGA claims.

- 1.35. **“PAGA Period”** means the period between July 14, 2020 and March 23, 2023.
- 1.36. **“Participating Class Member”** means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.37. **“Plaintiffs”** means Florencio Chavez Quiroz and Leonardo Basurto, the named plaintiffs in the Operative Complaint in the Action.
- 1.38. **“Preliminary Approval”** means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.39. **“Preliminary Approval Order”** means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.40. **“Prior Release Payments”** means the individual settlement agreement payments that Defendants made to class members as part of a *Pick-up Stix* Campaign. All employees who received Prior Release Payments are included as PAGA Employees in this Settlement and are included as Class Members only to the extent they worked one or more Workweeks not released by the Class Member in connection with the Prior Release Payment
- 1.41. **“Released Class Claims”** means the claims being released as described in Paragraph 5.2 below.
- 1.42. **“Released PAGA Claims”** means the claims being released as described in Paragraph 5.3 below.
- 1.43. **“Released Parties”** means Defendants Prestige Gunitite, LP and West Coast Gunitite Management, LLC, their present and former parents, subsidiaries, and its and their respective : (i) predecessors, successors, and assigns and (ii) current and former agents, heirs, executors, administrators, principals, owners, officers, directors, shareholders, managers, members, exempt employees, insurers, attorneys, and all others claiming through or by any of them. For the avoidance of doubt, to the extent that any of the Released Parties are individuals, such individuals are Released Parties pursuant to Sections 5.2 and 5.3 solely with respect to the claims against Defendants that were alleged in the Action or reasonably could have been alleged. .
- 1.44. **“Request for Exclusion”** means a Class Member’s submission of a timely written request to be excluded from the Class Settlement signed by the Class Member.
- 1.45. **“Response Deadline”** means 45 calendar days after the Administrator mails Notice to Class Members and PAGA Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.46. **“Settlement”** means the disposition of the Action effected by this Agreement and the Judgment.

- 1.47. **“Waiting Time Penalty Subclass.”** The Waiting Time Penalty Subclass is defined as all members of the Settlement Class whose employment with Defendant ended at any time from September 17, 2018 to March 23, 2023. Waiting Time Penalty Subclass Members will be credited with six (6) additional compensable Workweeks solely for the purpose of determining **the Participating Class Members’ pro rata shares of the Net Settlement Amount**. Any such additional Workweeks will not be used to calculate the pro rata increase described in Paragraph 8.
- 1.48. **“Workweek”** means any week during which a Class Member worked for Defendants for at least one day, during the Class Period (not including workweeks covered by Prior Release Payments for those Class Members who already executed a Release with Defendants)

2. **RECITALS.**

- 2.1 On March 14, 2022, Plaintiff Florencio Chavez Quiroz commenced this Action by filing a wage and hour class action and PAGA complaint against Defendants Prestige Gunitite, LP and West Coast Gunitite Management, LLC. As a term of this Settlement, on November 21, 2023, Plaintiffs filed a First Amended Complaint to add Leonardo Basurto as a named plaintiff, and add the claims **alleged in Plaintiffs’ PAGA Notices on both a Class and PAGA basis. The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint”).** Plaintiffs allege Defendants (1) failed to provide meal periods; (2) failed to provide rest periods; (3) failed to provide heat recovery periods; (4) failed to pay minimum, regular, and overtime wages; (5) failed to indemnify all necessary expenditures; (6) failed to provide accurate itemized wage statements; (7) failed to timely pay all wages due upon separation of employment; (8) **violated California’s Unfair Business Law**. Plaintiffs also seek civil penalties against Defendants pursuant to the PAGA. Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in the Operative Complaint, and deny any and all liability for the causes of action alleged.
- 2.2 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs gave timely written notice to Defendants and the LWDA by sending the PAGA Notices.
- 2.3 On March 23, 2023, the Parties participated in an all-day private mediation presided over by Jeffrey Krivis, Esq., which led to this Agreement to settle the Action.
- 2.4 Prior to mediation, Plaintiffs obtained, through formal and informal discovery, Defendants’ policies and procedures related to the claims asserted, and a sample of the timekeeping and payroll records for 40 Class Members. **Plaintiffs’ investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).**
- 2.5 The Court has not granted class certification in this Action.
- 2.6 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 extinguished or affected by the Settlement.

3. **MONETARY TERMS.**

3.1 **Gross Settlement Amount.** Except as otherwise provided by Paragraph 8 below, Defendants agree to pay a maximum total amount of \$480,637.19 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or PAGA Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

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

3.2.1 **To Plaintiffs:** Class Representative Service Payments to the Class Representatives of not more than \$7,500 each, in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a **Participating Class Member. Defendants will not oppose Plaintiffs' requests for a** Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed in the Class Representative Services Payments.

3.2.2 **To Class Counsel:** A Class Counsel Fees Payment of not more than one third of the Gross Settlement Amount, which is currently estimated to be \$160,212.39, plus one third of the Prior Release Payments under the catalyst theory, which is currently estimated to be \$7,666.66 and a Class Counsel Litigation Expenses Payment of not more than \$18,000. Defendants will not oppose requests for these payments provided they do not exceed these amounts. In the event the Gross Settlement Amount increases due to the Pro-Rata Increase described in paragraph 8, Defendants agree to **non-opposition to request for attorneys' fees of up to one-third** of the increased Gross Settlement Amount. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remaining to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other **Plaintiff's Counsel arising from any claim** to any portion of any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full

responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$6,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less, or the Court approves payment less than \$6,000, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4 To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period (not including workweeks covered by Prior Release Payments)_ and (b) multiplying the result by each **Participating Class Member's Workweeks**. Waiting Time Penalty Subclass Members will be credited with six (6) additional compensable Workweeks.

3.2.4.1 Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are 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 any 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.

3.2.5 To the LWDA and PAGA Employees: PAGA Penalties in the amount of \$5,000 to be paid from the Gross Settlement Amount, with 75% (\$3,750) allocated to the LWDA PAGA Payment and 25% (\$1,250) allocated to the Individual PAGA Payments.

3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the PAGA Employees' 25% share of PAGA Penalties (\$1,250) by the total number of PAGA Period Pay Periods worked by all PAGA Employees during the PAGA Period and (b) multiplying the result by each PAGA Employee's PAGA Period Pay Periods. PAGA Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount.

100% of each PAGA Employee's Individual PAGA Payment will be allocated to settlement of claims for penalties. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. **SETTLEMENT FUNDING AND PAYMENTS.**

- 4.1 Class Workweeks and PAGA Employee Pay Periods. Based on a review of their records to date, Defendants estimate there are 86 Class Members who collectively worked a total of 7,000 Workweeks, not including workweeks covered by Prior Release Payments, and 106 PAGA Employees.
- 4.2 Class Data. Not later than 30 days after the Court grants Preliminary Approval of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the Administrator, 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.
- 4.3 Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator no later than 45 days after the Effective Date.
- 4.4 Payments from the Gross Settlement Amount. Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments shall not precede disbursement of 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 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). The Administrator will send checks for Individual PAGA Payments to all PAGA Employees including Non-Participating Class Members who qualify as PAGA 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 the Individual PAGA Payment. Before mailing any checks or notices, the Settlement Administrator **must update the recipients' mailing addresses** using the National Change of Address Database and conduct an Accurint or substantially similar skip traces.

- 4.4.2 The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 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, requested by the Class Member prior to the void date.
- 4.4.3 Uncashed checks will be redistributed to Class Members/PAGA Employees if the uncashed check amount does not exceed 50% of the administration costs to distribute the uncashed and/or returned checks. Portions of the uncashed and/or returned checks that are PAGA Penalties will only be redistributed to PAGA Employees. If the amount does exceed the 50% threshold, funds from uncashed and/or returned checks **will be distributed to the State Controller's Unclaimed Property Fund in the name of the employees or an appropriate charity of the Parties' mutual choosing.**
- 4.4.4 The Payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendants 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 when Defendants fully fund the entire Gross Settlement Amount and separately fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Participating Class Members, and Class Counsel will release claims against all Released Parties as follows:

- 5.1 **Plaintiffs' Release.** Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, charges, complaints, liens, demands, agreements, contracts, covenants, actions, suits, causes of action, penalties, wages, obligations, debts, expenses, damages, attorneys' fees, costs, judgments, orders, liabilities transactions, or occurrences of any kind or nature in law, equity, or otherwise, known and unknown, suspected and unsuspected, that Plaintiffs had, now have, or may hereafter claim to have against the Released Parties at any time from the beginning of time until the Effective Date, including by way of example only but in no way limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts and legal theories contained, in the Operative Complaint; (b) all PAGA claims that were, or reasonably could have been, alleged based on facts and legal theories **contained in the Operative Complaint, Plaintiffs' PAGA Notices**, or ascertained during the Action and released under Paragraph 5.2, below; and (c) claims arising from or dependent on the California Labor Code, the Wage Orders of the California Industrial Welfare Commission, California Business and Professions Code

section 17200 et seq., the California Fair Employment and Housing Act ([Cal. Gov't Code](#) section 12900 et seq.), the California Healthy Workplaces, Healthy Families Act (Cal. Labor Code section 245 et seq.), the California common law of contract and tort, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.); the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.); the Fair Labor Standards Act (29 U.S.C. § 201 et seq.), and the Families First Coronavirus Response Act (“**Plaintiffs’ Release**”). **Plaintiffs’ Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers’ compensation benefits that arose at any time. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true, but agree, nonetheless, that Plaintiffs’ Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs’ discovery of them.**

5.1.1 **Plaintiffs’ Waiver of Rights Under California Civil Code Section 1542.** For purposes of Plaintiffs’ Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

- 5.2 **Release by Participating Class Members:** All Settlement Class Members who do not timely opt out of the Settlement will release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all causes of action and claims against Defendants that were alleged in the Action or reasonably could have been alleged based on the facts and legal theories contained in the Operative Complaint and the LWDA Exhaustion Letters, dated December 3, 2021, November 9, 2022, and December 12, 2022, including all of the following claims for relief: (1) Failure to Provide Meal Periods; (2) Failure to Provide Rest Periods; (3) Failure to Pay Minimum, Regular and Overtime Wages; (4) Failure to Indemnify for all Necessary Expenditures; (5) Failure to Provide Heat Recovery Periods; (6) Failure to Provide Accurate Itemized Wage Statements; (7) Failure to Timely Pay All Wages Due Upon Separation of Employment; (8) Violation of Business & Professions Code section 17200 (collectively, the “**Released Claims**”). Except as set forth in Paragraph 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period. The Class Release will only release these claims during the Class Period
- 5.3 **Release by PAGA Employees:** All PAGA Employees will release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns and the State of California, the Released Parties from all causes of action and claims for civil penalties, attorneys’ fees and costs under the California Labor Code Private Attorneys General Act of 2004 that were alleged in the

Operative **Complaint in the Action, in Plaintiffs’ LWDA Exhaustion Letters**, dated December 3, 2021, November 9, 2022, and December 12, 2022, or reasonably could have been alleged based on the facts and legal theories contained in the Operative Complaint in the Action, including claims for civil penalties based on the following: in the operative complaint, including all of the following claims for relief: (1) Failure to Provide Meal Periods; (2) Failure to Provide Rest Periods; (3) Failure to Pay Minimum & Regular Wages; (4) Failure to Pay Overtime Wages; (5) Failure to Provide Recovery Periods; (6) Failure to Provide Accurate Itemized Wage Statements; and (7) Failure to Timely Pay All Wages Due Upon Separation of Employment. The PAGA Release will only release these claims during the PAGA Period, regardless of the PAGA Employees decision to participate in the Class Settlement.

6. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”).

6.1 **Plaintiffs’ Responsibilities.** Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) 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)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) 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 Plaintiffs, Class Counsel, or Defense Counsel; (v) signed declarations from Plaintiffs confirming their willingness and competency to serve and disclose all facts relevant to any actual or potential conflicts of interest with Class Members, and the Administrator; (vi) a signed declaration from Class Counsel attesting to its competency to represent the Class Members; its 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 (vii) all facts relevant to any actual or potential conflict of interest with Class Members, and the Administrator. In their Declarations, Plaintiffs and Class Counsel shall 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.

6.2 **Responsibilities of Counsel.** Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for 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. Class Counsel will provide Defense Counsel with a copy of the proposed Motion for Preliminary Approval and supporting declarations and documents no later than five (5) court days prior to filing. Defense Counsel shall provide any proposed edits at least two (2) court days prior to filing by Class Counsel.

- 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy **the Court's concerns.**

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected Apex Class Action Settlement Administration to serve as the Administrator and verified that, as a condition of appointment, Apex Class Action Settlement Administration agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") **under US Treasury Regulation** section 468B-1.
- 7.4 Notice to Class Members.
- 7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Employees, Workweeks, and Pay Periods in the Class Data.
- 7.4.2 Using best efforts to perform as soon as possible, and in no event later than fourteen (14) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, **the Class Notice**, with Spanish translation, substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member (and/or PAGA Employee), and the number of Workweeks and PAGA Pay Periods used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database and an Accurint or substantially similar skip trace.
- 7.4.3 Not later than three business (3) **days after the Administrator's receipt of any Class Notice** returned by the USPS as undelivered, the Administrator shall re-mail the Class

Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

7.4.4 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) days beyond the forty-five (45) calendar days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.4.5 If the Administrator, Defendants, or Class Counsel is contacted by or otherwise discovers any person who believes they should have been included in the Class Data and should have received the Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) days after receipt of the Class Notice, or the deadline dates in the Class Notice, whichever are later.

7.5 Requests for Exclusion (Opt-Outs).

7.5.1 Class Members who wish to exclude themselves (opt-out of) from the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than forty-five (45) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed). 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.

7.5.2 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.

7.5.3 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' Release under Paragraph 5.2 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

- 7.5.4 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 Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are PAGA Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for and shall receive an Individual PAGA Payment.
- 7.6 **Challenges to Calculation of Workweeks.** Each Class Member shall have forty-five (45) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email, or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks and PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. **The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge.** The Administrator shall promptly provide copies of all challenges to the calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the **Administrator's determination** of the challenges.
- 7.7 **Objections to Settlement.**
- 7.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or the amounts requested for the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payments.
- 7.7.2 Participating Class Members may send written objections to the Administrator by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than forty-five (45) days after the **Administrator's** mailing of the Class Notice (plus an additional fourteen (14) calendar days for Class Members whose Class Notice was re-mailed).
- 7.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement or the PAGA Penalties.
- 7.8 **Administrator Duties.** The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

- 7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time, and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Class Representative Services Payments, the Final Approval, and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes, and emails.
- 7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing: (a) the names and other identifying information of **Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”)**; (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; and (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 Pay Periods 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 the Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.**
- 7.8.4 Workweek and/or Pay Period 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 Pay Periods. **The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.**
- 7.8.5 Administrator’s Declaration. Not later than fourteen (14) days before the date by which Plaintiffs are 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 the Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement 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 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 will 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 ESTIMATES AND ESCALATOR CLAUSE.** Based on their records, Defendants estimate that, as of the date of this Settlement Agreement, (1) there are 86 Class Members and 7,000 Total Workweeks during the Class Period, not including workweeks covered by Prior Release Payments and (2) there are 106 PAGA Employees. Should the total number of Workweeks in the Class Period increase by more than five percent (5%) above 7,000 Workweeks, the Gross Settlement Amount shall increase on a pro rata basis in accordance with the increase in the number of Workweeks worked by the Settlement Class Members above five percent (5%). By way of example, if the number of Workweeks increases by six percent (6%) to 7,420 Workweeks, the Gross Settlement Amount will increase by one percent (1%).
9. **DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total Workweeks during the Class Period (not including workweeks covered by Prior Release Payments), Defendants may, but are not obligated to, elect to withdraw from the Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be void ab initio and shall have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendants will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendants must notify Class Counsel and the Court of its election to withdraw not later than seven (7) days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
10. **MOTION FOR FINAL APPROVAL.** Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiffs will file in Court a motion seeking final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a **Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval")**. Plaintiffs shall provide drafts of these documents to Defense Counsel not later than seven (7) days prior to filing the 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 (5) 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 modification of 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. The Court's decision to award less than the amounts requested for the Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator 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 do 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 any 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 Payments 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.

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

12. **ADDITIONAL PROVISIONS.**

12.1 No Admission of Liability, Class Certification, or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended to or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendants' defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement

only. If, for any reason the Court does grant Preliminary Approval, Final Approval, or enter Judgment, Defendants reserve the right to contest certification of any class for any reasons, and Defendants reserve all available defenses to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any grounds available and to contest **Defendants' defenses**. The Settlement, this Agreement, and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, **association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter (although neither the Parties nor their Counsel are presently aware of any related matter); (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency.** Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendants and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters **giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.**
- 12.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or to appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's **ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.**
- 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibit shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 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 or the Court for resolution.

- 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 Plaintiffs, Class Counsel, Defendants 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 C.F.R. 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 exhibit 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 have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code section 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and not other purposes, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 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, Plaintiffs shall destroy, all paper and electronic versions of Class Data received from Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants make a written request to Class Counsel for the return, rather than the destructions, of Class Data.
- 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, federal legal holiday, or California state court 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 Plaintiffs:

GrahamHollis, APC
Graham Hollis
Hali M. Anderson
Erik Dos Santos
3555 Fifth Ave
San Diego, CA 92103

To Defendants:

Newmeyer & Dillion LLP
James J. Ficenec
Tara C. Dudum
Gabriella N. Stevens
2033 N. Main Street, Suite 500
Walnut Creek, CA 94596

- 12.17 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (*e.g.*, 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 reached a settlement of this matter in principle on April 3, 2023. The Parties agree that, as of April 3, 2023, the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that pursuant to Code of Civil Procedure § 583.330, as of April 3, 2023, the five year deadline to bring a case to trial under Code of Civil Procedure § 583.310 is extended for the entire period of this settlement process, whether through final approval and judgment or the Court's complete and final rejection of this settlement.

Dated: 11/30/2023

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202502F0928740A...
Plaintiff Florencio Chavez Quiroz

Dated: _____

Plaintiff Leonardo Basurto

weekend, federal legal holiday, or California state court 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 Plaintiffs:

Graham Hollis, APC
Graham Hollis
Hali M. Anderson
Erik Dos Santos
3555 Fifth Ave
San Diego, CA 92103

To Defendants:

Newmeyer & Dillion LLP
James J. Ficenec
Tara C. Dudum
Gabriella N. Stevens
2033 N. Main Street, Suite 500
Walnut Creek, CA 94596

- 12.17 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (*e.g.*, 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 reached a settlement of this matter in principle on April 3, 2023. The Parties agree that, as of April 3, 2023, the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that pursuant to Code of Civil Procedure § 583.330, as of April 3, 2023, the five year deadline to bring a case to trial under Code of Civil Procedure § 583.310 is extended for the entire period of this settlement process, whether through final approval and judgment or the Court's complete and final rejection of this settlement.

Dated: _____

Dated: 12/12/2023

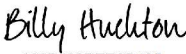
Plaintiff Florencio Chavez Quiroz

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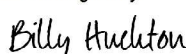


Plaintiff Leonardo Basurto

Dated: 12/22/2023

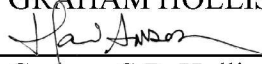
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168D468DEFCEB485...
Defendant Prestige Gunite, LP
President

Dated: 12/22/2023

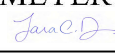
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Defendant West Coast Gunite Management,
LLC
President

Title

Dated: 12/21/2023

By: 
GRAHAM HOLLIS APC
Graham S.P. Hollis
Hali M. Anderson
Erik A. Dos Santos
Counsel for Plaintiffs

Dated: 12/26/2023

By: 
NEWMeyer & DILLION LLP
James J. Ficenec
Tara C. Dudum
Gabriella N. Stevens
Counsel for Defendants