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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

MARCO ROSALES, on behalf of
himself and others similarly situated,

Plaintiff,

vs.

SYNERGEYES, INC., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.:
37-2022-00036845-CU-OE-NC

Assigned for All Purposes to:
Earl H. Maas, III

**JOINT STIPULATION RE:
CLASS ACTION SETTLEMENT**

Complaint Filed: September 14, 202

IT IS HEREBY STIPULATED by and between Plaintiff Marco Rosales (“Plaintiff”) on behalf of himself and the Settlement Class Members, on the one hand, and Defendant SynergEyes, Inc. (“Defendant”) on the other hand, and subject to the approval of the Court, that the above-captioned Action is hereby being compromised and settled pursuant to the terms and conditions set forth herein (the “Stipulation” or “Agreement”).

1. DEFINITIONS

Unless otherwise defined herein, capitalized terms used in this Agreement shall

1 have the meanings set forth below:

2 1.1 “Action” means the wage and hour class action claims in *Marco Rosales*
3 *v. SynergEyes, Inc.*, in the Superior Court of San Diego, Case No. 37-2022-00036845-
4 CU-OE-NC (filed on September 14, 2022).

5 1.2 “Settlement Administration Costs” means all fees and costs owed to the
6 Settlement Administrator in connection with administering the class settlement in this
7 Action under the terms of this Settlement, not to exceed \$10,000 Dollars (\$).

8 1.3 “Settlement Administrator” means the third-party administrator appointed
9 by the Court to administer the class action settlement of this Action under the terms of
10 this Settlement. Simpluris shall serve as the Settlement Administrator, subject to the
11 Court’s approval.

12 1.4 “Class Counsel” means David Yeremian, Esq. and Roman Shkodnik, Esq.
13 of David Yeremian & Associates, Inc and Sahag Majarian of Law Offices of Sahag
14 Majarian.

15 1.5 “Class Counsel Fees and Costs” means the total amount of attorneys’ fees,
16 litigation costs, and expenses awarded to Class Counsel by the Court to compensate
17 them for their representation of the Class in this Action, including their pre-filing
18 investigation, pre-filing resolution efforts, their filing of the Action, all related litigation
19 activities, if any, including discovery, mediation, this Settlement, administration of the
20 Settlement, the motions for preliminary approval of the Settlement, final approval of
21 the Settlement, and the motion for attorney’s fees and costs, and compliance with all
22 post-Settlement compliance procedures.

23 1.6 “Class Information” means information regarding Settlement Class
24 Members that Defendant will in good faith compile from its records and provide to the
25 Settlement Administrator within twenty (20) calendar days following the Preliminary
26 Approval Order by the Court. Class Information shall be provided as a Microsoft Excel
27 spreadsheet and shall include: each Settlement Class Member’s full name; last known
28 address; last known home telephone number; Social Security Number; and the number

1 of pay periods worked by the Class Member within the Class Period to the extent that
2 such information is available to Defendant in its records. A Class Member who worked
3 any part of a particular pay period shall be deemed to have worked the entire pay period
4 for pay period count purposes; each Class Member shall have a total number of pay
5 periods worked that shall be reflected by a whole number. If a class member is missing
6 any of the critical information and it cannot be determined from readily accessible
7 records, counsel will meet and confer in an attempt to resolve this. The Settlement
8 Administrator shall maintain the Class Information in confidence; access shall be
9 limited to those with a need to use the Class Information as part of the administration
10 of the Settlement. Class Information shall not be shared with Class Counsel.

11 1.7 “Class Period” shall mean the period of time from January 18, 2018,
12 through November 21, 2022.

13 1.8 “Class Representative” or “Plaintiff” shall mean the named Plaintiff,
14 Marco Rosales.

15 1.9 “Class Representative Incentive Award” means the amount that the Court
16 authorizes to be paid to the Class Representative, as follows: An amount not exceeding
17 Ten Thousand Dollars (\$10,000) to Plaintiff Rosales in addition to his Individual
18 Settlement Award, in recognition of his efforts and risks in assisting with the
19 prosecution of the Action and as consideration for executing this Stipulation and general
20 release of all of his claims against Defendant.

21 1.10 “Court” means the Superior Court of California, County of San Diego.

22 1.11 “Defendant” means SynergEyes, Inc., and its owners, directors, officers
23 and managing agents as those terms are defined in Labor Code, section 558.1,
24 successors, heirs and assigns.

25 1.12 “Defense Counsel” or “Counsel for Defendant” means Meagan E. Garland,
26 Esq. and Sarah A. Gilbert, Esq., of Duane Morris, LLP.

27 1.13 “Effective Date” means the date by which all of the following have
28 occurred:

1 1.13.1 The Court has issued its Final Approval Order of the Settlement
2 and entered Judgment thereon;

3 1.13.2 The Court issues an order dismissing the Action with prejudice;
4 and

5 1.13.3 The Judgment has become Final, as defined herein below in
6 ¶1.15.

7 1.14 “Complaint” shall mean the Complaint, which was filed in this action on
8 February 14, 2022.

9 1.15 “Final,” as set forth in ¶1.13.3, shall mean one of the following with respect
10 to the Superior Court’s Final Class Judgment approving this Joint Stipulation of
11 Settlement:

12 A. The thirtieth (30th) calendar day after service of notice of entry of
13 the Final Class Judgment if, and only if, each of the following conditions (the
14 “Conditions”) are satisfied: (1) no objections to the Settlement are asserted before entry
15 of the Final Class Judgment; (2) no motion is filed within that 30 day period that extends
16 the deadline to appeal the Final Class Judgment; and (3) Class Counsel confirms within
17 that 30-day period that they will not appeal any reduction by the Court of their requested
18 award of attorneys’ fees and costs.

19 B. If any one of the Conditions enumerated in subsection (A)
20 immediately above is not satisfied, then “Final” shall mean the 65th calendar day after
21 notice of entry of the Final Class Judgment, plus any extension of the time to appeal
22 resulting from the filing of a motion that extends the deadline to appeal (assuming no
23 appeal, writ or other request for appellate review is filed within the foregoing time
24 period).

25 C. If any appeal, writ, or other request for appellate review is filed, the
26 date when that appeal, writ, or request for appellate review is finally ruled upon, denied,
27 or dismissed, and no other appeal, writ or appellate review is possible.

28 1.16 “Final Approval Hearing” means the hearing to be conducted by the Court

1 to determine whether to finally approve and implement the terms of this Settlement.

2 1.17 “Final Class Judgment” means the judgment entered by the Court after it
3 grants final approval of this Settlement.

4 1.18 “Final Approval Order” means the order issued by the Court approving the
5 terms of this Settlement, and directing implementation of the terms of this Settlement.

6 1.19 “Gross Maximum Settlement Amount” is the total maximum potential
7 monetary value of the settlement payable by Defendant as provided herein, which is
8 Four- Hundred-Forty-Seven-Thousand, Fifty-Dollars and Zero Cents (\$447,050.00).
9 The Gross Settlement Amount is inclusive of (i) all payments to Class Members under
10 the terms of this Settlement, (ii) Class Counsel Fees (up to and not to exceed one-third,
11 or \$149,016.66 of the Gross Settlement Amount), (iii) Class Counsel Costs (not to
12 exceed \$20,000) awarded by the Court, (iv) the Class Representative Incentive Awards
13 (not to exceed \$10,000) approved by the Court, (v) Settlement Administration Costs
14 (not to exceed \$10,000), (vi) the LWDA Payment defined below (not to exceed
15 \$20,000), of which Fifteen Thousand Dollars (\$15,000) shall be paid to the State of
16 California, and Five Thousand Dollars (\$5,000) shall be included in the Net Settlement
17 Amount and distributed to PAGA Members, and (vii) all employee-side taxes.
18 Employer-side taxes shall be separately paid by Defendant and shall not be paid from
19 the Gross Maximum Settlement Amount.

20 1.20 “Individual Settlement Award” means the amount payable from the Net
21 Settlement Amount to each Settlement Class Member (separate from the Class
22 Representative Incentive Award payable to Plaintiff). The Individual Settlement
23 Awards shall be calculated pursuant to Paragraph 3.6 herein.

24 1.21 “LWDA Payment” means the Twenty Thousand Dollars (\$20,000)
25 payable to the California Labor & Workforce Development Agency from the Gross
26 Maximum Settlement Amount, for the compromise of claims brought under PAGA
27 divided as specified in Paragraph 3.4 herein.

28 1.22 “Net Settlement Amount” means the net amount available for payment of

1 Individual Settlement Awards to Settlement Class Members after deducting from the
2 Gross Maximum Settlement Amount the Class Counsel Fees and Costs, the Class
3 Representative Incentive Award, Settlement Administrator Costs, the portion of the
4 LWDA Payment going to the State of California's Labor Workforce Development
5 Agency ("LWDA"), and the estimated amount for the employee-side payroll taxes.

6 1.23 "Notice of Settlement" means the Notice of Class Action Settlement
7 (substantially in the form attached hereto as Exhibit A), which will be sent in English
8 and Spanish.

9 1.24 "Notice Packet" means the Notice of Class Action Settlement, Request for
10 Exclusion and Objection to be sent to Class Members for return to the Settlement
11 Administrator.

12 1.25 "Objection" means the Objection form (substantially in the form attached
13 hereto as Exhibit B), by which a Class Member may object to the Settlement.

14 1.26 "Opt Out/Objection Deadline" means the date forty-five (45) calendar days
15 from the first date the Settlement Administrator mails Notice Packets to Settlement
16 Class Members and the last date on which Settlement Class Members may: (a)
17 postmark or fax stamp Requests for Exclusion; or (b) file and serve Objections to the
18 Settlement.

19 1.27 "PAGA Members" means those Class Members who worked for
20 Defendant during the PAGA Period.

21 1.28 "PAGA Payment" means the amount to be paid to each PAGA Member in
22 accordance with the provisions of Section 3.6.2 hereof.

23 1.29 "PAGA Period" means the period from January 18, 2021, to November
24 21, 2022.

25 1.30 "Parties" means Plaintiff and Defendant, and "Party" shall mean either
26 Plaintiff or Defendant, individually.

27 1.31 "Plaintiff" means Plaintiff Marco Rosales.

28 1.32 "Preliminary Approval" or "Preliminary Approval Date" means the date

1 on which the Court enters the Preliminary Approval Order.

2 1.33 “Preliminary Approval Order” means the Proposed Order (substantially in
3 the form attached hereto as Exhibit C).

4 1.34 “Request for Exclusion” means the Request for Exclusion form
5 (substantially in the form attached hereto as Exhibit D) by which a Class Member may
6 request that such Class Member not participate in the Settlement.

7 1.35 “Settlement” means the disposition of the Action pursuant to this
8 Agreement.

9 1.36 “Settlement Class Members,” “Settlement Class,” or “Class Members”
10 means all non-exempt individuals employed in the State of California by SynergEyes,
11 Inc. between January 18, 2018 and November 21, 2022. This includes the now former
12 employees that make up the Settlement Class of which there are approximately 79.

13 1.37 “Settlement Fund Account” means the bank account established by the
14 Settlement Administrator pursuant to the terms of this Stipulation from which all
15 monies payable under the terms of this Settlement shall be paid, as set forth herein.

16 **2. RECITALS**

17 2.1 On January 18, 2022, Counsel for Plaintiff sent a letter to the LWDA and
18 Defendant in furtherance of Plaintiff’s administrative exhaustion requirements, and
19 setting forth facts and theories of Labor Code violations alleged against Defendant
20 pursuant to the California Private Attorneys General Act (“PAGA”), California Labor
21 Code §2699 et seq.

22 2.2 Following receipt of Plaintiff’s letter to the LWDA, but prior to Plaintiff
23 filing a lawsuit, the Parties agreed to attend mediation.

24 2.3 On June 11, 2021, the Parties attended a mediation with Brandon
25 McKelvey, a distinguished labor and employment and class action mediator. After
26 lengthy negotiations during which the Parties recognized the burdens and risk of
27 continuing with the litigation, Brandon McKelvey made a mediator’s proposal, which
28 was accepted by both Parties.

1 2.4 In order to effectuate Settlement, Plaintiff agreed to file the Complaint on
2 behalf of himself, Class Members and PAGA Members, to encompass causes of action
3 based upon the the facts and theories of Labor Code violations alleged in his original
4 LWDA letter.

5 2.5 On February 14, 2022, Plaintiff filed this Complaint alleging causes of
6 action for: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3)
7 failure to pay vacation wages; (4) failure to provide paid sick leave, in violation of
8 California Labor Code §§ 245-246; (5) failure to provide California COVID-19
9 Supplemental Sick Leave; (6) failure to provide legally-compliant meal periods; (7)
10 failure to provide legally-compliant rest periods; (8) failure to keep records in
11 accordance with California Labor Code § 1174; (9) failure to issue semimonthly
12 payments, in violation of Labor Code § 204; (10) knowing and intentional failure to
13 comply with wage statement provisions; (11) waiting time penalties; and (12) violation
14 of the Unfair Competition Law (“UCL”).

15 2.6 Defendant denies any liability or wrongdoing of any kind associated with
16 the claims alleged in the Action, and further denies that the Action is appropriate for
17 class treatment or imposition of penalties under the Private Attorneys General Act
18 (“PAGA”) for any purpose other than this settlement. Defendant contends that it has
19 complied at all times with the California Labor Code and that penalties under the Private
20 Attorneys General Act are inappropriate. It is Defendant’s position that, if this case
21 were to be litigated, class certification would be inappropriate because Plaintiff is not
22 an adequate class representative, Plaintiff’s claims are not typical of putative class
23 members, and individual issues predominate over class issues. The Action, the
24 negotiation and execution of this Settlement Agreement, and all acts performed or
25 documents executed pursuant to, or in furtherance of, the Settlement Agreement (i) shall
26 not be used as an admission or evidence of wrongdoing on behalf of Defendant; (ii)
27 shall not be an admission or evidence of fault on behalf of Defendant in any action
28 before a court (civil or criminal), or administrative agency; and (iii) shall not be deemed

1 to be, and may not be used as, an admission or evidence of the appropriateness of these
2 or similar claims for class certification in the Action, or with respect to any other
3 proceeding.

4 2.7 The Class Representative contends that Defendant violated the California
5 Labor Code and that this case is appropriate for class certification.

6 2.8 Class Counsel represent they have conducted a thorough investigation into
7 the facts and law during the prosecution of this class action case, including the exchange
8 of informal discovery, and the review, analysis and verification of time and payroll data
9 and other facts and information provided by Defendant, including with the assistance
10 of an expert. Counsel for the Parties also represent they have investigated the applicable
11 law as applied to the facts discovered regarding the alleged claims of Plaintiff and
12 potential defenses thereto, and the damages claimed by Plaintiff.

13 2.9 The Parties believe this Settlement Agreement is a fair, adequate and
14 reasonable settlement of the Action and have arrived at this Settlement after arm's-
15 length negotiations, and in pre-litigation, taking into account all relevant factors, present
16 and potential. The Parties further acknowledge that they are each represented by
17 competent counsel and that they have had an opportunity to consult with their counsel
18 regarding the fairness and reasonableness of this Settlement.

19 Based on these Recitals, the Parties hereby agree as follows.

20 **3. SETTLEMENT TERMS AND CONDITIONS**

21 3.1 Plaintiff will provide notice of this settlement to the LWDA, in accordance
22 with the provisions of PAGA, at the time the motion for preliminary approval is
23 submitted to the Court.

24 3.2 **Gross Maximum Settlement Amount.** In order to settle the claims in this
25 Action, Defendant agrees to pay the Gross Maximum Settlement Amount of Four
26 Hundred Forty Seven Thousand and Fifty Dollars and Zero Cents (\$447,050.00). This
27 Gross Maximum Settlement Amount is inclusive of: (i) all Individual Settlement
28 Awards to Settlement Class Members under the terms of this Settlement; (ii) LWDA

1 Payment; (iii) all PAGA Payments to the Settlement Class Members who are also
2 PAGA Members; (iv) Class Counsel Fees awarded by the Court and (v) Costs awarded
3 by the Court; (vi) the Class Representative Incentive Award approved by the Court;
4 (vii) Settlement Administration Costs; and (viii) employee-side federal, state and local
5 taxes on the portion of the Individual Settlement Awards allocated to wages. Employer-
6 side federal, state and local taxes on the wages component of the Individual Settlement
7 Awards will be separately paid by Defendant, in addition to the Gross Maximum
8 Settlement Amount. Other than employer-side taxes, no other amounts will be paid by
9 Defendant to the Settlement Class or their counsel for the claims released by this
10 Settlement other than as provided in the Gross Maximum Settlement Amount.

11 **3.3 Class Counsel Fees and Costs.** Defendant and their counsel will not
12 oppose the application to the Court for an award of Class Counsel Fees and Costs
13 consisting of: (1) up to one-third, or \$149,016.66, of the Gross Maximum Settlement
14 Amount for attorneys' fees; and (2) up to \$20,000 for reimbursement of Class Counsel's
15 costs. Payment of Class Counsel Fees and Costs for the claims released shall not be
16 sought except as set forth herein. The award of such Class Counsel Fees and Costs will
17 be paid from the Gross Maximum Settlement Amount. The Settlement Administrator
18 will issue an IRS Form 1099 to Class Counsel with respect to the Class Counsel Fees
19 and Costs awarded to them. Defendant agrees not to oppose a motion for attorney's
20 fees or a bill of costs for the aforementioned amounts, but same should not be construed
21 as approval or endorsement by Defendant of the amount sought. Should the Court
22 award less than the amount of Class Counsel Fees and/or Costs requested by Class
23 Counsel, the difference shall be included in the Net Settlement Amount. Class Counsel
24 may appeal any reduction by the Court to the Class Counsel Fees requested by Class
25 Counsel if the Court awards Class Counsel Fees of less than one-third of the Gross
26 Maximum Settlement Amount. Class Counsel may appeal any reduction by the Court
27 to Costs requested.

28 **3.4 LWDA Payment.** Subject to Court approval, the Parties shall allocate a

1 total of Twenty Thousand Dollars (\$20,000) from the Gross Maximum Settlement
2 Amount for the compromise of claims brought under PAGA. California Labor Code
3 section 2699(i) requires that the parties distribute any settlement of PAGA claims as
4 follows: seventy-five percent (75%) to LWDA for enforcement of labor laws and
5 education of employers; and twenty-five percent (25%) to the aggrieved employees.
6 The Parties, therefore, agree that Fifteen Thousand Dollars (\$15,000) of the LWDA
7 Payment shall be paid to the LWDA from the Gross Maximum Settlement Amount by
8 the Settlement Administrator pursuant to the terms set forth herein. The remaining Five
9 Thousand Dollars (\$5,000) of the LWDA Payment shall be included in the Net
10 Settlement Amount and shall be distributed among the Class Members who are also
11 PAGA Members in the manner specified in Section 3.6.2 hereof.

12 **3.5 Class Representative Incentive Award.**

13 3.5.1 Class Counsel will request, and Defendant will not oppose,
14 payment of an incentive award to Plaintiff in an amount up to and not to exceed Ten
15 Thousand Dollars (\$10,000). The incentive award is intended as reasonable additional
16 compensation for the time and effort expended by Plaintiff in connection with the
17 initiation and maintenance of this Action and in recognition that the Class
18 Representative is executing a full general release of claims in favor of Defendant as
19 addressed in this Agreement. The Class Representative Incentive Award will be paid
20 from the Gross Maximum Settlement Amount, and is in addition to whatever payment
21 Plaintiff is otherwise entitled to as Class Member for release of the claims addressed in
22 the Settlement. The Class Representative Incentive Award will be reported to the taxing
23 authorities by means of an IRS Form 1099. The amount of the Class Representative
24 Incentive Award is left to and within the Court's sole discretion. Defendant agrees not
25 to oppose an application for the Class Representative Incentive Award in the above
26 amount; however, that should not be construed as approval or endorsement by
27 Defendant of the amount sought. Should the Court approve less than the amount of the
28 Class Representative Incentive Award requested, or not at all, the difference shall be

1 included in the Net Settlement Amount. This Settlement is not contingent on Plaintiff's
2 receipt of any incentive award out of the Gross Maximum Settlement Amount.

3 3.5.2 The Class Representative acknowledges and agrees that
4 Defendant and its attorneys have made no representations or warranties regarding the
5 tax consequences of payment of the Class Representative Incentive Award, and Class
6 Representative has not relied on any such representations or warranties. Class
7 Representative further agrees to pay and bear sole responsibility for all taxes, liens,
8 levies, encumbrances, interest, and penalties that may be due or payable to any taxing
9 authority as a result of payment of the Incentive Award. Furthermore, Class
10 Representative agrees to defend and indemnify Defendant in connection with any taxes,
11 fines, interest or penalties incurred as a result of any failure by Class Representative to
12 pay taxes due, if any, on the Class Representative Incentive Award paid pursuant to this
13 Agreement.

14 3.6 **Individual Settlement Awards.** After deducting the Class Counsel Fees
15 and Costs approved and awarded by the Court, the Class Representative Incentive
16 Award, if any, approved and awarded by the Court, the LWDA Payment portion going
17 to the LWDA, and the Settlement Administration Costs, the remainder of the Gross
18 Maximum Settlement Amount (the "Net Settlement Amount") will be divided and
19 distributed to the Settlement Class as follows:

20 3.6.1 **Payments to Class Members.** The Net Settlement Amount shall
21 be known as the Class Settlement Distribution Amount, and will be distributed among
22 the Class Members as described in this Section 3.6.1. The amount that each Settlement
23 Class Member will be eligible to receive under the Settlement will be determined by
24 converting the Class Settlement Distribution Amount into a pay period value. The pay
25 period value will be established by dividing the Class Settlement Distribution Amount
26 by the aggregate total of all pay periods worked by all Settlement Class Members during
27 the Class Period. The pay periods worked during the Class Period will be derived from
28 the payroll data in Defendant's records to be supplied to the Settlement Administrator.

1 The individual settlement award for each Settlement Class Member will be determined
2 by multiplying the pay period value by the number of pay periods the Class Member
3 worked during the Class Period.

4 The individual settlement award payable to each Class Member will be
5 apportioned as follows: 20% as wages, 80% as penalties and interest. The amounts paid
6 as wages (the “Wage Component”) shall be subject to all tax withholdings customarily
7 made from employee’s wages and all other authorized and required withholdings and
8 shall be reported by W-2 forms. The amounts paid as penalties and interest shall be
9 subject to all authorized and required withholdings other than the tax withholdings
10 customarily made from employees’ wages and shall be reported by IRS 1099 forms.

11 **3.6.2 Payments to PAGA Members.** Five Thousand Dollars (\$5,000)
12 shall be known as the PAGA Group Distribution Amount and will be distributed among
13 the Class Members who worked during the PAGA Period (also known as PAGA
14 Members) as described in this Section 3.6.2. The amount that each PAGA Member will
15 be eligible to receive under the Settlement will be determined by converting the PAGA
16 Group Distribution Amount of \$5,000 into a pay period value. The pay period value
17 will be established by dividing the PAGA Group Distribution Amount by the aggregate
18 total of all pay periods worked by all PAGA Members during the PAGA Period. The
19 pay periods worked during the PAGA Period will be derived from the payroll data in
20 Defendant’s records and be supplied to the Settlement Administrator. The PAGA
21 Payment will be determined by multiplying the pay period value by the number of pay
22 periods the PAGA Member worked during the PAGA Period. The PAGA Payment
23 shall be apportioned entirely to PAGA penalties and shall be subject to all authorized
24 and required withholdings other than the tax withholdings customarily made from
25 employees’ wages, and shall be reported by IRS 1099 forms.

26 **3.6.3 Timing of Distributions.** Within five (5) calendar days of the
27 Effective Date, the Settlement Administrator will provide Class Counsel and Defense
28 Counsel with the account information so that Defendant can wire the Gross Maximum

1 Settlement Amount.

2 3.6.3.1 Defendant is required to wire the Gross Maximum
3 Settlement Amount no later than twenty (20) calendar days after the Effective Date. No
4 distributions from the Gross Maximum Settlement Amount shall occur except in
5 accordance with the procedures and deadlines set forth in this Agreement.

6 3.6.3.2 After transfer of the Gross Maximum Settlement Amount by
7 Defendant, the Settlement Administrator shall maintain the funds in an interest-bearing
8 account, which will continue to accrue interest on the account until payment is made
9 pursuant to this Settlement or each check to Class Members is cashed.

10 3.6.3.3 The Settlement Administrator will distribute checks to
11 Settlement Class Members (for their Individual Settlement Awards and, as applicable,
12 their PAGA Payment), to the LWDA (for PAGA penalties), to Plaintiff (for the Class
13 Representative Incentive Award, if any, approved by the Court), and to Class Counsel
14 (for the Class Counsel Fees and Costs approved by the Court) within ten (10) calendar
15 days of receipt of payment from Defendant pursuant to this Paragraph. Individual
16 Settlement Awards and PAGA Payments may be combined into a single payment for a
17 specific individual and shall be mailed by regular First Class U.S. Mail to Settlement
18 Class Members' last known mailing address to which their Notices of Class Action were
19 successfully mailed.

20 3.6.3.4 Settlement checks issued to Settlement Class Members will
21 expire one hundred and eighty (180) calendar days from the date they are issued by the
22 Settlement Administrator. Any check not cashed within 180 calendar days will be void.
23 Funds represented by Individual Settlement Payment checks returned as undeliverable
24 and Individual Settlement Payment checks remaining un-cashed for more than one
25 hundred and eighty (180) calendar days after issuance will be tendered by the Settlement
26 Administrator to the State Controller's Office, Unclaimed Property Division. Other
27 than employer-side payroll taxes, payable on the wage components of the payments to
28 Settlement Class Members, Defendant shall not have any obligation to pay amounts in

1 interest or otherwise over the Gross Maximum Settlement Amount set forth in this
2 Agreement for the claims released by this Agreement. Defendant shall pay employer-
3 side payroll tax obligations on the wage component of payments made to Settlement
4 Class Members in addition to the Gross Maximum Settlement Amount.

5 **3.6.4 Taxes.** The Settlement Administrator will issue a W-2 Form to
6 each Settlement Class Member for the Wage Component of each Class Member's
7 Individual Settlement Award made under the Settlement Agreement, a 1099 form to
8 each Settlement Class Member for the Class Member's Penalty/Interest Payment, a
9 1099 Form to each PAGA Member for the PAGA Member's PAGA Payment, a 1099
10 Form to each Plaintiff for the Class Representative Incentive Award, a 1099 Form to
11 Class Counsel for the Class Counsel Fees and Costs, and a 1099 Form to the Settlement
12 Administrator for all Settlement Administration Costs. Plaintiff and Class Members
13 understand and agree that they will be solely responsible for the payment of any taxes
14 and penalties assessed on the payments described herein (except for as provided above)
15 and will hold Defendant harmless for any and all tax consequences relating to the
16 allocation of the payments made under this Settlement.

17 **3.7 Payments To Settlement Class Do Not Trigger Additional or**
18 **Derivative Payments.** It is expressly understood and agreed that the receipt of
19 Individual Settlement Awards and/or the receipt of PAGA Payments will not entitle any
20 Settlement Class Member to additional or derivative compensation or benefits under
21 any company bonus, contest or other compensation or benefit plan or agreement in place
22 during the period covered by the Settlement, nor will it entitle any Settlement Class
23 Member to any increased retirement, 401k benefits or matching benefits, or deferred
24 compensation benefits. It is the intent of this Settlement that the Individual Settlement
25 Awards and PAGA Payments provided for in this Agreement are the sole payments to
26 be made by Defendant to the Class Members, and that the Class Members are not
27 entitled to any additional or derivative compensation or benefits as a result of having
28 received the settlement awards (notwithstanding any contrary language or agreement in

1 any benefit or compensation plan document that might have been in effect during the
2 period covered by this Settlement).

3 **3.8 Settlement Approval and Implementation Procedures.** As part of this
4 Settlement, the Parties agree to the following procedures for obtaining the Court's
5 approval of the settlement: obtaining preliminary approval of the Settlement and
6 through this certifying a Settlement Class, notifying Settlement Class Members of the
7 Settlement, obtaining the Court's final approval of the Settlement, and processing the
8 Individual Settlement Awards.

9 **3.8.1 Preliminary Approval and Certification.** As soon as
10 practicable after execution of this Stipulation, Class Counsel will prepare a Motion for
11 Preliminary Approval, which will be provided to Defendant's Counsel prior to filing.
12 Defendant's Counsel will be given ten (10) calendar days to review and comment on
13 the motion prior to it being filed, and such comments shall be incorporated by Class
14 Counsel to the extent Class Counsel deems them reasonable and as part of the motion.
15 The Preliminary Approval motion will include this Agreement, the proposed Notice,
16 Objection and Request for Exclusion, the proposed Preliminary Approval Order, a
17 Declaration by Defendant's counsel as required by the Court, a Declaration by
18 Defendant as required by the Court, and any motions, memoranda and evidence as may
19 be necessary for the Court to determine that this Agreement is fair, adequate and
20 reasonable.

21 **3.8.2 Class Information.** Within twenty (20) calendar days after the
22 entry of the Preliminary Approval Order, Defendant shall provide the Settlement
23 Administrator with the Class Information for purposes of mailing Notice Packets to
24 Settlement Class Members. The Settlement Administrator shall not share the Class
25 Information with Class Counsel.

26 **3.8.3 Notice By First Class U.S. Mail.** Upon receipt of the Class
27 Information, the Settlement Administrator will perform a search on the National Change
28 of Address database to update the Settlement Class Members' addresses. No more than

1 ten (10) calendar days after receiving the Class Information from Defendant as provided
2 herein, the Settlement Administrator shall mail copies of the Notice Packet to all
3 Settlement Class Members by regular First Class U.S. Mail. The Settlement
4 Administrator shall exercise its best judgment to determine the current mailing address
5 for each Settlement Class Member. The address identified by the Settlement
6 Administrator as the current mailing address shall be presumed to be the best mailing
7 address for each Settlement Class Member. It will be conclusively presumed that, if an
8 envelope mailed to a Settlement Class Member has not been returned as undeliverable
9 within thirty (30) calendar days of the mailing, the Settlement Class Member received
10 the Notice Package.

11 **3.8.4 Undeliverable Notices.** If any Notice Packets are returned as
12 undeliverable within thirty (30) calendar days of the mailing of the Notice Packet with
13 a forwarding address, the Settlement Administrator shall have five (5) business days to
14 re-mail the Notice Packet to the forwarding address. If no forwarding address is
15 provided, the Settlement Administrator shall make reasonable efforts to obtain an
16 updated mailing address within five (5) business days of the date of the return of the
17 Notice Packet. This inquiry shall include a National Change of Address search. The
18 Settlement Administrator will be responsible for taking all reasonable steps, consistent
19 with its agreed upon job parameters, Court orders and fee, as agreed to with Class
20 Counsel and according to the deadlines set forth in this Settlement, to trace the mailing
21 address of any Class Member for whom a Class Notice is returned by the U.S. Postal
22 Service as undeliverable. These reasonable steps will include, at a minimum, the
23 tracking of all undelivered mail, performing an address search for all mail returned
24 without a forwarding address, and promptly re-mailing the Notice Packet to Class
25 Members for whom new addresses are found. If the Notice Packet is re-mailed, the
26 Settlement Administrator will note for its own records the date and address of each such
27 re-mailing and so notify Class Counsel and Defense Counsel. Those Class Members
28 who receive a re-mailed Notice Packet, will have between the later of (a) an additional

ten (10) calendar days or (b) the Opt Out/Objection Deadline to submit a Request for Exclusion or an objection to the Settlement. The obligation to trace and resend returned Notice Packet shall cease after two mailings. The Settlement Administrator shall provide weekly status reports to counsel for the Parties, including: (a) the number of Notice Packets mailed; (b) the number of objections filed; and (c) the number of Requests for Exclusion filed; (d) the number of notices returned; (e) the number of notices traced; and (f) the number of notices forwarded.

3.8.6 Compliance with the procedures specified in paragraphs 3.7 through 3.8 herein shall constitute due and sufficient notice to Settlement Class Members of this Settlement and shall satisfy the requirement of due process. Nothing else shall be required of, or done by, the Parties, Class Counsel, and Defense Counsel to provide notice of the proposed settlement.

3.9 Exclusions (Opt-Outs) and Objections To Settlement. Class Members are not required to sign a claim form to participate. Class Members may opt out of the settlement or submit objections to the Settlement pursuant to the following procedures:

3.9.1 **Exclusions.** The Notice shall state that Settlement Class Members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Opt Out/Objection Deadline. The Request for Exclusion: (1) must contain the name, address, telephone number and the last four digits of the Social Security number of the person requesting exclusion, (2) must be signed by the Settlement Class Member seeking exclusion; (3) must state in substance: “I wish to exclude myself from the Settlement in *Marco Rosales v. SynergEyes, Inc.*, in the Superior Court of California, County of San Diego, Case No. 37-2022-00036845-CU-OE-NC; and (4) must be postmarked or fax stamped by the Opt Out/Objection Deadline (or any extended time frame for a re-mailed Notice Packet as provided above) and returned to the Settlement Administrator at the specified address or fax telephone number. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from this Settlement, except a Request for

1 Exclusion form not containing a Settlement Class Member's telephone number and/or
2 last four digit of the Social Security number will be deemed valid. The date of the
3 postmark on the return mailing envelope or fax stamp on the Request for Exclusion
4 shall be the exclusive means used to determine whether a Request for Exclusion has
5 been timely submitted. Any Settlement Class Member who is not also a PAGA Member
6 who requests to be excluded from the Settlement Class will not be entitled to any
7 recovery under the Settlement and will not be bound by the terms of the Settlement or
8 have any right to object, appeal or comment thereon. Settlement Class Members who
9 receive a Notice Packet but fail to submit a valid and timely Request for Exclusion on
10 or before the Opt Out/Objection Deadline shall be bound by all terms of the Settlement
11 and any Final Judgment entered in this Action if the Settlement is approved by the
12 Court. No later than ten (10) calendar days after the Opt Out/Objection Deadline (or
13 any extended time frame for a re-mailed Notice Packet as provided above), the
14 Settlement Administrator shall provide Counsel for Defendant with a complete list of
15 all Class Members who have timely submitted valid Requests for Exclusion, including
16 their name and social security number. Class Counsel shall be provided with a summary
17 report that includes only the number of Requests for Exclusion received by the
18 Settlement Administrator and the names of each Class Member who submitted a valid
19 Request for Exclusion (to be included in the Settlement Administrator's declaration for
20 Final Approval). At no time shall any of the Parties or their counsel seek to solicit or
21 otherwise encourage members of the Settlement Class to submit Requests for Exclusion
22 from the Settlement

23 **3.9.2 Objections.** The Notice shall state that Settlement Class
24 Members who wish to object to the Settlement or the pay period calculation must submit
25 to the Settlement Administrator a written statement of Objection by the Opt
26 Out/Objection Deadline (or any extended time frame for a re-mailed Notice Packet as
27 provided above). The date of filing and the postmark date on the copies mailed to
28 counsel for the Parties shall be deemed the exclusive means for determining that a

1 Notice of Objection was filed and served timely. The Notice of Objection must be
2 signed by the Settlement Class Member and state: (1) the full name of the Settlement
3 Class Member; (2) the address and telephone number of the Settlement Class Member;
4 (4) the last four digits of the Settlement Class Members' Social Security number and/or
5 the Employee ID number; and (5) the basis for the objection. If the Settlement Class
6 Member objects to the amount of the settlement payment based upon the number of pay
7 periods, the Settlement Class Member must set forth the basis of the objection, and
8 provide any documentary evidence supporting the objection. Settlement Class
9 Members who fail to make objections in the manner specified in (1)-(5) shall be deemed
10 to have waived any objections and shall be foreclosed from making any objections
11 (whether by appeal or otherwise) to the Settlement. Settlement Class Members who
12 submit a timely Objection will have a right to appear at the Final Approval Hearing in
13 order to have their objections heard by the Court. At no time shall any of the Parties or
14 their counsel seek to solicit or otherwise encourage Settlement Class Members to file
15 or serve written objections to the Settlement or appeal from the Order and Final
16 Judgment. Class Counsel shall not represent any Settlement Class Members with
17 respect to any such objections. If a Class Member who has timely filed an Objection to
18 the Settlement files a Notice of Appeal of the judgment within the time period
19 prescribed by law, Defendant shall not be required to fund any portion of the Gross
20 Maximum Settlement Amount, and the Settlement Administrator shall not distribute or
21 pay any monies until the appeal(s) are finally resolved in favor of the settlement or
22 dismissed with prejudice (as provided in this Agreement).

23 **3.10 Option to Terminate Settlement.** If, after the Opt Out/Objection
24 Deadline and before the Final Approval Hearing, the number of individuals who
25 submitted timely and valid Requests for Exclusion from the Settlement exceeds ten
26 percent (10%) of all potential Settlement Class Members or represents more than ten
27 percent (10%) of total pay periods, Defendant shall have, in its sole discretion, the
28 option to terminate this Settlement. If Defendant exercises its option to terminate this

1 Settlement, Defendant shall be responsible for the Settlement Administration Costs
2 incurred up to the date of termination.

3 **3.11 Resolution of Claim Disputes.** Settlement Class Members will have the
4 opportunity, should they disagree with Defendant's records regarding the dates of
5 employment and/or pay periods worked during the Class Period or PAGA Period, to
6 provide documentation and/or an explanation to show contrary employment dates/pay
7 periods worked. If there is a dispute, the Settlement Administrator will consult with the
8 Parties' counsel to determine whether an adjustment is warranted. The Settlement
9 Administrator shall determine the eligibility for, and the amounts of, any Individual
10 Settlement Awards under the terms of this Agreement. The Settlement Administrator's
11 determination of the eligibility for and amount of any Individual Settlement Award shall
12 be binding upon the Settlement Class Member and the Parties.

13 **3.12 Settlement Administration Costs.** The Settlement Administrator shall be
14 paid for the costs of administration of the Settlement from the Gross Maximum
15 Settlement Amount. Such costs of administration shall not exceed \$10,000. No fewer
16 than thirty (30) calendar days prior to the Final Approval Hearing, the Settlement
17 Administrator shall provide the Parties with a declaration detailing the costs of
18 administration, the number of opt-outs, the number of pay periods attributable to the
19 persons who have timely submitted opt-outs, and number of objections, if any. The
20 Settlement Administrator, on Defendant's behalf, shall have the authority and
21 obligation to make payments, credits and disbursements, including payments and
22 credits in the manner set forth herein, to Settlement Class Members calculated in
23 accordance with the methodology set out in this Agreement and orders of the Court.
24 The Parties agree to cooperate in the Settlement Administration process and to make all
25 reasonable efforts to control and minimize the cost and expenses incurred in
26 administration of the Settlement. The Parties each represent they do not have any
27 financial interest in the Settlement Administrator. The Settlement Administrator shall
28 be responsible for: (i) processing and mailing payments to Plaintiff, Class Counsel and

1 Settlement Class Members, (ii) printing and mailing the Notice Packets to the
2 Settlement Class Members as directed by the Court; (iii) receiving and reporting the
3 Requests for Exclusion and Objections; (iv) providing declaration(s) as necessary in
4 support of preliminary and/or final approval of this Settlement; and (v) other tasks as
5 the Parties mutually agree or the Court orders the Settlement Administrator to perform.
6 The Settlement Administrator shall keep the Parties timely apprised of the performance
7 of all Settlement Administrator responsibilities. Any legally mandated tax reports, tax
8 forms, tax filings, or other tax documents required by administration of this Agreement
9 shall be prepared by the Settlement Administrator. Any expenses incurred in
10 connection with such preparation shall be a cost of administration of the Settlement.
11 The Settlement Administrator shall be paid the Settlement Administration Costs no later
12 than forty-five (45) calendar days after the Settlement is Final.

13 **3.13 No Solicitation of Settlement Objections or Exclusions.** The Parties
14 agree to use their best efforts to carry out the terms of this Settlement. At no time shall
15 any of the Parties or their counsel seek to solicit or otherwise encourage Settlement
16 Class Members to submit either written objections to the Settlement or Requests for
17 Exclusion from the Settlement, or to appeal from the Court's Final Judgment.

18 **3.14 Increase in Workweeks.** Defendant represents that that there are
19 approximately 12,000 total workweeks worked by the Class Members during the Class
20 Period. In the event the actual total number of workweeks exceeds this projection by
21 more than ten percent (10%), (i.e., there are 13,200 or more total workweeks worked
22 by Class Members during the Class Period), Defendant shall have the option to either
23 increase the Net Settlement Amount as provided herein or to terminate this settlement,
24 in Defendant's absolute and sole discretion. If Defendant elects to increase the Net
25 Settlement Amount, it will be increased by determining the workweek value calculated
26 based upon a presumed total of 13,200 workweeks and then multiplied by the additional
27 number of workweeks. For example, if the total number of actual workweeks is 13,500
28 and the workweek value is \$10.00 per workweek, Defendant would have to increase the

1 Net Settlement Amount by \$3,000 ($13,500 - 13,200 = 300 \times \$10.00 = \$3,000$). If
2 Defendant elects to rescind the Settlement, the status of the Action will be deemed to
3 return to its status at the time immediately prior to and as if the Parties never executed
4 the Settlement including dismissal of the Class Action Complaint, except that
5 Defendant shall be solely responsible for all costs incurred by the Claims Administrator.

6 **3.15 Additional Briefing and Final Approval.**

7 3.15.1 As soon as practicable following the deadline for objecting to or
8 opting out of the settlement, Class Counsel will file with the Court a Motion for Final
9 Approval of the Settlement and a memorandum in support of the motion, which
10 Defendant agrees it will not oppose so long as the motion is in all respects consistent
11 with the terms of this Settlement. Class Counsel will provide Defendant with a draft of
12 the Motion for Final Approval of the Settlement and Defendant shall have five (5) court
13 days in which to review said draft Motion and to advise Class Counsel if there are any
14 portions of said draft Motion which Defendant believes are inconsistent with the terms
15 of this Settlement. Such comments shall be incorporated by Class Counsel to the extent
16 Class Counsel deems them reasonable.

17 3.15.2 With the Motion for Final Approval the Parties will present a
18 Final Judgment for the Court's approval and entry. The proposed Final Judgment will
19 approve and enforce the terms of this Settlement. After entry of the Final Judgment, the
20 Court will have continuing jurisdiction over the Action and the Settlement solely for
21 purposes of: (i) enforcing this Settlement, (ii) addressing any settlement administration
22 matters that may arise; and (iii) addressing such post-Judgment matters as may be
23 appropriate under court rules or applicable law.

24 **3.16 Dispute Resolution.** Except as otherwise set forth herein, all disputes
25 concerning the interpretation, calculation or payment of settlement claims, or other
26 disputes regarding compliance with this Agreement shall be resolved as follows:

27 3.16.1 If Plaintiff, Class Counsel, any Settlement Class Members, or the
28 Defendant at any time believes that the other has breached or acted contrary to the

1 Agreement, that party shall notify the other party in writing of the alleged violation.

2 3.16.2 Upon receiving notice of the alleged violation or dispute, the
3 responding party shall have ten (10) calendar days to correct the alleged violation and/or
4 respond to the initiating party with the reasons why that party disputes all or part of the
5 allegation.

6 3.16.3 If the response does not address the alleged violation to the
7 initiating party's satisfaction, the initiating and responding parties shall negotiate in
8 good faith for up to ten (10) calendar days to resolve their differences.

9 3.16.4 If initiating and responding parties are unable to resolve their
10 differences after twenty (20) calendar days, either may file an appropriate motion for
11 enforcement with the Court.

12 3.17 **Waiver of Right to Appeal.** The Parties agree to waive all appeals from
13 the Court's Final Approval of this Settlement except as related to (i) any reduction in
14 Class Counsel Fees based upon the Court's reduction of Class Counsel Fees below 37%
15 of the Gross Maximum Settlement Amount. However, any reduction in the Class
16 Counsel Fees (below 37% of the Gross Maximum Settlement Amount), Costs, and/or
17 any reduction to the requested Class Representative Incentive Awards, does not
18 constitute grounds to terminate or void the Settlement.

19 3.18 **Release of Claims.**

20 3.18.1 **Released Parties.** "Released Parties" is defined to include
21 Defendant and each and every one of its officers, directors, employees and agents.

22 3.18.2 **Release of Claims By Class Members.** Upon entry of final
23 judgment by the Court, and in consideration for the Settlement Amount, Plaintiff and
24 all Settlement Class Members, excluding only those who have timely opted out of the
25 settlement by submitting a valid Request for Exclusion, shall release Defendant and the
26 Released Parties (defined above) of all claims known or unknown, in law or in equity,
27 whether or not concealed or hidden that have been asserted or that might have been
28 asserted on behalf of the Settlement Class/PAGA Aggrieved Employees related to, or

arising from, the facts asserted in the Complaint, arising during the period from and including January 18, 2018, through November 21, 2022, for unpaid wages (including premiums) or other compensation allegedly owed, or for damages, penalties (including without limitation wage statement penalties and waiting time penalties under Labor Code section 203), restitution, interest, liquidated damages, attorneys' fees, or costs, or any other recovery based on or arising out of the class/PAGA claims and allegations alleged in the Complaint, including under the California Labor Code and corresponding provisions of Wage Orders, for: (1) Failure to pay Wages for all Hours Worked including Minimum Wage (California Labor Code sections 204, 1194, 1194.2, 1197); (2) Failure to Pay Overtime Wages (California Labor Code sections 204, 510, 1194); (3) Failure to Provide Compliant Meal Periods and Rest Breaks (California Labor Code sections 226.7, 512, and Industrial Wage Order); (4) Failure to Provide Accurate Wage Statements (California Labor Code sections 226, 1174, 1174.5, Industrial Wage Order); (5) Failure to Timely Pay all Wages due Upon Separation (California Labor Code sections 201-203); (6) Failure to Provide Paid Sick Leave (California Labor Code sections 245-246); (7) Failure to Pay Wages Semimonthly (California Labor Code section 204); (8) Failure to Provide COVID-19 Supplemental Paid Sick Leave (California Labor Code section 248.2, 248.5 248.6); (9) Violation of California's Unfair Competition Law (California Business & Professions Code section 17200, *et seq.*; (10) Violation of Labor Code sections 2698 *et seq.* (PAGA) that might have occurred during the Class Period alleged in the operative Complaint or that could have been alleged based on the facts alleged. Without limiting the foregoing, it is expressly understood and agreed that each Settlement Class Member shall release any and all such claims for unpaid wages, unpaid overtime, unpaid double time, unpaid reporting time pay, unpaid split shift premiums, meal premiums, rest period premiums, waiting time penalties, statutory penalties under the Labor Code and any PAGA penalties that arose, or could have arisen, at any time during the Class Period based on the facts alleged. It is the intent of the Parties that the judgment entered by the Court upon final approval of the

1 Settlement shall have *res judicata* effect and be final and binding upon Plaintiff and all
2 Settlement Class Members, excluding only those who have expressly opted out of the
3 settlement by submitting a valid Request for Exclusion.

4 **3.18.3 Release of Claims By PAGA Members.** Upon entry of final
5 judgment by the Court, and in consideration for the Settlement Amount, Plaintiff and
6 all Settlement Class Members who are PAGA Members are deemed to release
7 Defendant and the Released Parties (defined above) from all claims for PAGA penalties
8 that were alleged, or reasonably could have been alleged, based on the PAGA Period
9 facts stated in the Complaint, the PAGA Notice dated January 18, 2022 including: (1)
10 Failure to pay Wages for all Hours Worked including Minimum Wage (California
11 Labor Code sections 204, 1194, 1194.2, 1197); (2) Failure to Pay Overtime Wages
12 (California Labor Code sections 204, 510, 1194); (3) Failure to Provide Compliant Meal
13 Periods and Rest Breaks (California Labor Code sections 226.7, 512, and Industrial
14 Wage Order); (4) Failure to Provide Accurate Wage Statements (California Labor Code
15 sections 226, 1174, 1174.5, Industrial Wage Order); (5) Failure to Timely Pay all Wages
16 due Upon Separation (California Labor Code sections 201-203); (6) Failure to Provide
17 Paid Sick Leave (California Labor Code sections 245-246); (7) Failure to Pay Wages
18 Semimonthly (California Labor Code section 204); (8) Failure to Provide COVID-19
19 Supplemental Paid Sick Leave (California Labor Code sections 248.2, 248.5 248.6); (9)
20 Violation of Labor Code sections 2698 et seq. (PAGA).

21 **3.18.4 Complete And Full General Release By Plaintiff.** In exchange
22 for the Class Representative Incentive Award and for his efforts in representing the
23 Class Members, Plaintiff Rosales, individually, and on his own behalf, releases the
24 Released Parties from any and all charges, complaints, claims, causes of action,
25 demands, disputes, damages, attorneys' fees, costs, losses and liabilities of any kind or
26 nature whatsoever, known or unknown, suspected or unsuspected, asserted or
27 unasserted, which Plaintiff, at any time heretofore, had or claimed to have or Plaintiff
28 may have as of the date they sign this Agreement, including but not limited to any and

1 all claims arising out of, relating to or resulting from his respective employment with
2 or separation of employment with Released Parties, including any claims arising under
3 any federal, state or local law, statute, ordinance, rule or regulation or Executive Order
4 relating to employment, including, but in no way limited to, any claim under Title VII
5 of the Civil Rights Act of 1964, as amended (“Title VII”), 42 U.S.C. § 1981; the
6 Americans with Disabilities Act (“ADA”); the Family and Medical Leave Act
7 (“FMLA”); the Employee Retirement Income Security Act (“ERISA”); the California
8 Family Rights Act (“CFRA”); the California Fair Employment and Housing Act
9 (“FEHA”); all claims for wages or penalties under the Fair Labor Standards Act
10 (“FLSA”); all claims for wages or penalties under the California labor Code; Business
11 and Professions Code sections 17200 *et seq.*; all laws relating to violation of public
12 policy, retaliation, or interference with legal rights; any and all other employment or
13 discrimination laws; whistleblower claims; any tort, fraud or constitutional claims; and
14 any breach of contract claims or claims of promissory estoppel. It is agreed that this is
15 a full general release and is to be broadly construed as a release of all claims; provided
16 that, notwithstanding the foregoing, this paragraph expressly does not include a release
17 of any claims that cannot be released hereunder by law, including any claims or rights
18 afforded to Plaintiff under California Workers’ Compensation laws. However, the
19 Equal Employment Opportunity Commission (“EEOC”) or other governmental agency
20 cannot be barred from pursuing a claim on Plaintiff’s behalf, although Plaintiff agrees
21 that he is releasing his respective rights to any personal monetary recovery from a claim
22 brought by the EEOC or any other governmental agency. Plaintiff understands and
23 expressly agrees that this Agreement extends to claims that they he has against
24 Defendant, of whatever nature and kind, known or unknown, suspected or unsuspected,
25 vested or contingent, past, present, or future, arising from or attributable to an incident
26 or event, occurring in whole or in part, on or before the date they sign this Agreement
27 (except as noted above). Any and all rights granted under any state or federal law or
28 regulation limiting the effect of this Agreement, including the provisions of section

1 1542 of the California Civil Code, ARE HEREBY EXPRESSLY WAIVED. Section
2 1542 of the California Civil Code reads as follows:

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

11 3.19 **Nullification of Settlement Agreement.** In the event: (i) the Court does
12 not enter the Preliminary Approval Order as specified herein; (ii) the Court does not
13 grant final approval of the Settlement as provided herein; (iii) the Court does not enter
14 a Final Judgment as provided herein; or (iv) the Settlement does not become final for
15 any other reason, this Settlement Agreement shall be null and void, and any order or
16 judgment entered by the Court in furtherance of this Settlement shall be treated as void
17 from the beginning. In such a case, the Parties and any funds to be awarded under this
18 Settlement shall be returned to their respective statuses as of the date and time
19 immediately prior to the execution of this Agreement, and the Parties shall proceed in
20 all respects as if this Agreement had not been executed, except that any fees already
21 incurred by the Settlement Administrator shall be paid by the Parties in equal shares.
22 In the event an appeal is filed from the Court's Final Judgment or any other appellate
23 review is sought based upon the Court's reduction of Class Counsel's Fees or Costs as
24 addressed above, administration of the Settlement shall be stayed pending final
25 resolution of the appeal or other appellate review, but any fees incurred by the
26 Settlement Administrator prior to it being notified of the filing of an appeal from the
27 Court's Final Judgment, or any other appellate review, shall be paid to the Settlement
28 Administrator from the GSA within forty-five (45) calendar days of said notification.

3.20 **No Admission.** By agreeing to this Settlement, Defendant makes no
admission of liability or wrongdoing. It is acknowledged by all parties that Defendant

1 states it is participating in this settlement to avoid the expense, inconvenience and delay
2 of further litigation.

3 **3.21 Confidentiality Preceding Preliminary Approval.** The Parties and their
4 respective counsel agree that they will not issue any press releases, initiate any contact
5 with the press, respond to any press inquiry, or have a communication with the press
6 about the fact, amount or terms of the Settlement prior to the filing of the Motion for
7 Preliminary Approval. Any communication about the Settlement to Class Members
8 prior to the court-approved mailing will be limited to a statement that a settlement has
9 been reached and the details will be communicated in a forthcoming Court-approved
10 notice.

11 **3.22 Publicity.** Plaintiff, Defendant and their respective counsel agree that no
12 Party or their respective legal counsel shall issue a press release to the news media, nor
13 shall any Party or their respective counsel disclose any information regarding this
14 settlement in their marketing materials, nor shall any Party or their respective counsel
15 communicate in any way with news media concerning the Settlement. However,
16 following Preliminary Approval of the Settlement, Class Counsel may list the
17 settlement on its websites, as long as the disclosure does not identify Defendant by name
18 or by industry. The Parties agree that in any description of this Settlement, Plaintiff'
19 counsel shall describe the settlement as having been made with a "service industry" and
20 involving nonexempt employees. There shall be no mention of contact lenses,
21 corrective lenses, or any similar descriptor in any such website description(s). Further,
22 Plaintiff and their counsel agree not to otherwise notify the media about the terms of
23 the Settlement or advertise or market any of the terms of the Settlement through written,
24 recorded or electronic communications. This provision shall not apply to, or limit the
25 public filing of motions or other case materials in the Action related to seeking and
26 obtaining Court approval of the Settlement. This provision shall also not prohibit Class
27 Counsel from responding to specific questions from Class Members. This provision
28 shall also not prohibit Class Counsel from listing the instant action in support of a

1 motion for appointment as class counsel/PAGA representative counsel or motion for
2 attorneys' fees in another action. Nothing herein shall be interpreted as preventing any
3 good-faith communications by any Counsel and/or any Parties with the Court, the Class
4 Members, or the Settlement Administrator.

5 **3.23 Fair, Adequate And Reasonable Settlement.** This Settlement was
6 reached after extensive negotiations. The Parties believe and agree that this Settlement
7 is a fair, adequate, and reasonable resolution of the Action and have arrived at this
8 Settlement through arms-length negotiations, with the assistance of a mediator, and
9 taking into account all relevant factors, present and potential, and will so represent it to
10 the Court.

11 **3.24 Judgment.**

12 **3.24.1** The Parties agree that, upon final approval of the Settlement by
13 the Court, the Action will be dismissed in its entirety with prejudice pursuant to the
14 Proposed Final Judgment and Order of Dismissal.

15 **3.25 Jurisdiction of the Court.** The Parties agree that the Court shall retain
16 jurisdiction with respect to the interpretation, implementation and enforcement of the
17 terms of this Agreement and all orders and judgments entered in connection therewith
18 pursuant to Code of Civil Procedure Section 664.6, and the Parties and their counsel
19 hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing
20 and enforcing the settlement embodied in this Agreement and all orders and judgments
21 entered in connection therewith.

22 **3.26 Execution by Settlement Class Members.** It is agreed that it is
23 impossible or impractical to have each Class Member execute this Settlement
24 Agreement. The Notice will advise all Settlement Class Members of the binding nature
25 of the release and upon entry of Judgment shall have the same force and effect as if each
26 Settlement Class Member executed this Agreement. Notice of entry of the Final
27 Judgment shall be given to Class Counsel on behalf of Plaintiff and all Settlement Class
28 Members. It shall not be necessary to send notice of entry of this Final Approval Order

1 or the ensuing Final Judgment to individual Settlement Class Members. The time for
2 any appeal shall run from service of Notice of entry of Judgment, by Class Counsel on
3 Defendant.

4 **3.27 Execution by Plaintiff.** Plaintiff are bound by the terms herein and further
5 agree not to request to be excluded from the Settlement. Any such request for exclusion
6 shall therefore be void and of no force or effect.

7 **3.28 Miscellaneous Terms.**

8 **3.28.1 Integrated Agreement.** After it is signed and delivered by all
9 Parties and their counsel, this Settlement and its exhibits will constitute the entire
10 agreement between the Parties relating to the terms of Settlement, and will supersede
11 any prior or contemporaneous oral representations, warranties, covenants, or
12 inducements made to any Party concerning this Settlement or its exhibits, including the
13 Settlement Terms executed at the time of the mediation.

14 **3.28.2 Execution in Counterparts.** This Settlement may be executed
15 in one or more counterparts and by facsimile or PDF version. All executed counterparts,
16 and each of them, will be deemed to be one and the same instrument. Any executed
17 counterpart will be admissible in evidence to prove the existence and contents of this
18 Settlement.

19 **3.28.3 Exhibits and Headings.** The terms of this Agreement include
20 the terms set forth in any attached Exhibits, which are incorporated by this reference as
21 though fully set forth herein. Any Exhibits to this Agreement are an integral part of the
22 Settlement. The descriptive headings of any paragraphs or sections of this Agreement
23 are inserted for convenience of reference only and do not constitute a part of this
24 Agreement.

25 **3.28.4 Modification of Settlement.** This Settlement, and any and all
26 parts of it, may be amended, modified, changed, or waived only by an express written
27 instrument signed by all Parties or their successors-in-interest.

28 **3.28.5 Applicable Law.** All terms and conditions of this Settlement and

1 its exhibits will be governed by and interpreted according to the laws of the State of
2 California, without giving effect to any conflict of law or choice of law principles.

3 **3.28.6 Invalidity of Any Provision.** Before declaring any provision of
4 this Agreement invalid, the Court shall first attempt to construe the provisions valid to
5 the fullest extent possible consistent with applicable precedents so as to define all
6 provisions of this Agreement valid and enforceable.

7 **3.28.7 Interim Stay of Proceedings.** All proceedings in this Action are
8 stayed until further order of the Court, except as may be necessary to implement the
9 terms of the settlement.

10 **3.28.8 Authorization to Enter Into Settlement Agreement.** Counsel
11 for all Parties warrant and represent they are expressly authorized by the Parties whom
12 they represent to negotiate this Agreement and to take all appropriate actions required
13 or permitted to be taken by such Parties pursuant to this Agreement to effectuate its
14 terms, and to execute any other documents required to effectuate the terms of this
15 Agreement. The Parties and their counsel will cooperate with each other and use their
16 best effort to effect the implementation of the Settlement. In the event the Parties are
17 unable to reach agreement on the form or content of any document needed to implement
18 the Settlement, or on any supplemental provisions that may become necessary to
19 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court
20 to resolve such disagreement. The person(s) signing this Agreement on behalf of
21 Defendant represents and warrants that they are authorized to sign this Agreement on
22 behalf of Defendant. Plaintiff represent and warrant that they are authorized to sign this
23 Agreement and that they have not assigned any claim, or part of a claim, covered by
24 this Settlement to a third-party.

25 **3.28.9 Notices.** Unless otherwise specifically provided herein, all
26 notices, demands or other communications given hereunder shall be in writing and shall
27 be deemed to have been duly given as of the third business day after mailing by United
28 States registered or certified mail, return receipt requested, addressed as follows:

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To Class Counsel:

DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian, Esq.
Roman Shkodnik, Esq.
2450 Foothill Blvd. Ste 201
La Crescenta, CA 91214
Telephone: (818) 230 0308

To Defendant:

DUANE MORRIS LLP
Meagan E. Garland, Esq.
Sarah A. Gilbert, Esq.
750 B Street, Suite 2900
San Diego, CA 92101
Telephone: (619) 744 2200

3.28.10 **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Settlement. This Settlement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

IT IS SO AGREED.

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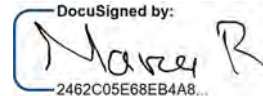
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September 13
DATED: _____, 2022

DocuSigned by:

2462C05E68EB4A8...

MARCO ROSALES

DATED: _____, 2022

By: _____

Name: _____

Title: _____

SYNERGEYES, INC.

To Class Counsel:

DAVID YEREMIAN & ASSOCIATES, INC.
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DATED: _____, 2022

MARCO ROSALES

DATED: September 15, 2022

By: Bob Ferrigno

Name: Bob Ferrigno

Title: President & CEO

SYNERGEYES, INC.

1 **Approved as to Form and Content**

2
3
4 DATED: _____, 2022

DAVID YEREMIAN & ASSOCIATES

5 By: _____

6 DAVID YEREMIAN
7 ROMAN SHKODNIK

8 *Counsel for Plaintiff and the Class*
9 *Members*

10 DATED: _____, 2022

**LAW OFFICES OF SAHAG
MAJARIAN**

12 By: _____

13 SAHAG MAJARIAN

14 *Counsel for Plaintiff and the Class Members*

15
16
17 DATED: September 15, 2022

DUANE MORRIS LLP

19
20 By:  _____

21 MEAGAN E. GARLAND
22 SARAH A. GILBERT
23 *Counsel for Defendant*

1 **Approved as to Form and Content**

2
3
4 DATED: September 13, 2022

DAVID YEREMIAN & ASSOCIATES

5 By: Roman Shkodnik

6 DAVID YEREMIAN
7 ROMAN SHKODNIK

8 *Counsel for Plaintiff and the Class*
9 *Members*

10 DATED: 9/19/2022, 2022

**LAW OFFICES OF SAHAG
MAJARIAN**

11
12 By: DocuSigned by:
Sahag Majarian
3142D9828E6E4A2

13 SAHAG MAJARIAN

14 *Counsel for Plaintiff and the Class Members*

15
16
17
18 DATED: _____, 2022

DUANE MORRIS LLP

19
20 By: _____

21 MEAGAN E. GARLAND
22 SARAH A. GILBERT

23 *Counsel for Defendant*