JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

Subject to final approval by the Court, it is stipulated, by and between Plaintiff Pedro Zermeno ("Plaintiff"), on behalf of himself, other similarly situated putative class members, and other aggrieved employees, and Defendant Tessenderlo Kerley, Inc. (collectively, "Defendant") that the Action is hereby compromised and settled pursuant to the terms and conditions set forth in this Joint Stipulation of Class Action and PAGA Settlement ("Agreement," "Settlement Agreement," "Joint Stipulation," or "Settlement") and that the Court shall make and enter judgment subject to the definitions, recitals, and terms set forth herein, which by this reference become an integral part of the Agreement. Plaintiff and Defendant are collectively referred to in this Agreement as the "Parties."

I. DEFINITIONS

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

A. **Administration Costs**: The costs incurred by the Settlement Administrator to administer this Settlement pursuant to the terms of this Agreement, which is currently estimated at Six-Thousand Seven Hundred and Fifty Dollars ($6,750.00) and shall not exceed Ten Thousand Dollars ($10,000.00). All Administration Costs shall be paid from the Qualified Settlement Fund.

B. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement**: The settlement agreement reflected in this document, titled "Joint Stipulation of Class Action and PAGA Settlement."

C. **Attorney Fee Award**: The amount, not to exceed Thirty-Three and One-Third Percent (33 1/3%) of the Gross Settlement Amount or One Hundred Thirty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents ($136,666.67), in the event it is finally approved by the Court and awarded to Class Counsel. The Attorney Fee Award shall be paid from the Qualified Settlement Fund. Defendant takes no position as to the amount requested.

D. **Action or Case**: The Class Action Complaint initially filed by Vaughn Henry on January 28, 2022 entitled *Vaughn Henry v. Tessenderlo Kerley, Inc., et al*, Case No. 22C-0027, in the Kings County Superior Court, including the Second Amended Class and Representative Action Complaint ("Second Amended Complaint"), adding Plaintiff and allegations under the California Private Attorney General Act, for which a stipulation seeking leave to file was filed on April 28, 2025.

E. **Class**: All individuals who are or previously were employed by Defendant in the State of California and classified as non-exempt employees at any time during the Class Period.

F. **Class Counsel**: Benjamin H. Haber, Daniel J. Kramer, and Chase M. Stern of Wilshire Law Firm.

G. **Class Data**: Information regarding Class Members that Defendant will compile from its available, existing, electronic records and provide to the Settlement Administrator. The Class Data shall be formatted as a Microsoft Excel spreadsheet and shall include: (i) each Class

Member's full name; (ii) each Class Member's last known address; (iii) each Class Member's last known telephone number; (iv) each Class Member's Social Security number; and (v) information sufficient to allow the Settlement Administrator to calculate the number of workweeks and/or pay periods worked by each Class Member, each Class Member's Individual Settlement Share, and each Eligible Aggrieved Employee's Individual PAGA Payment.

H. **Class Member**: Each person eligible to participate in this Settlement who is a member of the Class as defined above.

I. **Class Period**: The time period from August 3, 2017 to Preliminary Approval.

J. **Class Representative or Plaintiff**: Pedro Zermeno.

K. **Class Representative Enhancement Payment**: The amount(s) the Court awards to Plaintiff for his service as the Class Representative, which will not exceed Ten Thousand Dollars ($10,000.00) to Plaintiff. The payment shall be paid from the Qualified Settlement Fund. Defendant takes no position as to the amount requested. The enhancement is subject to Court approval. If the Court awards less than the amount(s) requested, any amount(s) not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.

L. **Complaint**: The Class Action Complaint initially filed by Vaughn Henry on January 28, 2022 entitled *Vaughn Henry v. Tessenderlo Kerley, Inc., et al*, Case No. 22C-0027, in the Kings County Superior Court, including the Second Amended Complaint that adds Plaintiff as a class and PAGA representative.

M. **Cost Award**: The amount that the Court awards Class Counsel for payment of actual litigation costs, which shall not exceed Twenty Thousand Dollars ($20,000.00). The Cost Award will be paid from the Qualified Settlement Fund. Defendant takes no position as to the amount requested. The Cost Award is subject to Court approval. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members

N. **Counsel for Defendant or Defense Counsel**: Attorneys Mitchell A. Wrosch and Andrew B. Levin of Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

O. **Court**: The Kings County Superior Court of the State of California.

P. **Defendant**: Tessenderlo Kerley, Inc.

Q. **Effective Final Settlement Date or Effective Date**: The later of the following: (i) if no objections to the Settlement have been filed, or timely objections have been filed and then withdrawn, then the date the Court enters judgment granting Final Approval; (ii) if an objection to the Settlement has been filed, then the date on which time expires to file an appeal of the Court's grant of Final Approval; or (iii) if an objection was filed and a Notice of Appeal of the Court's grant of Final Approval was timely filed, then the date the appeal is finally resolved, with the grant of Final Approval unaffected.

R. **Eligible Aggrieved Employees**: All individuals who are or previously were employed by Defendant in the State of California and classified as non-exempt employees at any time during the PAGA Period.

S. **Exclusion Form**: The Election Not To Participate In ("Opt Out" From) Class Action Settlement Form, substantially similar to the form attached hereto as **Exhibit B**, subject to Court approval.

T. **Final Approval, Final Approval Order, Judgment, and Final Judgment**: "Final Approval" or "Final Approval Order" means the final order entered by the Court, following the Final Approval Hearing, finally approving this Agreement. "Judgment" or "Final Judgment" means the final judgment entered by the Court following the Final Approval Hearing.

U. **Gross Settlement Amount or GSA**: The total value of the Settlement is a non-reversionary Four Hundred and Ten Thousand Dollars and Zero Cents ($410,000.00). This is the gross amount Defendant shall be required to pay under this Settlement Agreement, which includes without limitation: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (4) Administration Costs paid to the Settlement Administrator, as approved by the Court; and (5) the PAGA Payment paid to the LWDA and to Eligible Aggrieved Employees, as approved by the Court. Defendant's portion of payroll taxes as the Class Members' current or former employer is not included in the GSA and will be a separate obligation of Defendant. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

V. **Individual PAGA Payment(s)**: The amount payable to each Eligible Aggrieved Employee from the portion of the PAGA Payment allocated to the Eligible Aggrieved Employees under the terms of this Settlement Agreement. Eligible Aggrieved Employees are not required to submit a claim form to receive their Individual PAGA Payments pursuant to this Agreement.

W. **Individual Settlement Share(s)**: The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement. Rather, Participating Class Members will receive an Individual Settlement Share automatically, unless the Class Member submits a timely and valid request for exclusion.

X. **LWDA**: California Labor and Workforce Development Agency.

Y. **Net Settlement Amount or NSA**: The total amount of money available for payout to Participating Class Members, which is the GSA less the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payment, the PAGA Payment, and Administration Costs. In other words, the NSA is the portion of the GSA that will be distributed to Class Members who do not request exclusion from the Settlement ("Participating Class Members").

Z. **Notice**: The "Notice of Class Action and PAGA Settlement," provided to all Class Members regarding the terms of this Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval. The Notice shall constitute notice to the Class pursuant to

California Rule of Court, rule 3.769(f) and, once approved by the Court, shall be deemed compliant with California Rule of Court, rule 3.766.

AA. **<u>Notice Packet</u>**: Collectively, the Notice and Exclusion Form, mailed to all identified Class Members by the Settlement Administrator.

BB. **<u>PAGA</u>**: The California Labor Code Private Attorneys General Act of 2004 (Labor Code section 2698, *et seq.*).

CC. **<u>PAGA Payment</u>**: The PAGA Payment consists of Twenty-Five Thousand Dollars ($25,000.00) of the Gross Settlement Amount allocated for the settlement and release of claims for civil penalties under PAGA. Seventy-Five Percent (75%) of the PAGA Payment ($18,750.00) shall be paid to the LWDA, and Twenty-Five Percent (25%) ($6,250.00) of the PAGA Payment shall be distributed to Eligible Aggrieved Employees, on a pro-rata basis, as set forth below. If the Court requires a higher allocation for the PAGA Payment, the additional amount will be taken from the GSA.

DD. **<u>PAGA Period</u>**: The time period from April 21, 2021 to Preliminary Approval.

EE. **<u>PAGA Released Claims</u>**: All claims for civil penalties pursuant to PAGA based on the factual or legal theories that were alleged in the Second Amended Complaint and Plaintiff's letter to the LWDA, or that reasonably could have been alleged based on the facts, legal theories, Labor Code sections, and primary rights at issue in the Second Amended Complaint or Plaintiff's letter to the LWDA, including the: failure to pay minimum and straight time wages; failure to pay overtime; failure to provide meal periods and provide meal period premium payments; failure to provide rest periods and provide rest period premium payments; failure to timely pay wages upon termination; failure to provide and maintain compliant wage statements; failure to reimburse necessary business expenses; violations of the unfair competition law; and any other claims or penalties under the wage and hour laws pleaded in the Action (collectively, the "PAGA Released Claims"). The period of the PAGA Released Claims shall extend to the limits of the PAGA Period.

The PAGA Released Claims does not include claims that, as a matter of law, cannot be released and does not include claims for retaliation, discrimination, wrongful termination, and individual claims for the recovery of workers' compensation benefits.

FF. **<u>Participating Class Members</u>**: All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement. Participating Class Members will release all of the Released Claims and will be bound by all terms of the Settlement and any final judgment entered in this Action.

GG. **<u>Parties</u>**: Plaintiff, individually and as the Class Representative, and Defendant Tessenderlo Kerley, Inc.

HH. **<u>Preliminary Approval or Preliminary Approval Order</u>**: The Court's order preliminarily approving the proposed Settlement following the Preliminary Approval Hearing.

II. **<u>Qualified Settlement Fund or QSF</u>**: A fund within the meaning of Treasury Regulation section 1.46B-1, 26 C.F.R. section 1.468B-1 *et seq.*, that is established by the Settlement Administrator for the benefit of Participating Class Members, Eligible Aggrieved Employees, Plaintiff and Class Counsel.

JJ. **<u>Released Claims</u>**: All claims based on the factual or legal theories that were alleged in the Complaints and/or Plaintiff's letters to the LWDA, or that reasonably could have been alleged based on the facts, legal theories, Labor Code sections, and primary rights at issue in the Complaints and/or Plaintiff's letters to the LWDA, including the: failure to pay minimum and straight time wages; failure to pay overtime; failure to provide meal periods and provide meal period premium payments; failure to provide rest periods and provide rest period premium payments; failure to timely pay wages upon termination; failure to provide and maintain compliant wage statements; failure to reimburse necessary business expenses; violations of the unfair competition law; and any other claims or penalties under the wage and hour laws pleaded in the Action. The Released Claims include all claims for compensatory, consequential, incidental, liquidated, punitive, and exemplary damages; restitution; interest; costs and fees; injunctive or equitable relief; and any other remedies available at law or equity for the time period from August 3, 2017 through Preliminary Approval (the last two sentences, collectively, the "Released Claims"). The period of the Released Claims shall extend to the limits of the Class Period. The res judicata effect of the Judgment will be the same as that of the Released Claims.

The Released Claims does not include claims that, as a matter of law, cannot be released and does not include claims for retaliation, discrimination, wrongful termination, and individual claims for the recovery of workers' compensation benefits.

KK. **<u>Released Parties</u>**: Defendant and its past, present, and/or future, direct and/or indirect, officers, directors, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

LL. **<u>Response Deadline</u>**: Forty-five (45) calendar days from the initial mailing of the Notice Packets and the last date on which Class Members may request exclusion from or object to the Settlement. Class Members who receive a re-mailed Notice will have an additional ten (10) calendar days, for a total of fifty-five (55) calendar days from the initial mailing of the Notice, to request exclusion from or object to the Settlement.

MM. **<u>Settlement Administrator</u>**: The third-party administrator selected by the Plaintiff to administer this Settlement is Phoenix Settlement Administrators. ("Phoenix").

II. <u>RECITALS</u>

A. **Procedural History.** On January 28, 2022, Vaughn Henry filed a Class Action Complaint in Kings County Superior Court against Defendant Tessenderlo Kerley, Inc. seeking damages based on alleged violations of the California Labor Code and California Business and Professions Code, Case No. 22C-0027. Also on January 28, 2022, Vaughn Henry sent a letter to the LWDA identifying provisions of the Labor Code he contends were violated by Defendant and the theories supporting his contentions. On April 4, 2022, Defendant filed its Answer to the

Class Action Complaint, asserting general and affirmative defenses. On April 22, 2022, Vaughn Henry filed a PAGA Representative Action Complaint in Kings County Superior Court against Defendant alleging violations under PAGA, Case No. 22C-0138. On or around June 13, 2022, Vaughn Henry filed a First Amended Complaint against Defendant in Kings County Superior Court, Case No. 22C-0027, adding allegations under PAGA. On June 29, 2022, Vaughn Henry filed a Request for Dismissal of Case No. 22C-0138, which the Kings County Superior Court granted on June 29, 2022. On July 22, 2022, Defendant filed its Answer to the First Amended Complaint, asserting general and affirmative defenses. On February 21, 2025, Plaintiff sent a letter to the LWDA identifying provisions of the Labor Code he contends were violated by Defendant and the theories supporting his contentions. On April 28, 2025, the Parties filed a joint stipulation seeking leave to allow Plaintiff to file a Second Amended Complaint, which seeks to add Plaintiff as a class and PAGA representative.

B. **Investigation and Discovery.** Prior to mediation, and both before and after the Action was filed, the Parties conducted significant investigation of the relevant facts and law. Prior to mediation, Defendant produced documents relating to its wage-and-hour policies, practices, and procedures, including those regarding meal and rest periods, the recording of time, and off-the-clock work. Plaintiff's Counsel also reviewed, with the assistance of a forensic accountant consultant, a reasonable and adequate sampling of time and pay records from the putative Class provided by Defendant and information relating to the size and scope of the Class, as well as data permitting Plaintiff to understand the number of workweeks in the Class Period and pay periods in the PAGA Period. Plaintiff and Vaughn Henry also provided information from their own experience and observations working for Defendant, and with the information provided in their own personnel records and time and records. The Parties agree that the above-described investigation and evaluation, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis.

C. **Mediation.** On February 1, 2023, the Parties participated in a private mediation with Jeffrey Krivis, a well-respected mediator with considerable experience mediating wage-and-hour class actions. This mediation took place only after the Parties informally exchanged extensive information and data. The mediation and subsequent negotiations resulted in the Settlement described herein to resolve this Action in its entirety.

D. **Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the expense and length of additional proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiff and Class Counsel have also taken into account the uncertainty and risks, the potential outcome, and the difficulties and delays inherent in further litigation, including the chances of class certification and prevailing at trial by either party. Plaintiff and Class Counsel have conducted extensive settlement negotiations, including formal mediation on February 1, 2023, as mentioned above. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.

E. **Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of Defendant's time, energy, and resources have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims Plaintiff has asserted. Defendant has also taken into account the risks of further litigation in reaching its decision to enter into this Settlement. Despite continuing to contend that it is not liable for any of the claims set forth by Plaintiff, Defendant has, nonetheless, agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the claims as set forth in the Action.

F. **Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Action is not appropriate for class or representative treatment. Defendant asserted a number of defenses to the claims and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. The monies being paid as part of the settlement are genuinely disputed and the Parties agree that the provisions of Labor Code section 206.5 are not applicable to this Settlement. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever and shall not constitute an admission of the accuracy of any allegations made by Plaintiff or Class Counsel. Nor should the Agreement be construed as an admission that Plaintiff can serve as an adequate Class Representative. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.

G. **Plaintiff's Claims.** Plaintiff asserts that Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiff, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Action. However, in the event that this Settlement is finally approved by the Court, none of Plaintiff, Class Members, or Class Counsel will oppose Defendant's efforts to use this Agreement to prove that Plaintiff and Class Members have resolved and are forever barred from re-litigating the Released Claims.

III. SETTLEMENT TERMS AND CONDITIONS

A. **Settlement Consideration by Defendant - Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount, excluding payroll taxes, that Defendant is obligated to pay under this Settlement Agreement is Four Hundred and Ten Thousand Dollars and Zero Cents ($410,000.00). In no event shall Defendant be required to pay more than the Gross Settlement Amount, other than its share of payroll taxes.

B. **Notice to the LWDA.** On January 28, 2022, Vaughn Henry filed and served his Notice of Labor Code Violations Pursuant to Labor Code Section 2699.3 ("PAGA Notice"). On February 21, 2025, Plaintiff filed and served his Amended Notice of Labor Code Violations Pursuant to Labor Code Section 2699.3. Thus, Plaintiff maintains that he has satisfied his notice obligations under PAGA.

C. Class Certification. Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must conditionally certify the Class as defined in this Agreement.

D. Conditional Nature of Stipulation for Certification. The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiff and Class Members for purposes of this Settlement only. This Stipulation is contingent upon Preliminary and Final Approval. If the Settlement does not become final and effective, for whatever reason, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall have no bearing on and shall not be admissible or used in any way in connection with the question of whether the Court should certify any claims in a non-settlement context in this Action or in any other lawsuit. Defendant reserves the right to oppose class certification should this Settlement be materially modified, withdrawn, or reversed on appeal, or otherwise fail to become final and effective. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative Enhancement Payment, the Attorney Fee Award, and/or the Cost Award, will not constitute a material modification to the Settlement within the meaning of this paragraph.

E. Appointment of Class Representatives. Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff shall be appointed as the representative for the Class.

F. Appointment of Class Counsel. Solely for the purposes of this Settlement, the Parties stipulate and agree that Class Counsel shall be appointed to represent the Class

G. Settlement Disbursement. Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount:

1. **To the Plaintiff.** In addition to his respective Individual Settlement Share and Individual PAGA Payment, as applicable, and subject to the Court's approval, Plaintiff will receive up to Ten Thousand Dollars ($10,000.00) as Class Representative Enhancement Payment in exchange for releasing the Released Parties from the Released Claims, a general release, and for his time, his effort, and the risk his undertook in bringing and prosecuting this matter. The Settlement Administrator will pay the Class Representative Enhancement Payment out of the Qualified Settlement Fund. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payment. The Settlement Administrator shall issue IRS Forms 1099 to Plaintiff for his Class Representative Enhancement Payment. Plaintiff shall be solely and legally responsible for paying any and all applicable taxes due on his Class Representative Enhancement Payment and shall hold harmless Defendant and the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Enhancement Payment. In the event the Court does not approve the entirety of the application for the Class Representative Enhancement Payment, Plaintiff shall not have the right to revoke the Settlement and it will remain binding. In the event the Court does not approve the entirety of the application for the Class Representative Enhancement Payment, the

Settlement Administrator shall pay whatever amounts the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amounts requested and the amount awarded. If the amounts awarded are less than the amounts requested by Plaintiff, the difference shall become part of the NSA and be available for distribution to Participating Class Members.

2. **To Class Counsel.** Class Counsel will apply to the Court for, a total Attorney Fee Award not to exceed Thirty Three and One-Third Percent (33 1/3 %), or One Hundred Thirty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents ($136,666.67), of the GSA and a Cost Award not to exceed Twenty Thousand Dollars ($20,000.00). Defendant takes no position as to the amounts requested. Class Counsel, Plaintiff and the Participating Class Members will not apply to the Court for any payment of attorneys' fees and costs that are in addition to the foregoing or that exceed the GSA. The Parties agree that, over and above the Court-approved Attorney Fee and Cost Awards, each of the Parties, including all Participating Class Members, shall bear their own fees and costs, including, but not limited to, those related to the investigation, filing, prosecution, or settlement of the Action; the negotiation, execution, or implementation of this Agreement; and/or the process of obtaining, administering, or challenging an Order Granting Preliminary Approval and/or Final Approval. The Settlement Administrator will pay the Court-approved amounts for the Attorney Fee Award and Cost Award out of the Gross Settlement Amount. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to these payments. In the event the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount(s) requested and the amount(s) awarded. In the event the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost, Class Counsel shall not have the right to revoke the Settlement and it will remain binding. However, Class Counsel reserve the right to appeal any reduction by the Court of the requested Attorney Fee Award and Cost Award. If the amount(s) awarded is less than the amount(s) requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Participating Class Members.

3. **To the Responsible Tax Authorities.** The Settlement Administrator will withhold the amount of each Participating Class Member's portion of normal payroll withholding taxes out of each Participating Class Member's Individual Settlement Share apportioned to wages. The Settlement Administrator will calculate the amount of the Participating Class Members' and Defendant's portions of payroll withholding taxes. The Settlement Administrator will submit Defendant's portion of payroll withholding tax calculation to Defendant for additional funding and forward those amounts, along with each Participating Class Member's Individual Settlement Share withholdings, to the appropriate taxing authorities. Defendant will pay its portion of employer-side payroll taxes at the same time its funds the Gross Settlement Amount in accordance with the requirements of Section III (J)(12) of this Settlement Agreement.

4. **To the Settlement Administrator.** The Settlement Administrator will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court in an amount currently estimated at Six Thousand Seven Hundred and Fifty Dollars ($6,750.00) and not to exceed Ten Thousand Dollars ($10,000.00). This will be paid out of the Qualified Settlement Fund. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and be available for distribution to Participating Class Members. In the event the Court does not approve the entirety of the requested Administration Costs, the Settlement Administrator shall pay to itself whatever amount the Court awards, and neither Defendant nor Plaintiff shall be responsible for paying the difference between the amount requested and the amount awarded.

5. **To Participating Class Members.** The Settlement Administrator will pay each Participating Class Member an Individual Settlement Share from the NSA.

   a. **Individual Settlement Share Calculation.** The Settlement Administrator will pay each Participating Class Member his or her proportional share of the Net Settlement Amount, which will be equal to: (i) the number of workweeks he or she worked as a Class Member during the Class Period, based on the Class Data provided by Defendant, divided by (ii) the total number of workweeks worked by all Participating Class Members, collectively, during the Class Period, based on the same Class Data, and (iii) multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a workweek for purposes of this calculation. Therefore, the value of each Participating Class Member's Individual Settlement Share is tied directly to the number of workweeks he or she worked during the Class Period.

   b. **Tax Treatment for Individual Settlement Shares.** Each Participating Class Member's Individual Settlement Share will be apportioned as follows: twenty percent (20%) as wages and eighty percent (80%) as penalties and interest. The portion paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by IRS Forms W-2. Payment of all amounts will be made subject to backup withholding unless a duly executed IRS Form W-4 is received from the payee(s). The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS Forms 1099. The employees' share of payroll tax withholdings and other legally required withholdings shall be withheld from the portion of each Participating Class Member's Individual Settlement Share attributed to wages. Participating Class Members will be responsible for the payment of any taxes and penalties assessed on the Individual Settlement Shares and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual Settlement Shares.

6. **To Eligible Aggrieved Employees.** The Settlement Administrator will pay each Eligible Aggrieved Employee an Individual PAGA Payment from the portion of the PAGA Payment allocated to the Eligible Aggrieved Employees.

   a. **Individual PAGA Payment Calculation.** The Settlement Administrator will pay each Eligible Aggrieved Employee his or her proportional share of the portion of the PAGA Payment allocated to the Eligible Aggrieved Employees, which will be equal to: (i) the number of pay periods he or she worked as an Eligible Aggrieved Employee during the PAGA Period, based on the Class Data provided by Defendant, (ii) divided by the total number of pay periods worked by all Eligible Aggrieved Employees collectively during the PAGA Period, based on the same Class Data, and (iii) multiplied by the portion of the PAGA Payment allocated to the Eligible Aggrieved Employees. One day worked in a given pay period will be credited as a pay period for purposes of this calculation. Therefore, the value of each Eligible Aggrieved Employee's Individual PAGA Payment is tied directly to the number of pay periods he or she worked during the PAGA Period.

   b. **Tax Treatment for Individual PAGA Payments.** Each Eligible Aggrieved Employee's Individual PAGA Payment will be apportioned as one hundred percent (100%) penalties and shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS Forms 1099. Eligible Aggrieved Employees will be responsible for the payment of any taxes and penalties assessed on the Individual PAGA Payments and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual PAGA Payments.

H. **Appointment of Settlement Administrator.** Solely for the purposes of this Settlement, the Parties stipulate and agree that Phoenix shall be retained to serve as Settlement Administrator. By accepting the role as Settlement Administrator, the Settlement Administrator is bound to all the terms, conditions and obligations described in this Settlement Agreement. The Settlement Administrator shall be responsible for preparing, translating into Spanish, printing, and mailing the Notice Packets to the Class Members; creating a static settlement website that will go live on the same date the Notice Packet is first mailed to the Class Members and that will include, among other things, the Complaints, standalone generic copies of the Notice and Exclusion Form, all papers filed in connection with the Preliminary Approval Hearing (including all orders filed by the Court), all papers filed in connection with the Final Approval Hearing (including the fee motion and the final approval motion), and, if the Settlement is approved, the Final Approval Order and Judgment; keeping track of any objections or requests for exclusion from Class Members; calculating each Class Member's Individual Settlement Share and each Eligible

Aggrieved Employee's Individual PAGA Payment; calculating any and all payroll tax deductions as required by law; mailing Individual Settlement Shares to Participating Class Members and Individual PAGA Payments to Eligible Aggrieved Employees; performing skip traces and remailing Notice Packets, Individual Settlement Shares, and Individual PAGA Payments to Class Members and Eligible Aggrieved Employees; providing weekly status reports to Counsel for Defendant and Class Counsel, which are to include updates on any objections or requests for exclusion that have been received; providing a due diligence declaration for submission to the Court upon completion of the Settlement and prior to the Final Approval Hearing; mailing the LWDA's portion of the PAGA Payment to the LWDA; distributing the Attorney Fee Award and Cost Award to Class Counsel; printing and providing Class Members and Plaintiff with IRS Forms W2 and 1099 as required under this Agreement and applicable law; providing any funds remaining in the QSF as a result of uncashed checks to the California State Controller's Office in the name of the Class Member(s) or Eligible Aggrieved Employee(s) in accordance with California Unclaimed Property Law, including the administration of related tax reimbursements; and for such other tasks as the Parties mutually agree. The Parties each represent that they do not have any financial interest in Phoenix or otherwise have a relationship with Phoenix that could create a conflict of interest. Plaintiff, Class Counsel, Defendant and Defense Counsel shall not bear any responsibility for errors or omissions in the calculation or distribution of the Individual Settlement Shares, Individual PAGA Payments, or any other distribution of monies contemplated by this Agreement, or in the development of the list of recipients of all such settlement payments.

I. **CIRCULAR 230 DISCLAIMER.** Each Party to this Agreement (for purposes of this section, the "Acknowledging Party" and each Party to this Agreement other than the Acknowledging Party, an "Other Party") acknowledges and agrees that (1) No provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisors, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of U.S. Treasury Dept. Circular 230 (31 C.F.R. Part 10, as amended); (2) The Acknowledging Party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any Other Party or any attorney or advisor to any Other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any Other Party to avoid any tax penalty that may be imposed on the Acknowledging Party; and (3) No attorney or advisor to any Other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

J. **Procedure for Approving Settlement.**

1. **Motion for Preliminary Approval and Conditional Certification.**

   a. Plaintiff will move for an order conditionally certifying the Class for settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Notice and Exclusion Form.

b. At the Preliminary Approval Hearing, Plaintiff will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representative, Class Counsel, and Settlement Administrator; approving the Notice and Exclusion Form; and setting the Final Approval Hearing.

c. Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement, the Parties will work together in good faith to resolve any and all issues identified by the Court to in order to obtain Preliminary Approval of the Settlement. If, after three (3) attempts by the Parties to obtain Preliminary Approval of the Settlement, the Court declines to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement, the Settlement will be null and void and the Parties shall have no further obligations under it. The amounts of the Attorney Fee Award, Cost Award, Administration Costs, PAGA Payment, and Class Representative Enhancement 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 not a condition of this Agreement and shall be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to an application for the Attorney Fee Award, Cost Award, Administration Costs, PAGA Payment, and/or the Class Representative Enhancement Payment shall not operate to terminate or cancel this Agreement. Nothing in this Agreement shall limit Plaintiff's or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorney Fee Award, Cost Award, Administration Costs, and/or Class Representative Enhancement Payment.

2. **Notice to Class Members.** After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Notice Packet in accordance with the following procedure:

a. Within fourteen (14) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator the Class Data. If any or all of the Class Data is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Class Data shall be based on Defendant's payroll, personnel, and other business records. The Settlement Administrator will conduct a National Change of Address ("NCOA") Database search (which provides updated addresses for individuals who have moved in the past four years and who have provided the U.S. Postal Service with a forwarding address) for all Class Members to obtain the most up-to-date address information. The Settlement Administrator shall maintain the Class Data and all information contained therein as private and confidential. This provision shall not impede Class Counsel's ability to discharge its fiduciary duties, including effectuating the terms of this Settlement.

b. Within fourteen (14) calendar days after Defendant provides the Class Data to the Settlement Administrator, the Settlement Administrator will mail the Notice Packet to all identified Class Members via first-class regular U.S. Mail, using the most current mailing address information available.

c. If a Notice Packet is returned because of an incorrect address, within five (5) calendar days after receipt of the returned Notice Packet, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Notice Packet to the Class Member. The Settlement Administrator will conduct a skip trace to attempt to find the Class Member's current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Notice Packet is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing Notice Packets to Class Members for whom new addresses are found. If the Settlement Administrator is unable to locate a better address, the Notice Packet shall be re-mailed to the original address. If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing. Those Class Members who receive a re-mailed Class Notice, whether by skip trace or forwarded mail, will have an additional ten (10) calendar days from the original Response Deadline to postmark a request for exclusion from or an objection to the Settlement. The Settlement Administrator shall mark on the envelope whether the Notice Packet is a re-mailed packet and shall provide on the envelope the Class Member's new deadline to respond.

d. Class Members will have the opportunity to dispute the information provided in their Notice Packets. All such disputes must be in writing, postmarked by the Response Deadline, and sent via first-class regular U.S. mail to the Settlement Administrator. To the extent a Class Member disputes the number of workweeks or pay periods with which he or she has been credited or the amount of his or her Individual Settlement Share or Individual PAGA Payment, the Class Member may produce and submit evidence to the Settlement Administrator showing that the disputed information is inaccurate. The Settlement Administrator will evaluate any evidence submitted by the Class Member and will make the initial decision as to the number of eligible workweeks or pay periods with which the Class Member should be credited and/or the amount of the Individual Settlement Share or Individual PAGA Payment to which the Class Member may be entitled. The Court shall have the right to review any decision made by the Settlement Administrator regarding such a dispute and will make the final determination. Class Counsel will file with the Court any and all disputes submitted by Class Members, the evidence submitted in support of such disputes, and the resolution of those disputes.

e. If the Settlement Administrator receives an incomplete or deficient request for exclusion, the Settlement Administrator shall send a letter informing the Class Member of the deficiency and shall provide the Class Member fourteen (14) calendar days with which to cure the deficiency. If the Settlement Administrator does not receive a cured request for exclusion, postmarked by the last and fourteenth (14^{th}) day of the cure period, the Class Member will be deemed not to have excluded himself or herself from the Settlement and will be bound by the Settlement.

f. The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defense Counsel of the number of Notice Packets mailed, the number of Notice Packets returned as undeliverable, the number of Notice Packets re-mailed, and the number of requests for exclusion received. No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel no later than ten (10) calendar days before the Final Approval Hearing. If any material changes occur before the Final Approval Hearing but after the Settlement Administrator's declaration of due diligence has been filed, the Settlement Administrator will supplement its declaration.

3. **Notice.** The Notice will provide that Class Members who wish to object to the Settlement may do so by mailing written objections to the Settlement Administrator, postmarked on or before the Response Deadline. Class Members who object to this Settlement or any of its terms may not also submit requests for exclusion from this Settlement (i.e., may not opt out of this Settlement). In the event a Class Member submits both a request for exclusion and a written objection, the request for exclusion will be deemed invalid, and the objection will remain valid. The postmark date of mailing shall be the exclusive means used to determine whether an objection was timely served. A Class Member who objects to the Settlement will remain a Participating Class Member and, if the Court finally approves the Settlement, the objecting Class Member will be bound by the terms of the Settlement in the same way and to the same extent as those Participating Class Members who do not object to the Settlement. Eligible

Aggrieved Employees do not have the right to object to the PAGA portion of the Settlement.

a. **Format.** For a written objection to be valid, it must: (a) be signed and dated by the objecting Class Member or his or her lawful representative; (b) include the objecting Class Member's full name, address, telephone number, and the last four digits of the Class Member's Social Security number, as well as the name and address of counsel, if any; (c) include the words "Notice of Objection" or "Formal Objection;" (d) state the case name and number; (e) provide a concise, factual written statement of the Class Member's reasons for objecting; (f) include a statement indicating whether the objecting Class Member (or someone on his or her behalf) intends to appear at the Final Approval Hearing; and (g) be postmarked on or before the Response Deadline.

4. **Appearance at Final Approval Hearing and Oral Objection.** Participating Class Members may (but are not required to) appear at the Final Approval Hearing, either in person or through their own counsel and at their own expense, and orally object to the Settlement, regardless of whether the Participating Class Member submitted a written objection to the Settlement. The failure to submit a valid written objection does not waive a Participating Class Member's right to appear at and make an oral objection to the Settlement at the Final Approval Hearing. The Court will hear from any Class Member who attends the Final Approval Hearing and asks to speak, regardless of whether the Class Member has submitted a written objection.

5. **Filing Objections.** The Settlement Administrator shall send all written objections to Class Counsel and Defense Counsel. Class Counsel will be responsible for filing the objections with the Court in advance of the Final Approval Hearing. Class Counsel and Defense Counsel will be permitted to respond in writing to any properly submitted objections no later than nine (9) court days before the Final Approval Hearing.

6. **Request for Exclusion from the Settlement ("Opt Out").**

a. **Notice.** The Notice will provide that Class Members who wish to exclude themselves from the Settlement must do so by mailing a request for exclusion to the Settlement Administrator, postmarked on or before the Response Deadline. The postmark date of mailing shall be the exclusive means used to determine whether the request for exclusion was timely submitted.

b. **Format.** For a request for exclusion to be valid, it must unambiguously state that the Class Member wishes to exclude himself or herself from the Settlement and must also: (a) include the Class Member's name, address, and the last four digits of the Class Member's Social Security number; (b) be addressed to the Settlement Administrator at the specified address; (c) be signed by the Class Member or his or her lawful representative; and (d) be postmarked on or before the Response Deadline.

c. **Validity and Effect.** Class Members who fail to submit valid and timely requests for exclusion will automatically be included in the Settlement and will become Participating Class Members upon the expiration of the Response Deadline. Each Participating Class Member shall be bound by all terms of the Settlement and any Final Judgment entered in this Action if the Settlement is finally approved by the Court and shall be mailed an Individual Settlement Share, regardless of whether the Participating Class Member has objected to the Settlement. Any Class Member who returns a valid and timely request for exclusion will not participate in or be bound by the terms of the class portion of the Settlement or any Final Judgment entered if the Settlement is finally approved by the Court and thereby will not have any right to object to, appeal or comment thereon. Class Members who return valid and timely requests for exclusion will not be entitled to any payment from the Net Settlement Amount.

d. **Confirmation of Authenticity.** If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member's identity.

7. **Report.** No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notice Packets mailed to Class Members, the number of Notice Packets returned as undeliverable, the number of Notice Packets re-mailed to Class Members, the number of re-mailed Notice Packets returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid and timely requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.

8. **Eligible Aggrieved Employees May Not Opt Out of PAGA Settlement.** Notwithstanding the foregoing, the Parties agree that there is no statutory or other right for any Eligible Aggrieved Employee to opt out or otherwise exclude himself or herself from the PAGA portion of the Settlement, which releases the PAGA Released Claims as provided in Sections I(EE) and III(L) of this Agreement. Therefore, if the Court approves the Settlement, the Eligible Aggrieved Employees will be bound by the PAGA portion of the Settlement and will still be entitled to their Individual PAGA Payments, regardless of whether they submitted valid and timely requests for exclusion.

9. **No Solicitation of Objections or Exclusion Forms.** Neither the Parties nor their respective counsel will solicit or otherwise encourage, directly or indirectly, any Class

Member to object to the Settlement, request exclusion from the Settlement, or appeal the Final Approval Order or Judgment.

10. Motion for Final Approval.

a. At the earliest practicable time following the expiration of the Response Deadline, Class Counsel will file motions and memoranda in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: the (1) Attorney Fee Award; (2) Cost Award; (3) Administration Costs; (4) Class Representative Enhancement Payment; and (5) PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment), pursuant to which all Participating Class Members shall release all Released Claims and all Eligible Aggrieved Employees shall release the PAGA Released Claims. Class Counsel's motion for Final Approval of the Settlement, including Final Approval of the (1) Attorney Fee Award, (2) Cost Award, (3) Administration Costs, (4) Class Representative Enhancement Payment, and (5) PAGA Payment, shall be filed at least sixteen (16) Court days before the Final Approval Hearing.

b. **Declaration by Settlement Administrator.** The Settlement Administrator shall submit a declaration in support of Plaintiff's Motion for Final Approval of this Settlement detailing the number of Notice Packets mailed and re-mailed to Class Members, the number of undeliverable Notice Packets, the number of valid and timely requests for exclusion received, the number of valid and timely written objections received, the average amount of the Individual Settlement Share and Individual PAGA Payment, the Administration Costs, and any other information as the Parties mutually agree or the Court orders the Settlement Administrator to provide.

c. Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the Action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-Judgment matters as may be appropriate under Court rules and applicable law. The Final Approval Order and Judgment will be posted on the Settlement Administrator's website.

11. Disbursement of Settlement Shares and Payments. Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order and Judgment. The maximum amount Defendant can be required to pay under this Settlement for any purpose, other than Defendant's share of payroll taxes, is the

Gross Settlement Amount. The Settlement Administrator shall keep Defense Counsel and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Defense Counsel and Class Counsel. No person shall have any claim against Defendant, Defense Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

12. **Funding the Settlement.** No later than thirty (30) calendar days after the Effective Final Settlement Date and upon satisfaction of the preconditions described in this Settlement Agreement, Defendant shall deposit the Gross Settlement Amount of Four Hundred and Ten Thousand Dollars and Zero Cents ($410,000.00), along with Defendant's portion of employer-side payroll taxes, into the QSF (as defined below).

13. **Disbursement.** Within fourteen (14) calendar days after Defendant fund the entire Gross Settlement Amount, along with Defendant's portion of employer-side payroll taxes, the Settlement Administrator shall calculate and pay all payments due under the Settlement Agreement, including all Individual Settlement Shares and Individual PAGA Payments, the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payment, the payment to the LWDA, and the Administration Costs. The Settlement Administrator will forward a check for 75% of the PAGA Payment ($18,750.00) to the LWDA for settlement of the PAGA claim.

14. **QSF.** The Parties agree that the QSF is intended to be a "Qualified Settlement Fund" under section 468B of the Code and Treasury Regulations section 1.4168B-1, 26 C.F.R. section 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and the Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. section 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

15. **Uncashed Checks.** Participating Class Members and Eligible Aggrieved Employees must cash or deposit their Individual Settlement Share and Individual PAGA Payment checks within one hundred eighty (180) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) calendar days, it will expire and become non-negotiable, and offering to replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are initially mailed, cancel the check(s) and pay the amount of the Individual Settlement Share(s) or Individual PAGA Payment(s) (as applicable), plus any accrued interest, to the California State Controller's Office in the name of the Participating Class Member(s) or Eligible Aggrieved Employee(s), in accordance with California Unclaimed Property Law so that the Participating Class Member(s) or Eligible Aggrieved Employee(s) will have their Individual Settlement Share(s) or Individual PAGA Payment(s) available to them

per the applicable claim procedure to request that money from the State of California. Defendant will not be required to pay any interest on said amounts.

16. **Final Report by Settlement Administrator.** Within ten (10) calendar days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds.

K. **Release of Claims by All Participating Class Members.** Upon Defendant's fulfillment of its payment obligations under Section III(J)(12) of this Agreement, Plaintiff and all Participating Class Members shall release the Released Parties from the Released Claims, as defined in Section I(JJ) above, occurring during the Class Period. Plaintiff and the Participating Class Members agree not to sue or otherwise make any claim against any of the Released Parties for any of the Released Claims.

L. **Release of PAGA Claims by All Eligible Aggrieved Employees.** Upon Defendant's fulfillment of its payment obligations under Section III(J)(12) of this Agreement, the LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, any and all Eligible Aggrieved Employees, including Plaintiff, shall release the Released Parties from the PAGA Released Claims, as defined in Section I(EE) above, occurring during the PAGA Period. Plaintiff and the Eligible Aggrieved Employees agree not to sue or otherwise make any claim against any of the Released Parties for any of the PAGA Released Claims. The release of the PAGA Released Claims is effective, regardless of whether the Eligible Aggrieved Employee submits a timely and valid request for exclusion.

M. **Plaintiff's General Release of Claims.** Upon Defendant's fulfillment of its payment obligations under Section III(J)(12) of this Agreement, and in exchange for the Class Representative Enhancement Payment to Plaintiff, in amounts not to exceed Ten Thousand Dollars and Zero Cents ($10,000.00) to Plaintiff, in recognition of his work and efforts in obtaining the benefits for the Class and undertaking the risk of paying litigation costs in the event this matter had not successfully resolved, Plaintiff hereby provides a general release of claims for himself and any spouse, heirs, successors and assigns, and forever releases, remises, and discharges the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, arising from the beginning of time through December 17, 2021, known or unknown, suspected or unsuspected, asserted or that might have been asserted, whether in tort, contract, equity, or otherwise, arising out of Plaintiff's employment with Defendant, payment of wages during that employment and the cessation of that employment, and/or violation of any federal, state or local statute, rule, ordinance or regulation. Plaintiff's general release of claims does not include claims that, as a matter of law, cannot be released. Plaintiff's general release of claims also includes a waiver of California Civil Code section 1542, which provides as follows:

> **A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by**

him or her, would have materially affected his or her settlement with the debtor or released party.

N. Miscellaneous Terms.

1. **No Admission of Liability.** Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in this Action, or that but for the Settlement, a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement and Plaintiff's and Defendant's willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this Settlement).

2. **No Effect on Employee Benefits.** The amounts paid under this Agreement do not represent a modification of any previously credited hours of service under any employee benefit plan, policy or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendant's policies or bonus programs. Any payments made under the terms of this Settlement shall not be applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any other form of compensation for the purposes of Defendant's benefit plans, policies or bonus programs. Defendant retains the right to modify the language of its benefit plans, policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Settlement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or benefits are not required by this Settlement.

3. **No Solicitation of Individual Settlements.** Defendant and Defense Counsel agree that until and unless the Court does not grant Final Approval of the Settlement and/or the Settlement Agreement becomes null and void, Defendant and Defense Counsel will not attempt to procure any individual settlements from the Class Members. Should this clause be violated, Plaintiff reserves the right to terminate the Settlement Agreement. Plaintiff and Class Counsel agree that until and unless the Court does not grant Final Approval of the Settlement and/or the Settlement Agreement becomes null and void, Plaintiff and Class Counsel shall not attempt to procure from Class Members any requests for exclusion. Should this clause be violated, Defendant reserves the right to terminate the Settlement Agreement.

4. **Publicity.** Plaintiff and Class Counsel agree that they have not and will not publish the Settlement Agreement. In response to any inquiries, Plaintiff will state that "the case was resolved and it was resolved confidentially." Class Counsel shall not report the Settlement Agreement in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiff or the Class or the Settlement Agreement on their website, and shall not contact any reporters or media regarding the Settlement. Despite this provision, Class Counsel can discuss the Settlement with Plaintiff and the Class Members and in any filings with the Court.

5. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary, or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence.

6. **Authorization to Enter Into Settlement Agreement.** Class Counsel and Defense Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.

7. **Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

8. **Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval Hearing to be conducted by the Court.

9. **Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument, signed by counsel for all Parties or their successors-in-interest and subject to Court approval.

10. **Waiver of Certain Appeals.** The Parties agree to stipulate to class certification for purposes of implementing this Settlement only and agree to waive all appeals from the Court's final approval of the Settlement, unless the Court modifies the Settlement.

11. **Notice of Settlement to LWDA.** Plaintiff hereby represents that at the same time he files the Motion for Preliminary Approval, Plaintiff will provide notice of this Agreement and proposed settlement to the LWDA as required by Labor Code section 2699(l)(2).

12. **Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.

13. **No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that he has not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.

14. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

15. **Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arm's-length negotiations, taking into account all relevant factors, current and potential. The Parties further agree that this Settlement Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or her or its counsel participated in the drafting of this Settlement Agreement.

16. **No Unalleged Claims.** Plaintiff and Class Counsel acknowledge, represent, and warrant that (1) they are not currently aware of any unalleged claims that could be brought against Defendant or on behalf of Defendant's employees not covered by the Class definition; (2) they do not have any current intention of initiating any litigation or bringing claims against Defendant; and (3) other than the Class Members and Eligible Aggrieved Employees, they do not currently know of or represent any individuals that have expressed any interest in litigation against Defendant or that Class Counsel believe to have potential claims against Defendant. Nothing in this paragraph will be construed as a restraint on the right of any counsel to practice.

17. **No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member, such Class Member assumes all responsibility for the payment of such taxes.

18. **Jurisdiction of the Superior Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Superior Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.

19. **Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

20. **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.

21. **Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

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IN WITNESS WHEREOF, Plaintiff and Defendant and their respective undersigned counsel have executed this Agreement as of the date(s) indicated on the lines below.

Dated: 27/05/2025

PLAINTIFF PEDRO ZERMENO

By: ____________________

Pedro Torres (May 27, 2025 13:40 PDT)

PEDRO ZERMENO

Dated: 03-Jun-2025

DEFENDANT TESSENDERLO KERLEY, INC.

By: ____________________

DocuSigned by:

Lisa Nguyen

0A7A0BAA14DE482...

ON BEHALF OF DEFENDANT
TESSENDERLO KERLEY, INC.

APPROVED AS TO FORM AND CONTENT:

Dated: June 2, 2025

WILSHIRE LAW FIRM

By: ____________________

Benjamin H. Haber
Daniel J. Kramer
Chase M. Stern
Counsel for Plaintiff and Class Counsel

Dated: 03-Jun-2025

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

By: ____________________

Mitchell Wrosch
Andrew B. Levin
Counsel for Defendant
Tessenderlo Kerley, Inc.