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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

ORLANDO DIAZ, an individual, on behalf of
himself, the State of California, as a private
attorney general, and on behalf of all others
similarly situated,

Plaintiff,

v.

RIVERBED DAIRY, a California Partnership; R
& J HARINGA DAIRY, a California Entity of
Unknown Formation; and DOES 1 TO 50,

Defendants.

Case No.: CVRI2200119

**Settlement Agreement and Release of Class
Action**

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8
9 **SETTLEMENT AGREEMENT AND RELEASE OF CLASS ACTION**

10 This Settlement Agreement and Release of Class Action (“Settlement Agreement”) is made and
11 entered into by: **(1)** Plaintiff Orlando Diaz (“Plaintiff”), individually and in his representative capacity
12 on behalf of the Settlement Class, as defined below, and as a private attorney general on behalf of the
13 State of California; and **(2)** Defendants Riverbed Dairy and R & J Haringa Dairy (collectively,
14 “Defendants”). Plaintiff and Defendants are collectively referred to herein as the “Parties.” This
15 Settlement Agreement is subject to the approval of the Court, pursuant to California Rules of Court,
16 rule 3.769, subdivisions (c), (d), and (e), and is made for the sole purpose of attempting to consummate
17 settlement of the action on a class-wide basis subject to the following terms and conditions. As detailed
18 below, if the Court does not enter an order granting final approval of this Settlement Agreement or the
19 conditions precedent are not met for any reason, this Settlement Agreement is void and of no force or
effect whatsoever.

20 **1. DEFINITIONS**

21 As used in this Settlement Agreement, the following terms shall have the meanings specified
22 below. To the extent terms or phrases used in this Settlement Agreement are not specifically defined
23 below, but are defined elsewhere in this Settlement Agreement, they are incorporated by reference into
24 this definition section.
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27
28

1 **1.1. ACTION**

2 “Action” shall mean the following civil action: *Orlando Diaz v. Riverbed Dairy, et al.*, case
3 number CVRI2200119, currently pending before the Superior Court of the State of California for the
4 County of Riverside.

5 **1.2. ADMINISTRATIVE EXPENSES**

6 “Administrative Expenses” shall include all costs and expenses associated with and paid to the
7 third-party settlement administrator, which are estimated not to exceed \$12,000.00.

8 **1.3. APPLICABLE WAGE ORDER**

9 “Applicable Wage Order” shall mean the California Industrial Welfare Commission (“IWC”)
10 Wage Order applicable to the facts of this case, including IWC Wage Order 14-2001 and others that
11 may be applicable. (Cal. Code of Regs., tit. 8, § 11140.)

12 **1.4. CLAIMS**

13 “Claims” shall mean the claims asserted in the Action.

14 **1.5. CLASS ATTORNEY FEES AND EXPENSES**

15 “Class Attorney Fees and Expenses” shall mean the portion of the Gross Settlement Amount
16 attributable to attorney fees and litigation expenses. The Parties agree that the fee-portion of the Class
17 Attorney Fees and Expenses shall be up to one-third of the Gross Settlement Amount (i.e., \$62,666.67),
18 as approved by the Court, and the award of costs and expenses shall be up to an additional \$15,000.00.
19 If the Escalator Provision described below is triggered so as to increase the Gross Settlement Amount,
20 the Parties agree that the fee portion of the Class Attorney Fees and Expenses will increase
21 proportionally such that the total amount of attorneys’ fees remains one-third of the Gross Settlement
22 Amount *after* the upward adjustment required by the Escalator Provision is implemented.

23 **1.6. CLASS COUNSEL**

24 “Class Counsel” shall mean Megan E. Ross, Jonathan Melmed, and Hannah Becker of Melmed
25 Law Group P.C.

1 **1.7. CLASS MEMBER**

2 “Class Member” shall mean all non-exempt, hourly-paid employees of Defendants that worked
3 during any part of the Class Period, or, if such person is incompetent or deceased, the person’s legal
4 guardian, executor, heir, or successor-in-interest.

5 **1.8. CLASS NOTICE**

6 “Class Notice” shall mean the *Notice of Proposed Class Action Settlement*, as set forth in the
7 form of **Exhibit 1** attached hereto, or as otherwise approved by the Court, which is to be mailed to
8 Class Members along with the Share Form.

9 **1.9. CLASS PARTICIPANTS**

10 “Class Participants” shall mean all Class Members who do not timely request exclusion from
11 the Class Settlement.

12 **1.10. CLASS PERIOD**

13 “Class Period” shall mean the period from January 10, 2018, through the earlier of: June 7,
14 2023 or the date of preliminary approval of the settlement.

15 **1.11. CLASS REPRESENTATIVE**

16 “Class Representative” shall mean Plaintiff Orlando Diaz.

17 **1.12. CLASS SETTLEMENT**

18 “Class Settlement” shall mean the settlement embodied in this Settlement Agreement, which is
19 subject to Court approval.

20 **1.13. COMPLAINT**

21 “Complaint” shall mean the currently-operative complaint in the Action.

22 **1.14. COURT**

23 “Court” shall mean the Superior Court of the State of California for the County of Riverside.

24 **1.15. DAILY RATE SUBCLASS**

25 “Daily Rate Subclass” shall consist of all individuals who are or were employed by Defendants
26 as non-exempt employees in California during the Class Period who were paid at a daily rate.

27 **1.16. DEFENDANTS**

28 “Defendants” shall mean Defendants Riverbed Dairy and R & J Haringa Dairy.

1.17. DEFENSE COUNSEL

“Defense Counsel” shall mean Erica M. Sorosky, Erin K. Oyama, and Kristen Khair at Palmieri, Tyler, Wiener, Wilhelm & Waldron, LLP. .

1.18. EFFECTIVE DATE

“Effective Date” shall be the date when all of the following events have occurred: **(a)** this Settlement Agreement has been executed by all Parties and by Class Counsel and Defense Counsel; **(b)** the Court has given preliminary approval to the Class Settlement; **(c)** notice has been given to the Settlement Class providing them with an opportunity to request exclusion from the Class Settlement; **(d)** the Court has held a Final Approval and Fairness Hearing and entered a final order and judgment certifying the Settlement Class and approving this Settlement Agreement; and **(e)** the later of the following events: **(i)** the expiration of the period for filing any appeal, writ, or other appellate proceeding opposing the Class Settlement has elapsed without any appeal, writ, or other appellate proceeding having been filed; **(ii)** the dismissal of any appeal, writ, or other appellate proceeding opposing the Class Settlement with no right to pursue further remedies or relief; or **(iii)** any appeal, writ, or the issuance of such other final appellate order upholding the Court’s final order with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Class Settlement shall not become effective until the Court’s order approving the Class Settlement is completely final and there is no further recourse by an appellant or objector who seeks to contest the Class Settlement. If no objections are filed, the Effective Date shall be after steps (a) through (d) are completed (i.e., the date that the court has entered a final order and judgment certifying the Settlement Class and approving this Settlement Agreement).

1.19. EMPLOYEE’S TAXES AND REQUIRED WITHHOLDING

“Employee’s Taxes and Required Withholding” shall mean the employee’s share of any and all applicable federal, state, or local payroll taxes, including those collected under authority of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and/or the State Unemployment Tax Act (SUTA) on the portion of any Class Participant’s Individual Settlement Amount that constitutes wages. The Employee’s Taxes and Required Withholdings will be withheld from and paid out of the Individual Settlement Amounts paid from the Net Settlement Amount.

1.20. EMPLOYER'S TAXES

"Employer's Taxes" shall mean and refer to Defendants' share of payroll taxes (e.g., Unemployment Insurance, Employment Training Tax, Social Security, and Medicare taxes) that is owed on the portion of any Class Participant's Individual Settlement Amount that constitutes wages. The Employer's Taxes shall be separately paid by Defendants and shall not be paid from the Gross Settlement Amount or Net Settlement Amount.

1.21. FINAL APPROVAL AND FAIRNESS HEARING

"Final Approval and Fairness Hearing" shall mean the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Class Settlement.

1.22. GROSS SETTLEMENT AMOUNT

"Gross Settlement Amount" is the agreed upon non-reversionary settlement amount totaling \$188,000.00 to be paid by Defendants in full settlement of the Released Claims asserted in this case, inclusive of the Administrative Expenses, the Employee's Taxes and Required Withholdings, the Class Attorney Fees and Expenses, the Incentive Award, and PAGA Payment. Defendants shall separately pay its share of the Employer's Taxes in addition to the Gross Settlement Amount on the portion of each Individual Settlement Amount allocated as wages.

1.23. HEARING ON PRELIMINARY APPROVAL

"Hearing on Preliminary Approval" shall mean the hearing held on the motion for preliminary approval of the Class Settlement.

1.24. INCENTIVE AWARD

"Incentive Award" shall mean any additional monetary payment provided to the Class Representative for his efforts and risks on behalf of the Settlement Class in this Action.

1.25. INDIVIDUAL SETTLEMENT AMOUNT

"Individual Settlement Amount" shall mean the amount which is ultimately distributed to each Class Participant, less any Employee's Taxes and Required Withholdings. The Individual Settlement Amount does not include any portion of the PAGA Payment.

1.26. NET SETTLEMENT AMOUNT

“Net Settlement Amount” shall mean the Gross Settlement Amount minus: Administrative Expenses; Class Attorney Fees and Expenses; 75% of the share of the Gross Settlement Amount allocated toward penalties pursuant to the Labor Code Private Attorney General Act of 2004 (“PAGA”), codified at Labor Code sections 2698 through 2699.6, which are payable to the California Labor and Workforce Development Agency (“LWDA”); and Plaintiff’s Incentive Award.

1.27. OPT OUT

“Opt Out” shall refer to the process of submitting a timely and valid request for exclusion from the Class Settlement in accordance with the terms of the Class Notice and no later than the Response Deadline.

1.28. OPT-OUTS

“Opt-Outs” shall mean all persons who timely and validly request exclusion from the Class Settlement in accordance with the terms of the Class Notice and no later than the Response Deadline.

1.29. PAGA PAYMENT

“PAGA Payment” means the penalties pursuant to PAGA that the Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is \$10,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$7,500.00) to the LWDA and twenty-five percent (25%) (i.e., \$2,500.00) to the PAGA Settlement Class. Class Counsel shall give timely notice of this Settlement Agreement to the LWDA pursuant to Labor Code section 2699, subdivision (l)(2).

1.30. PAGA PERIOD

“PAGA Period” shall mean the period from January 10, 2021, through the earlier of: June 7, 2023 or the date of preliminary approval of the settlement.

1.31. PAGA SETTLEMENT CLASS

“PAGA Settlement Class” shall mean all individuals who are or were employed by Defendants as non-exempt employees in California during the PAGA Period. Defendants represent that the PAGA

Settlement Class consists of approximately 52 employees that worked a total of approximately 2,025 pay periods during the PAGA Period.

1.32. PARTIES

“Parties” shall mean Plaintiff and Defendants.

1.33. PLAINTIFF

“Plaintiff” shall mean Plaintiff Orlando Diaz.

1.34. PRELIMINARY APPROVAL DATE

“Preliminary Approval Date” shall mean the date upon which the Court enters an order preliminarily approving this Settlement Agreement.

1.35. RELEASED CLAIMS

“Released Claims” shall mean those claims arising out of or related to the allegations set forth in the Complaint and/or PAGA notice to the LWDA, which arose during the Class Period, including claims for: **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the Applicable Wage Order; **(2)** failure to pay all split shift premiums in violation of Labor Code sections 1197 and 1198, and the Applicable Wage Order; **(3)** failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable Wage Order; **(4)** failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the Applicable Wage Order; **(5)** failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage Order; **(6)** failure to maintain accurate employment records in violation of Labor Code section 1174; **(7)** failure to pay timely wages during employment in violation of Labor Code sections 204, 210; **(8)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; **(9)** failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; **(10)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); **(11)** statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698–2699.6); and **(12)** all claims for liquidated damages, penalties, interest, fees, costs based on the foregoing.

1 No other claims are released other than those claims specifically plead in the Complaint or
2 otherwise specifically identified herein. This Settlement Agreement will not release any person, party,
3 or entity from claims, if any, by Class Members for workers compensation, unemployment, or disability
4 benefits of any nature. Nor does it release any claims, actions, or causes of action which may be
5 possessed by Class Members under state or federal discrimination statutes, including, without
6 limitation, the California Fair Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh
7 Civil Rights Act (Civ. Code, § 51); the California Constitution; Title VII of the Civil Rights Act of
8 1964 (42 U.S.C. § 2000, et seq.); the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the
9 Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their
10 implementing regulations and interpretive guidelines.

11 **1.36. RELEASED PARTIES**

12 “Released Parties” shall mean Defendants and all of Defendants’ subsidiaries, affiliates,
13 shareholders, members, officers, directors, employees, agents, predecessors, successors, and assigns.

14 **1.37. RELEASING PARTIES**

15 “Releasing Parties” shall mean every Class Participant and all persons purporting to act on their
16 behalf or purporting to assert a claim under or through them, including, but not limited to, their
17 dependents, heirs, assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees,
18 conservators, guardians, personal representatives, and successors-in-interest, whether individual, class,
19 representative, legal, equitable, direct or indirect, or any other type or in any other capacity.

20 **1.38. RESPONSE DEADLINE**

21 “Response Deadline” shall mean the date forty-five (45) days following the date on which the
22 Settlement Administrator first mails Class Notice to the Class Members and the last day on which Class
23 Members may submit a request for exclusion and/or objection to Class Settlement.

24 **1.39. SETTLEMENT ADMINISTRATOR**

25 “Settlement Administrator” shall mean ILYM Group, Inc. (or other administrator agreed on by
26 the parties) which the Parties have agreed will be responsible for administration of the Class Settlement
27 and related matters.
28

1 **1.40. SETTLEMENT CLASS**

2 “Settlement Class” shall mean all individuals who are or were employed by Defendants as non-
3 exempt employees in California during the Class Period. Defendants represent that the Settlement Class
4 consists of approximately 113 Class Members that worked a total of approximately 8,837 workweeks
5 during the Class Period.

6 **1.41. SHARE FORM**

7 “Share Form” shall mean the *Class Action Settlement Share Form*, as set forth in the form of
8 **Exhibit 2** attached hereto, or as otherwise approved by the Court, which is to be mailed to Class
9 Members along with the Class Notice.

10 **2. FACTUAL AND PROCEDURAL BACKGROUND**

11 **2.1. PLAINTIFF’S CLAIMS**

12 On January 10, 2022, Plaintiff, individually and in his representative capacity on behalf of the
13 Settlement Class, and as a private attorney general on behalf of the State of California, has alleged the
14 following violations: **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code
15 sections 1194 and 1194.2, and the Applicable Wage Order; **(2)** failure to pay all split shift premiums
16 in violation of Labor Code sections 1197 and 1198, and the Applicable Wage Order; **(3)** failure to pay
17 proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable
18 Wage Order; **(4)** failure to provide compliant rest periods and pay missed rest break premiums in
19 violation of Labor Code section 226.7 and the Applicable Wage Order; **(5)** failure to provide compliant
20 meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512,
21 and the Applicable Wage Order; **(6)** failure to maintain accurate employment records in violation of
22 Labor Code section 1174; **(7)** failure to pay timely wages during employment in violation of Labor
23 Code sections 204, 210; **(8)** failure to pay all wages due and owing at separation in violation of Labor
24 Code sections 201, 202, and 203; **(9)** failure to provide complete and accurate wage statements in
25 violation of Labor Code sections 226 and 226.3; **(10)** deceptive, fraudulent, or otherwise unlawful
26 business practices based on the foregoing in violation of California’s Unfair Competition Law (Bus. &
27 Prof. Code, §§ 17200–17210); and **(11)** statutory penalties based on the foregoing pursuant to PAGA
28 (Lab. Code, §§ 2698–2699.6).

2.2. DISCOVERY, INVESTIGATION, RESEARCH, AND MEDIATION

Class Counsel has conducted significant informal discovery during the prosecution of the Action. This discovery, investigation, and prosecution has included, among other things, **(a)** over a dozen telephonic conferences with Plaintiff; **(b)** inspection and analysis of hundreds of pages of documents and other information produced by Plaintiff and Defendants; **(c)** analysis of employment data from a sample of Class Members; **(d)** an analysis of the legal positions taken by Defendants; **(d)** investigation into the viability of class treatment of the claims asserted in the Action; **(e)** analysis of potential class-wide damages, including information sufficient to understand Defendants' potential defenses to Plaintiff's claims; **(f)** research of the applicable law with respect to the claims asserted in the Complaint and the potential defenses thereto; and **(g)** assembling and analyzing of data for calculating damages.

Class Counsel and the Class Representative have vigorously prosecuted this case, and Defendants have vigorously defended it. Defendants have concluded that, because of the substantial expense of defending against the Action, the length of time necessary to resolve the issues presented herein, the inconvenience involved, and the concomitant disruption to its business operations, it was in the best interest of Defendants to attempt to resolve this case. As a result, on March 7, 2023, the Parties participated in a full-day mediation, which aided the Parties in reaching a settlement.

Overall, the Parties have engaged in sufficient investigation and discovery to assess the relative merits of the claims of the Class Representative and of the defenses to them. After such discovery, investigation, and prosecution, the Parties attended a full-day mediation with an experienced employment law mediator, which culminated in a settlement in principle, the terms of which are elaborated in this Settlement Agreement.

2.3. ALLEGATIONS OF THE CLASS REPRESENTATIVE AND BENEFITS OF CLASS SETTLEMENT

The document and data exchange in this matter, as well as discussions between counsel, have been adequate to give the Class Representative and Class Counsel a sound understanding of the merits of their positions and to evaluate the value of the claims of the Settlement Class. The informal discovery conducted in this Action and the information exchanged by the Parties through pre-mediation

1 discussions are sufficient to reliably assess the merits of the Parties' respective positions and to
2 compromise the issues on a fair and equitable basis.

3 The Class Representative and Class Counsel believe that the claims, causes of action,
4 allegations, and contentions asserted in the Action have merit. However, the Class Representative and
5 Class Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings
6 necessary to prosecute the Action against Defendants through trial and through appeals. Class Counsel
7 has taken into account the uncertain outcome of the litigation, the risk of continued litigation in complex
8 actions such as this, as well as the difficulties and delays inherent in such litigation, and the potential
9 difficulty of obtaining certification of the Settlement Class as well as trying the claims of the class.
10 Class Counsel is mindful of the potential problems of proof under, and possible defenses to, the claims
11 alleged in the Action.

12 The Class Representative and Class Counsel believe that the settlement set forth in this
13 Settlement Agreement confers substantial benefits upon Plaintiff and the Settlement Class and that an
14 independent review of this Settlement Agreement by the Court in the approval process will confirm
15 this conclusion. Based on their own independent investigation and evaluation, Class Counsel has
16 determined that the settlement set forth in this Settlement Agreement is in the best interests of Plaintiff
17 and the Class Members.

18 **2.4. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

19 Defendants have denied and continue to deny all allegations, claims, and contentions alleged
20 by Plaintiff in the Action. Defendants have expressly denied and continue to deny all charges of
21 wrongdoing or liability against them arising out of any of the conduct, statements, acts, or omissions
22 alleged in the Action. Defendants contend that they complied with California and federal wage and
23 hour laws and have dealt legally and fairly with Plaintiff and the Class Members.

24 Defendants further deny that, for any purpose other than settling this Action, these claims are
25 appropriate for class or representative treatment. Nonetheless, Defendants have concluded that further
26 proceedings in the Action would be protracted and expensive and that it is desirable that the Action be
27 fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement
28 Agreement to dispose of burdensome and protracted litigation, to permit the operation of Defendants'

1 respective businesses without further expensive litigation and the distraction and diversion of their
2 personnel with respect to matters at issue in the Action. Defendants have also taken into account the
3 uncertainty and risks inherent in any litigation, especially in complex cases such as the Action.
4 Defendants have, therefore, determined that it is desirable and beneficial to them that the Action be
5 settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

6 **2.5. INTENT OF THE CLASS SETTLEMENT**

7 The Class Settlement set forth herein intends to achieve the following: **(1)** entry of an order
8 approving the Class Settlement; **(2)** entry of judgment of the Action; **(3)** discharge of the Released
9 Parties from liability for any and all of the Released Claims; and **(4)** discharge of Defendants from
10 liability for any and all claims arising out of the Action.

11 **3. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

12 For the purposes of this Settlement Agreement and the Class Settlement of this Action only, the
13 Parties agree to conditional class certification of the Settlement Class. Defense Counsel believes this
14 conditional certification is appropriate because the Released Claims are being compromised without
15 need to establish the elements of those claims on which liability turns. The certification of the
16 Settlement Class shall not constitute, in this or any other proceeding, an admission of any kind by
17 Defendants, including without limitation, that certification of a class for trial purposes is or would be
18 warranted, appropriate or proper; or that Plaintiff could establish any of the requisite elements for class
19 treatment of any of the claims in the Action.

20 If the Settlement Agreement is not finally approved by the Court, the Effective Date is not
21 achieved, or the Class Settlement is rejected, terminated, or otherwise rendered null and void as set
22 forth herein, then certification of the Settlement Class shall be automatically vacated, shall be void *ab*
23 *initio*, of no force or effect, and shall not constitute evidence or a binding determination that the
24 requirements for certification of a class for trial purposes in this Action or in any other action which
25 have been, are or can be, satisfied. Further, if the Agreement does not reach the Effective Date, Plaintiff
26 agrees that Plaintiff will not argue, claim, reference, or otherwise raise any preliminary approval of the
27 Settlement Class in connection with any later proceeding before the Court.
28

1 **4. APPOINTMENT OF CLASS COUNSEL**

2 For purposes of this Settlement Agreement and subject to the Court's approval, the Parties agree
3 to the appointment of Class Counsel as counsel for the Settlement Class and the effectuation of the
4 Class Settlement pursuant to this Settlement Agreement.

5 **5. CONSIDERATION**

6 **5.1. SETTLEMENT AMOUNT**

7 The Parties agree to settle this Action for the Gross Settlement Amount of \$188,000.00. There
8 shall be no reversion to Defendants. Defendants shall pay the Gross Settlement Amount in full. The
9 Gross Settlement Amount and other actions and forbearances taken by Defendants shall constitute
10 adequate consideration for the Class Settlement and will be made in full and final settlement of: the
11 Released Claims, the Class Attorney Fees and Expenses, Administrative Expenses, the Incentive
12 Award, the PAGA Payment (and any payments to individual PAGA Class Members resulting from the
13 PAGA Payment), and any other obligation of Defendants under this Settlement Agreement (other than
14 the Employer's Taxes on the portion of the Net Settlement Amount allocated to the payment of wages).

15 After the Court issues an order preliminarily approving this Class Settlement, the Settlement
16 Administrator will distribute the Class Notice to the Class Members, which shall describe the terms of
17 the Class Settlement and procedures to Opt Out, object, or participate in the Class Settlement as well
18 as the Share Form, which shall identify the Class Member, the number of workweeks worked by each
19 Class Member ("Workweeks"), the number of workweeks worked at daily rate for each Daily Rate
20 Subclass member, as well as the estimated amount of the Individual Settlement Amount the Class
21 Member can expect to receive once the Class Settlement becomes effective on the Effective Date. Class
22 Members shall be given the opportunity to challenge their Workweeks information.

23 **5.2. INCENTIVE AWARD FOR PLAINTIFF**

24 Plaintiff may petition the Court to approve an Incentive Award in an amount up to \$10,000.00
25 for Orlando Diaz to acknowledge his efforts on behalf of the Settlement Class in this Action, including
26 assisting in the investigation and consulting with Class Counsel and providing crucial documents to
27 Class Counsel. Defendants shall not oppose any request by Plaintiff for an Incentive Award in such an
28 amount. Any Incentive Award approved by the Court shall be paid to Plaintiff from the Gross

1 Settlement Amount and shall be in addition to any distribution to which he may otherwise be entitled
2 as a Class Participant. Any Incentive Award approved by the Court shall not be considered wages, and
3 the Settlement Administrator shall issue to Plaintiff an IRS Form 1099 reflecting such payment.
4 Plaintiff shall be responsible for the payment of all taxes with respect to any Incentive Award approved
5 by the Court and shall hold Defendants harmless from all liability with regard thereto.

6 **5.3. PAYMENT TO CLASS PARTICIPANTS**

7 Each Class Participant shall be eligible to receive payment of the Individual Settlement
8 Amount, which is a share of the Net Settlement Amount based on the pro rata number of weeks worked
9 by the Class Members during the Class Period as a proportion of all weeks worked by all Class
10 Members. However, all weeks worked at a daily rate by members of the Daily Rate Subclass shall be
11 weighted at twice the pro rata share. Each Class Participant, including Plaintiff, shall be responsible
12 for the payment of the Employee's Taxes and Required Withholding with respect to his or her
13 Individual Settlement Amount and shall hold Defendants harmless from any and all liability with regard
14 thereto.

15 **5.4. PAYMENT TO PAGA SETTLEMENT CLASS**

16 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA
17 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have
18 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which
19 is \$10,000.00. The PAGA Payment must be approved by the Court pursuant to Labor Code section
20 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$7,500.00) to the LWDA and
21 twenty-five percent (25%) (i.e., \$2,500.00) to the PAGA Settlement Class. The portion of the PAGA
22 Payment allocated to the PAGA Settlement Class shall be distributed to the PAGA Settlement Class
23 based on the pro rata number of pay periods worked by each particular PAGA Settlement Class member
24 during the PAGA Period as a proportion of all pay periods worked by all members of the PAGA
25 Settlement Class.

26 **5.5. TAX TREATMENT AND PAYMENT**

27 For the purpose of calculating Employee's Taxes and Required Withholding for the Individual
28 Settlement Amounts for Class Participants (including any payments to the Class Representative but

1 exclusive of his Incentive Award), the Parties agree that 10% of each Individual Settlement Amount
2 shall constitute payment in the form of wages (and each Class Participant will be issued an IRS Form
3 W-2 for such payment to him or her), and 90% of each Individual Settlement Amount shall constitute
4 penalties and interest (and each Class Participant will be issued an IRS Form 1099 for such payment
5 to him or her). Prior to final distribution, the Settlement Administrator shall calculate the total
6 Employee's Taxes and Required Withholding due as a result of the wage portion of Class Participants'
7 anticipated Individual Settlement Amounts and such actual amount will be deducted from the Net
8 Settlement Amount. Additionally, prior to the funding of the Gross Settlement Amount and final
9 distribution, the Settlement Administrator shall calculate the total Employer's Taxes due on the wage
10 portion of the Class Participants' Individual Settlement Amounts and issue instructions to Defendants
11 to separately fund these tax obligations/withholdings. The Parties understand that Plaintiff and the
12 Class Participants who receive any payment pursuant to this Settlement Agreement shall be solely
13 responsible for all other individual tax obligations.

14 With respect to the PAGA Payment and any payments made to individual members of the
15 PAGA Settlement Class, all such payments shall be treated as payments owing for penalties and interest
16 thereon and shall not be considered wages. The Settlement Administrator shall issue to members of the
17 PAGA Settlement Class an IRS Form 1099 reflecting such payment. Members of the PAGA Settlement
18 Class shall be solely responsible for the payment of all taxes with respect to any PAGA payments made
19 to them.

20 **5.6. NO EFFECT ON EMPLOYEE BENEFIT PLANS**

21 Neither the Class Settlement nor any amounts paid under the Class Settlement will modify any
22 previously credited hours, days, or weeks of service under any employee benefit plan, policy or bonus
23 program sponsored by Defendants. Such amounts will not form the basis for additional contributions
24 to, benefits under, or any other monetary entitlement under Defendants' sponsored benefit plans,
25 policies, or bonus programs. The payments made under the terms of this Settlement Agreement shall
26 not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any
27 other form of compensation for the purposes of any of Defendants' benefit plan, policy, or bonus
28 program. Defendants retain the right to modify the language of their benefits plans, policies, and bonus

1 programs to reflect this intent and to make clear that any amounts paid pursuant to this Settlement
2 Agreement are not for “weeks worked,” “weeks paid,” “weeks of service,” or any similar measuring
3 term as defined by applicable plans, policies, and bonus programs for purpose of eligibility, vesting,
4 benefit accrual, or any other purpose, and that additional contributions or benefits are not required by
5 this Settlement Agreement. Defendants do not consider the Class Settlement payments “compensation”
6 for purposes of determining eligibility for, or benefit accrual within, any benefit plans, policies, or
7 bonus programs, or any other plan sponsored by Defendants.

8 **5.7. CLASS ATTORNEY FEES AND EXPENSES**

9 As part of the motion for final approval of the Class Settlement, Class Counsel may apply for
10 an award of Class Attorney Fees and Expenses with the fee portion not to exceed one-third of the Gross
11 Settlement Amount (i.e., \$62,666.67) and the award of costs and expenses up to an additional
12 \$15,000.00. Defendants agree to not object to any such fee, cost, or expense application in those
13 amounts.

14 As a condition of this Class Settlement, Class Counsel has agreed to pursue fees only in the
15 manner reflected by this subsection. Any Class Attorney Fees and Expenses awarded by the Court shall
16 be paid from the Gross Settlement Amount prior to arriving at the Net Settlement Amount and shall
17 not constitute payment to any Class Members. If Class Counsel voluntarily reduces the request for
18 Class Attorney Fees and Expenses or the Court’s award of Class Attorney Fees and Expenses is less
19 than set forth above, the Net Settlement Amount shall be recalculated to reflect the actual Class
20 Attorney Fees and Expenses awarded.

21 The Class Attorney Fees and Expenses approved by the Court shall reflect: **(a)** all work
22 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
23 represent the Settlement Class through the date of this Settlement Agreement; **(b)** all work to be
24 performed and costs to be incurred in connection with approval by the Court of the Class Settlement;
25 **(c)** all work to be performed and costs and expenses, if any, incurred in connection with administering
26 the Class Settlement through the Effective Date and dismissal of the Action with prejudice; and **(d)** may
27 be based on the “catalyst theory” and/or the “common fund doctrine.”
28

1 **6. SETTLEMENT ADMINISTRATION**

2 **6.1. COSTS AND EXPENSES**

3 All costs and expenses due to the Settlement Administrator in connection with its administration
4 of the Class Settlement, including, but not limited to, providing the Class Notice, locating Class
5 Members, processing Opt Out requests and objections, distributing the portion of the PAGA Payment
6 payable to the LWDA, distributing the portion of the PAGA Payment payable to the members of the
7 PAGA Settlement Class, and calculating, administering and distributing Individual Settlement
8 Amounts to the Class Participants and related tax forms, shall be paid from the Gross Settlement
9 Amount, and is not expected to exceed \$12,000.00.

10 **6.2. PAYMENT BY DEFENDANTS**

11 Defendants shall deposit the Gross Settlement Amount in a lump sum payment plus the
12 employer-side payroll taxes to the Settlement Administrator within seven (7) days of the Effective
13 Date. In no event shall Defendants be obligated to pay or deposit with the Settlement Administrator
14 more than \$188,000.00 plus the Employer's Taxes, except where the Escalator Provision is triggered.

15 **7. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS**

16 **7.1. THE SETTLEMENT ADMINISTRATOR**

17 The Settlement Administrator will be responsible for: translating the Class Notice and Share
18 Form to Spanish; mailing the Class Notice and Share Form (**Exhibit 1** and **Exhibit 2**, respectively) to
19 Class Members in both English and Spanish; posting notice of entry of final order and judgment
20 certifying the Class Settlement and approving this Settlement Agreement; handling inquiries from
21 Class Members concerning the Class Notice; determining Individual Settlement Amounts; determining
22 individual payments to members of the PAGA Settlement Class; maintaining the settlement funds in
23 an appropriate interest-bearing account; preparing, administering, and distributing Individual
24 Settlement Amounts to Class Participants; preparing, administering, and distributing individual
25 payments to members of the PAGA Settlement Class; distributing the portion of the PAGA Payment
26 payable to the LWDA; issuing a final report and performing such other duties as the Parties may direct.
27 Additionally, the Settlement Administrator will handle all tax document preparation and reporting,
28 including state and federal tax forms, if any.

1 On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and
2 Defense Counsel with summary information updating them as to the number of validated and timely
3 objections and Opt Out requests. The Settlement Administrator will serve on Class Counsel and
4 Defense Counsel via e-mail date-stamped copies of the original Opt Out requests and objections no
5 later than seven (7) days after their receipt. The Settlement Administrator will provide Class Counsel
6 with proof of mailing of the Class Notice, without listing individual Class Member names which the
7 Settlement Administrator will file with the Court at the time Class Counsel files its motion in support
8 of the Court's Final Approval and Fairness Hearing.

9 No later than thirty (30) days prior to the Final Approval and Fairness Hearing, the Settlement
10 Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary
11 information regarding: **(a)** the total amount of final Individual Settlement Amounts of each Class
12 Participant, without any identifying personal information; **(b)** the number of Class Participants to
13 receive such payments, and **(c)** the final number of Opt-Outs and objections.

14 Administrative Expenses are not anticipated to exceed \$12,000.00. Prior to the calculation and
15 distribution of the Individual Settlement Amounts, the Settlement Administrator shall calculate the
16 total Administrative Expenses through the conclusion of their services and such actual amount will be
17 deducted from the Gross Settlement Amount prior to the final calculation of the Individual Settlement
18 Amounts.

19 **7.2. NOTICE TO CLASS MEMBERS**

20 Notice shall be provided to Class Members in the following manner: Within fourteen (14) days
21 after the Preliminary Approval Date, Defendants shall provide the Settlement Administrator with an
22 updated list of Class Members and members of the PAGA Settlement Class containing names, social
23 security numbers, dates of employment, last-known addresses, and phone numbers (the "Database").
24 The Database shall be marked "Confidential – Settlement Administrator's Eyes Only." Class Counsel
25 shall not receive a copy of this list.

26 Within twenty-eight (28) days following the Preliminary Approval Date, the Settlement
27 Administrator shall determine the number of workweeks worked by each Class Member, populate the
28 data for each Class Member accordingly, and send each Class Member the Class Notice via first-class,

1 United States mail. The Class Notice shall also contain an easily-understood statement alerting the
2 Class Members that, unless they elect to Opt Out of the Class Settlement, the Class Member is releasing
3 and waiving all Released Claims against the Released Parties.

4 The Class Notice will inform Class Members of their estimated share of the settlement and the
5 number of workweeks they worked during the Class Period. Class Members may dispute their
6 workweeks if they believe they worked more weeks in the Class Period than Defendants' records show
7 by submitting information to the Settlement Administrator no later than forty-five (45) days after being
8 mailed the Class Notice and Share Form by the Settlement Administrator, which is the defined
9 Response Deadline. The Settlement Administrator will jointly work with Plaintiff and Defendants to
10 resolve the dispute in good faith. If Plaintiff and Defendants cannot agree over the workweeks to be
11 credited, the Settlement Administrator shall make the final decision based on the information presented
12 by the Class Member and Defendants.

13 **7.3. OPT OUT PROCEDURE**

14 Class Members who do not timely Opt Out of the Class Settlement will be deemed to participate
15 in the Class Settlement and shall become Class Participants without having to submit a claim form or
16 take any other action. To Opt Out of the Class Settlement, the Class Member must return a signed and
17 completed copy of the *Request for Exclusion Form* attached hereto as **Exhibit 3** to the Settlement
18 Administrator by the Response Deadline.

19 Any Opt Out request that is not postmarked by the Response Deadline will be invalid. If prior
20 to the Response Deadline any Class Notice mailed to a Class Member is returned as having been
21 undelivered by the United States Postal Service, the Settlement Administrator shall perform a skip trace
22 search and seek an address correction for such Class Members, and a second Class Notice will be sent
23 to any new or different address obtained. Such Class Members shall have an additional fourteen (14)
24 days from the date of the mailing of the second Class Notice in which to Opt Out, object, or dispute
25 the information provided in the Share Form if the Response Deadline would have otherwise passed
26 prior to fourteen (14) days from the date of the mailing of the second Class Notice.

27 It will be presumed that, if an envelope containing the Class Notice has not been returned within
28 thirty (30) days of the mailing, the Class Member received the Class Notice. At least twenty-one (21)

1 days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class
2 Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard
3 to the mailing of the Class Notice and its attempts to locate Class Members. The declaration shall
4 specify the number of Class Members to whom the Class Notice was sent and the number of Class
5 Members to whom the Class Notice was not delivered, as well as information relating to the number
6 of Opt-Outs and objectors. Class Counsel shall file this declaration with the Court.

7 If the Settlement Administrator determines that an Opt Out request returned by a Class Member
8 before the Response Deadline is deficient, then the Settlement Administrator shall mail a deficiency
9 letter to that Class Member identifying the problem. If a Class Member submits both a dispute and an
10 Opt Out request, the Settlement Administrator shall make reasonable attempts to clarify as if the Opt
11 Out request was deficient. If the Class Member fails to cure the deficiency, the Opt Out request shall
12 be disregarded and the claim will be paid, and the Class Member will become bound by the judgment.

13 Class Participants will be bound by the Release of Released Claims set forth in the definition
14 of “Released Claims” provided in this Settlement Agreement.

15 A request to Opt Out of the Class Settlement shall **not** serve to exclude the Class Member from
16 participation in the PAGA Settlement Class. Opt-Outs shall still be entitled to their share of the PAGA
17 Payment. Class Members who are also members of the PAGA Settlement Class shall have no right or
18 ability to opt out of the portion of this Settlement Agreement releasing PAGA claims.

19 **7.4. OBJECTION PROCEDURE**

20 The Class Notice shall inform the Class Members of their right to object to the Class Settlement
21 if they do not Opt Out. Any Class Participants who wish to object to the Class Settlement may submit
22 a written objection to the Settlement Administrator no later than the Response Deadline. Only Class
23 Participants may object to the Settlement. The objection should include the case name and number and
24 must set forth, in clear and concise terms, a statement of the reasons why the objector believes that the
25 Court should find that the proposed Class Settlement is not in the best interest of the Settlement Class
26 and the reasons why the Class Settlement should not be approved, including the legal and factual
27 arguments supporting the objection. If an objector also wishes to appear at the Final Approval and
28 Fairness Hearing, in person or through an attorney, they may do so. The Settlement Administrator will

promptly serve copies of any objection or notice of intention to appear on Class Counsel and Defense Counsel. Class Members wishing to make an objection may appear at the Final Approval and Fairness Hearing, either in person or through a lawyer retained at their own expense.

7.5. NOTICE OF FINAL JUDGMENT

Within seven (7) days after the Court has held a Final and Fairness Approval Hearing and entered a final order certifying the Class for settlement purposes only and approving the Class Settlement, the Settlement Administrator will give notice of judgment to Class Members pursuant to rule 3.771(b) of the California Rules of Court, by posting a copy of said order and final judgment on its website at a web address to be included in the Class Notice.

8. CLASS SETTLEMENT FUNDING AND DISTRIBUTION

8.1. ALLOCATION OF THE GROSS SETTLEMENT AMOUNT

The claims of all Class Members are settled for the Gross Settlement Amount of \$188,000.00, which will be allocated as follows:

1. The Administrative Expenses, estimated not to exceed \$12,000.00;
2. Class Counsel's attorney fees not to exceed \$62,666.67;
3. Class Counsel's litigation costs and expenses not to exceed \$15,000.00;
4. The Incentive Award, not to exceed \$10,000.00; and
5. PAGA Payment to LWDA of \$7,500.00.

For purposes of calculating the estimated Individual Settlement Amounts, the Settlement Administrator shall calculate the estimated Net Settlement Amount based on the estimated values provided above prior to sending Notice to the Class Members. Prior to final distribution, the Settlement Administrator shall recalculate the final Net Settlement Amount based on the actual values of the amounts in each category.

8.2. CALCULATION OF THE INDIVIDUAL SETTLEMENT AMOUNTS FOR CLASS PARTICIPANTS

Individual Settlement Amounts to be paid to Class Participants shall be paid from the Net Settlement Amount. The portion of the Net Settlement Amount shall be distributed pro rata on a

1 “checks cashed” basis based on the proportional number of weeks worked by each Class Member
2 during the Class Period.

3 Defendants will provide the Settlement Administrator with any information reasonably
4 necessary to perform the calculation of number of workweeks for each Class Member, and any other
5 reasonably required information the Settlement Administrator requests to perform the calculations
6 required under this Settlement Agreement. Defendants shall have no responsibility for deciding the
7 validity of the Individual Settlement Amounts or any other payments made pursuant to this Settlement
8 Agreement, shall have no involvement in or responsibility for the determination or payment of
9 Employee’s Taxes and Required Withholding, and shall have no liability for any errors made with
10 respect to such Employee’s Taxes and Required Withholding. Although the Settlement Administrator
11 will calculate and pay the standard Employee’s Taxes and Required Withholding on the portion of the
12 Individual Settlement Amounts constituting wages on their behalf, Plaintiff and Class Participants
13 represent and understand that they shall be solely responsible for any and all tax obligation associated
14 with their respective Individual Settlement Amounts and Incentive Awards.

15 **8.3. CALCULATION OF THE PAYMENTS FOR INDIVIDUAL MEMBERS OF**
16 **THE PAGA SETTLEMENT CLASS**

17 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA
18 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have
19 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which
20 is \$10,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section
21 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$7,500.00) to the LWDA and
22 twenty-five percent (25%) (i.e., \$2,500.00) to the PAGA Settlement Class.

23 The portion of the PAGA Payment allocated to the PAGA Settlement Class shall be distributed
24 to the PAGA Settlement Class based on the pro rata number of pay periods worked by each particular
25 PAGA Settlement Class member during the PAGA Period as a proportion of all pay periods worked
26 by all PAGA Settlement Class members during the PAGA Period. Each member of the PAGA
27 Settlement Class, including Plaintiff, shall be responsible for the payment of the Employee’s Taxes and
28

1 Required Withholding with respect to their share of the PAGA Payment and shall hold Defendants
2 harmless from any and all liability with regard thereto.

3 Defendants will provide the Settlement Administrator with any information reasonably
4 necessary to perform the calculation of number of pay periods worked for each PAGA Settlement Class
5 member, and any other reasonably required information the Settlement Administrator requests to
6 perform the calculations required under this Settlement Agreement. Defendants shall have no
7 responsibility for deciding the validity of the individual payment amounts allocated to each member of
8 the PAGA Settlement Class or any other payments made pursuant to this Settlement Agreement, shall
9 have no involvement in or responsibility for the determination or payment of Employee's Taxes and
10 Required Withholding, and shall have no liability for any errors made with respect to such Employee's
11 Taxes and Required Withholding.

12 The members of the PAGA Settlement Class shall be solely responsible for any and all tax
13 obligation associated with their respective shares of the PAGA Payment.

14 **8.4. TIME FOR PAYMENT OF ATTORNEY FEES AND EXPENSES**

15 The Settlement Administrator shall distribute to Class Counsel any attorney fees and expenses
16 approved by the Court no later than fourteen (14) days after the Effective Date.

17 **8.5. TIME FOR PAYMENT OF INCENTIVE AWARD**

18 The Settlement Administrator shall distribute to Plaintiff the Incentive Award approved by the
19 Court no later than fourteen (14) days after the Effective Date.

20 **8.6. TIME FOR PAYMENT OF PAGA PAYMENT TO THE LWDA**

21 The Settlement Administrator shall distribute to the LWDA the portion of the PAGA Payment
22 due to it and approved by the Court no later than fourteen (14) days after the Effective Date.

23 **8.7. TIME FOR PAYMENT OF TAXES AND REQUIRED WITHHOLDING AND** 24 **INDIVIDUAL SETTLEMENT AMOUNTS**

25 The Settlement Administrator shall make every effort to pay the Employee's Taxes and
26 Required Withholding associated with each Class Participant's Individual Settlement Amount and mail
27 the Individual Settlement Amount to each Class Participant, by first-class United States mail, to the
28 last-known address no later than fourteen (14) days after the Effective Date. If the Settlement

1 Administrator is not able to do so within the time period set forth above, it shall so inform Class Counsel
2 and Defense Counsel and provide an approximate date by which the Employee's Taxes and Required
3 Withholding shall be paid and the Individual Settlement Amounts will be mailed. Under no
4 circumstances shall the Settlement Administrator distribute checks to Class Participants until all
5 Individual Settlement Amounts have been considered, calculated, and accounted for, and all of the
6 remaining monetary obligations have been calculated and accounted for.

7 Within two hundred ten (210) days of mailing the Individual Settlement Amounts to Class
8 Participants, the Settlement Administrator shall file with the Court and provide to Class Counsel a
9 declaration of payment. If any Class Participant is deceased, payment shall be made payable to the
10 estate of that Class Member and delivered to the executor or administrator of that estate, unless the
11 Settlement Administrator has received an affidavit or declaration pursuant to California Probate Code
12 section 13101, in which case payment shall be made to the affiant(s) or declarant(s).

13 **8.8. NON-CASHED SETTLEMENT CHECKS**

14 Any funds associated with checks that have not been cashed within one hundred eighty (180)
15 days, will become void and the Individual Settlement Amount associated with the uncashed check will
16 be remitted pursuant to Code of Civil Procedure section 384 to the California State Controller for
17 deposit in the Unclaimed Property Fund in the name of the individual whose check was uncashed. The
18 Parties agree that this disposition results in no "unpaid residue" within the meaning of California Civil
19 Procedure Code section 384, as the entire Net Settlement Amount will be paid out to Class Participants,
20 whether or not they all cash their Individual Settlement Amount checks. Therefore, Defendants shall
21 not be required to pay any interest on said amount. For the purposes of determining whether Defendants
22 have met their financial obligation to pay the Individual Settlement Payment, Defendants will be
23 deemed to have fulfilled their obligation upon the mailing of the check to the Class Member, regardless
24 of whether such Class Member subsequently negotiates the check.

25 **8.9. DISPUTES REGARDING CLASS MEMBER WORKWEEKS DATA OR** 26 **PAYMENT OF INDIVIDUAL SETTLEMENT SHARES**

27 Class Member Workweeks and the corresponding Individual Settlement Amount shall be
28 calculated using the employment and payroll records of Defendants, which presumptively shall be

deemed to be full, complete, and accurate for purposes of this Settlement Agreement. To overcome that presumption, any Class Member objecting to the accuracy of the number of Workweeks or amount of the Individual Settlement Amount must submit documentary evidence, such as pay stubs or other written employment records, to the Settlement Administrator. Each Class Member may dispute the number of Workweeks or their estimated Individual Settlement Amount contained on their Class Notice (“Workweeks Dispute”). Any such Workweeks Dispute must be mailed or faxed to the Settlement Administrator by the Class Member, postmarked or fax-stamped on or before the Response Deadline. The Settlement Administrator shall immediately provide copies of all disputes to counsel for Defendants, shall inform Class Counsel of the dispute without disclosing the identity of the Class Member making the dispute, and shall immediately attempt to resolve all such disputes directly with relevant Class Members with the assistance of Defendants, Defense Counsel, and Class Counsel. If the dispute cannot be resolved, it shall be submitted to the Settlement Administrator for its final, non-appealable decision. The Settlement Administrator shall use its best efforts to resolve all such disputes prior to the Effective Date. If, however, a dispute arises or is not resolved until after the Settlement Amount has been distributed, the initial calculation shall stand (as Defendants shall be under no obligation to pay any amounts in excess of the Gross Settlement Amount under this Settlement Agreement).

9. NULLIFICATION OF THIS SETTLEMENT AGREEMENT

9.1. NON-APPROVAL OF THIS SETTLEMENT AGREEMENT

The Class Settlement and conditional class certification shall be considered null and void, and neither the Class Settlement, conditional class certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and all Parties to the Class Settlement shall stand in the same position, without prejudice, as if the Class Settlement had been neither entered into nor filed with the Court, if any of the following occur: **(a)** the Court should for any reason fail to approve this Settlement Agreement in the form agreed to by the Parties; **(b)** the Court should for any reason fail to enter a judgment with prejudice of the Action, or **(c)** the approval of the Class Settlement and judgment is reversed, modified, or declared or rendered void. Notwithstanding the foregoing, the Parties may attempt in good faith to cure any perceived defects in this Settlement Agreement to facilitate approval.

1 **9.2. PARTIES' RIGHTS TO VOID CLASS SETTLEMENT; ESCALATOR**
2 **PROVISION**

3 If 10% or more members of the Settlement Class timely submit Opt Out requests, Defendant(s)
4 shall have the right (but not the obligation) to void this Settlement Agreement. If the number of
5 workweeks is greater than 12% above that represented by Defendant(s), as described above, then the
6 Gross Settlement Amount shall be increased proportionally for each additional week worked.

7 **9.3. INVALIDATION**

8 Invalidation of any material portion of this Settlement Agreement shall invalidate the Class
9 Settlement in its entirety, unless the Parties subsequently agree in writing that the remaining provisions
10 of the Class Settlement are to remain in full force and effect.

11 **9.4. STAY ON APPEAL**

12 If a timely appeal from the approval of the Class Settlement and judgment, the judgment shall
13 be stayed, and Defendants shall not be obligated to fund the Gross Settlement Amount or take any other
14 actions required by this Settlement Agreement until all appeal rights have been exhausted by operation
15 of law.

16 **10. MOTIONS FOR COURT APPROVAL**

17 **10.1. PRELIMINARY APPROVAL**

18 As soon as practicable after execution of this Settlement Agreement, Class Counsel will submit
19 this Settlement Agreement to the Court along with a Motion for Preliminary Approval of the Class
20 Settlement. Each party shall cooperate to present the Class Settlement to the Court for preliminary
21 approval in a timely fashion.

22 **10.2. FINAL APPROVAL**

23 The Final Approval and Fairness Hearing shall be held before the Court. At the Final Approval
24 and Fairness Hearing, Plaintiff shall move the Court for the entry of the final order certifying the
25 Settlement Class for settlement purposes only and approving the Class Settlement as being fair,
26 reasonable, and adequate to the Class Participants within the meaning of California Rules of Court,
27 Rule 3.769, subdivisions (c), (d) and (e), and for the entry of a final judgment of the Action consistent
28 with the terms of the Class Settlement and rule 3.769, subdivision (h), of the California Rules of Court.

1 Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may
2 be required for the Court's determination.

3 **11. RELEASES AND WAIVERS**

4 **11.1. RELEASE OF CLAIMS BY THE SETTLEMENT CLASS**

5 Upon the Effective Date, the Releasing Parties shall be deemed to each release the Released
6 Parties, and each of them, of and from any and all Released Claims arising during the Class Period. It
7 is the desire of the Parties and the Releasing Parties to fully, finally, and forever settle, compromise,
8 and discharge the Released Claims. Each of the Releasing Parties, including each Class Participant,
9 will be bound by the release of Released Claims as a result of the Class Settlement and to the terms of
10 the final judgment and the satisfaction of such judgment.

11 Class Participants will be deemed to have acknowledged and agreed that their claims for wages
12 and/or penalties in the Action are disputed, and that their Individual Settlement Amount constitutes
13 payment of all sums allegedly due to them. Class Participants will be deemed to have acknowledged
14 and agreed that California Labor Code section 206.5 is not applicable to the Individual Settlement
15 Amount. That section provides in pertinent part as follows:

16 "An employer shall not require the execution of a release of a claim or right on account
17 of wages due, or to become due, or made as an advance on wages to be earned, unless
18 payment of those wages has been made."
19

20 **11.2. RELEASE OF CLAIMS BY PLAINTIFF**

21 Plaintiff, on behalf of himself and his dependents, heirs and assigns, beneficiaries, devisees,
22 legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives,
23 and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect,
24 or any other type or in any other capacity, shall and does hereby forever release, discharge and agree
25 to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities,
26 obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights,
27 demands, costs, losses, debts and expenses (including attorney fees and costs), known or unknown, at
28 law or in equity, which he may now have or may have after the signing of this Settlement Agreement,

1 arising out of or in any way connected with his employment with Defendants including, the Released
2 Claims, claims that were asserted or could have been asserted in the Complaint, and any and all
3 transactions, occurrences, or matters between the Parties occurring prior to the date this Settlement
4 Agreement is fully executed. Without limiting the generality of the foregoing, this release shall include,
5 but not be limited to, any and all claims under: **(a)** the Americans with Disabilities Act; **(b)** Title VII
6 of the Civil Rights Act of 1964; **(c)** the Civil Rights Act of 1991; **(d)** 42 U.S.C. § 1981; **(e)** the Age
7 Discrimination in Employment Act; **(f)** the Fair Labor Standards Act; **(g)** the Equal Pay Act; **(h)** the
8 Employee Retirement Income Security Act, as amended; **(i)** the Consolidated Omnibus Budget
9 Reconciliation Act; **(j)** the Rehabilitation Act of 1973; **(k)** the Family and Medical Leave Act; **(l)** the
10 Civil Rights Act of 1966; **(m)** the California Fair Employment and Housing Act; **(n)** the California
11 Constitution; **(o)** the California Labor Code; **(p)** the California Government Code; **(q)** the California
12 Civil Code; and **(r)** any and all other federal, state, and local statutes, ordinances, regulations, rules,
13 and other laws, and any and all claims based on constitutional, statutory, common law, or regulatory
14 grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of
15 contract or implied contract, fraud, misrepresentation, promissory estoppel, or intentional infliction of
16 emotional distress, negligent infliction of emotional distress, or damages under any other federal, state,
17 or local statutes, ordinances, regulations, rules, or laws. This release is for any and all relief, no matter
18 how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses,
19 compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain
20 and suffering, and attorney fees and costs, and Plaintiff hereby forever releases, discharges and agrees
21 to hold harmless Defendants and the Released Parties from any and all claims for attorney fees and
22 costs arising out of the matters released in this Settlement Agreement.

23 Plaintiff specifically acknowledges that he is aware of and familiar with the provisions of
24 California Civil Code section 1542, which provides as follows:

25 “A general release does not extend to claims that the creditor or releasing party does not
26 know or suspect to exist in his or her favor at the time of executing the release and that,
27
28

1 if known by him or her, would have materially affected his or her settlement with the
2 debtor or released party.”

3
4 Plaintiff, being aware of California Civil Code section 1542, hereby expressly waives and
5 relinquishes all rights and benefits he may have under section 1542 as well as any other statutes or
6 common law principles of a similar effect. Plaintiff may hereafter discover facts in addition to or
7 different from those which he now knows or believes to be true with respect to the subject matter of all
8 the claims referenced herein, but agrees that, upon the Effective Date, Plaintiff shall and hereby does
9 fully, finally, and forever settle and release any and all claims against the Released Parties, known or
10 unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or could have
11 been asserted upon any theory of law or equity without regard to the subsequent discovery of existence
12 of such different or additional facts.

13 **11.3. CIRCULAR 230 DISCLAIMER**

14 Each party to this Settlement Agreement (for purposes of this section, the “Acknowledging
15 Party”; and each party to this Agreement other than the Acknowledging Party, an “Other Party”)
16 acknowledges and agrees that **(1)** no provision of this Settlement Agreement, and no written
17 communication or disclosure between or among the parties or their attorneys and other advisers, is or
18 was intended to be, nor shall any such communication or disclosure constitute or be construed or be
19 relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31
20 C.F.R. Part 10); **(2)** the Acknowledging Party **(a)** has relied exclusively upon her or its own
21 independent legal and tax advisers for advice (including tax advice) in connection with this Settlement
22 Agreement, **(b)** has not entered into this Settlement Agreement based upon the recommendation of any
23 other party or any attorney or advisor to any other party, and **(c)** is not entitled to rely upon any
24 communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that
25 may be imposed on the Acknowledging Party; and **(3)** no attorney or adviser to any other party has
26 imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies
27 (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party
28

1 of the tax treatment or tax structure of any transaction, including any transaction contemplated by this
2 Settlement Agreement.

3 **12. DUTIES OF THE PARTIES**

4 **12.1. MUTUAL FULL COOPERATION**

5 The Parties agree to cooperate fully with one another to accomplish and implement the terms
6 of this Settlement Agreement. Such cooperation shall include, but not be limited to, execution of such
7 other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms
8 of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated
9 by this Settlement Agreement and any other efforts that may become necessary by court order or
10 otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable
11 after execution of this Settlement Agreement, Class Counsel, with the cooperation of Defendants and
12 Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final approval of
13 this Settlement Agreement.

14 **12.2. DUTY TO SUPPORT AND DEFEND THE CLASS SETTLEMENT**

15 The Parties agree to abide by all of the terms of this Settlement Agreement in good faith and to
16 support the Class Settlement fully and to use their best efforts to defend this Class Settlement from any
17 legal challenge, whether by appeal or collateral attack.

18 **12.3. DUTIES PRIOR TO COURT APPROVAL**

19 Class Counsel shall promptly submit this Settlement Agreement to the Court for preliminary
20 approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly
21 upon execution of this Settlement Agreement, Class Counsel shall apply to the Court for the entry of a
22 preliminary order scheduling a hearing on the question of whether the proposed Class Settlement
23 should be approved as fair, reasonable, and adequate as to the Class Members, approving as to form
24 and content the proposed Class Notice and Share Form attached hereto as **Exhibit 1** and **Exhibit 2**,
25 respectively, and directing the mailing of the Class Notice to Class Members. While Defendants can
26 reserve their right to object to facts or assertions made in the moving papers, Defense Counsel shall
27 file a notice of non-opposition to the granting of the motion for preliminary approval or join in the
28 motion.

1 **13. MISCELLANEOUS PROVISIONS**

2 **13.1. VOIDING THIS SETTLEMENT AGREEMENT**

3 Pending Court approval and other than as provided herein, if any of the conditions set forth in
4 this Settlement Agreement are not met and satisfied, this Settlement Agreement may, at the option of
5 either Plaintiff or Defendants, be ineffective, void, and of no further force and effect, and may not be
6 used or be admissible in any subsequent proceeding, either in this Court or in any other court or forum.
7 If either Party decides to void the Settlement Agreement, then the Settlement Agreement and
8 conditional class certification shall be considered void, and neither the Settlement Agreement,
9 conditional class certification, nor any of the related negotiations or proceedings, shall be of any force
10 or effect, and the Parties shall stand in the same position, without prejudice, as if this Settlement
11 Agreement had been neither entered into nor filed with the Court. Should any Party choose to void the
12 Class Settlement under this subsection, such Party shall be responsible for all Settlement Administrator
13 fees and costs actually incurred.

14 **13.2. DIFFERENT FACTS**

15 The Parties acknowledge that, except for matters expressly represented herein, the facts in
16 relation to the dispute and all claims released by the terms of this Settlement Agreement may turn out
17 to be different from the facts now known by each party and/or its counsel, or believed by such Party or
18 counsel to be true, and each Party therefore expressly assumes the risk of the existence of different or
19 presently unknown facts, and agrees that this Settlement Agreement shall be in all respects effective
20 and binding despite such difference.

21 **13.3. NO PRIOR ASSIGNMENTS**

22 The Parties represent, covenant, and warrant that they have not directly or indirectly assigned,
23 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any
24 portion of any liability, claim, demand, action, cause of action, or right herein released and discharged
25 except as set forth herein.

26 **13.4. NON-ADMISSION**

27 Nothing in this Settlement Agreement shall be construed as or deemed to be an admission by
28 any Party of any liability, culpability, negligence, or wrongdoing toward any other Party, or any other

1 person, and the Parties specifically disclaim any liability, culpability, negligence, or wrongdoing
2 toward each other or any other person. Each of the Parties has entered into this Settlement Agreement
3 with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses,
4 and contingencies. Nothing herein shall constitute any admission by Defendants of wrongdoing or
5 liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute any
6 admission by Defendants regarding the merits of the Claims in this Action, including but not limited
7 to claims for unpaid wages or violations under California or federal law. Nothing herein shall constitute
8 an admission by Defendants that the Action was properly brought as a class or representative action
9 other than for settlement purposes. To the contrary, Defendants have denied and continue to deny each
10 and every material factual allegation and all Claims. To this end, the Class Settlement of the Action,
11 the negotiation and execution of this Settlement Agreement, and all acts performed or documents
12 executed pursuant to or in furtherance of this Settlement Agreement or the Class Settlement are not,
13 shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or
14 liability on the part of Defendants or of the truth of any of the factual allegations in the Complaint in
15 the Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence
16 of any fault or omission on the part of Defendants in any civil, criminal, or administrative proceeding
17 in any court, administrative agency, or other tribunal.

18 **13.5. NON-EVIDENTIARY USE**

19 Neither this Agreement nor any of its terms, nor any statements or conduct in the negotiation
20 or drafting of it, shall be offered or used as evidence by Plaintiff, any Class Member (including any
21 individual who requested to be excluded from the Settlement Class), Defendants, or its, her, his, or
22 their respective counsel, in the Action, except as is reasonably necessary to effectuate the Settlement
23 Agreement's purpose and terms. This Settlement Agreement may, however, be used by Defendants
24 and the Released Parties to prove or defend against any claim released herein by any Class Member in
25 any judicial, quasi-judicial, administrative, or governmental proceeding.

26 **13.6. MEDIA OR PRESS**

27 Plaintiff and Defendants, and their respective counsel, recognize, accept, and agree that the
28 Parties to this Settlement Agreement desire that the terms of this Settlement Agreement, the fact of the

1 Class Settlement embodied in this Settlement Agreement, the disposition of the Action, the Action, and
2 all matters relating to the litigation of the Action, including discovery proceedings therein, and evidence
3 obtained during the course of the Action, shall not be discussed with or presented to the media or press.

4 **13.7. NON-RETALIATION**

5 Defendants understands and acknowledges that they have a legal obligation to not retaliate
6 against any Class Member who elects to participate in the Class Settlement or elects to Opt Out of the
7 Class Settlement. Defendants will refer any inquiries regarding this Class Settlement to the Settlement
8 Administrator or Class Counsel and will not discourage Class Members who are employees, directly
9 or indirectly, from making claims, opting out, or objecting to the Class Settlement. None of the Parties,
10 or their respective attorneys or agents, shall solicit or encourage any Class Members, directly or
11 indirectly, to Opt Out of the Class Settlement.

12 **13.8. CONSTRUCTION**

13 The Parties agree that the terms and conditions of this Settlement Agreement are the result of
14 lengthy, intensive, arms-length, non-collusive negotiations between the Parties and that this Settlement
15 Agreement is not to be construed in favor of or against any party by reason of the extent to which any
16 party or its counsel participated in the drafting of this Settlement Agreement. If any of the dates in this
17 Settlement Agreement fall on a weekend, bank or court holiday, the time to act shall be extended to the
18 next business day.

19 **13.9. GOVERNING LAW**

20 This Settlement Agreement is intended to and shall be governed by the laws of the State of
21 California, without regard to conflict of law principles, in all respects, including execution,
22 interpretation, performance, and enforcement.

23 **13.10. NOTICES**

24 Except for Class Member notices required to be made by the Settlement Administrator, all
25 notices or other communications required or permitted under this Settlement Agreement shall be in
26 writing and shall be sufficiently given if delivered in person to the party or their counsel by U.S.
27 certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed to the address of the
28 party appearing in this Settlement Agreement.

1 **13.11. CAPTIONS AND INTERPRETATIONS**

2 Section titles or captions contained herein are inserted as a matter of convenience and for
3 reference only and in no way define, limit, extend, or describe the scope of this Settlement Agreement
4 or any provision thereof.

5 **13.12. MODIFICATION**

6 This Settlement Agreement may not be changed, altered, or modified, except in writing signed
7 by the Parties or the Parties' counsel on their behalf. If preliminary or final approval of this Settlement
8 Agreement has been granted by the Court, then any such amendments or modifications to this
9 Settlement Agreement shall be approved by the Court. This Settlement Agreement may not be
10 discharged except by performance in accordance with its terms or by a writing signed by the Parties.

11 **13.13. INTEGRATION CLAUSE**

12 This Settlement Agreement contains the entire agreement between the Parties relating to the
13 Class Settlement of the Action and the transactions contemplated thereby, and all prior or
14 contemporaneous agreements, understandings, representations, and statements, whether oral or written,
15 and whether by a party or such party's legal counsel, are hereby superseded. No rights under this
16 Settlement Agreement may be waived except in writing as provided above.

17 **13.14. SUCCESSORS AND ASSIGNS**

18 This Settlement Agreement shall be binding on and inure to the benefit of the Parties and Class
19 Members (excluding only persons who timely Opt Out) and their respective present and former heirs,
20 trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees,
21 insurers, attorneys, accountants, auditors, advisors, consultants, pension plans, welfare benefit plans,
22 fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors,
23 successors, and assigns.

24 **13.15. CORPORATE SIGNATORIES**

25 Any person executing this Settlement Agreement or any such related document on behalf of a
26 corporate signatory or on behalf of a partnership hereby warrants and promises, for the benefit of all
27 Parties hereto, that such person has been duly authorized by such corporation or partnership to execute
28 this Settlement Agreement or any such related document.

13.16. EXECUTION IN COUNTERPARTS

This Settlement Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall have the same force and effect as if all Settling Parties had signed the same instrument.

13.17. ATTORNEY FEES, COSTS, AND EXPENSES

Except as otherwise specifically provided for herein, each party shall bear her or its own attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other party to this Settlement Agreement.

13.18. ACTION TO ENFORCE AGREEMENT

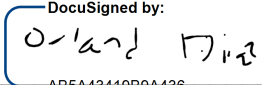
In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover her or its attorney fees and costs.

14. EXECUTION

The Parties and their counsel have executed this Settlement Agreement on the date below their signatures or the signature of their representatives. The date of this Settlement Agreement shall be the date of the latest signature.

APPROVAL AND EXECUTION BY PARTIES**CLASS REPRESENTATIVE:**

Dated: 05/23/2023

DocuSigned by:

 AB5A43419B9A436...
 Orlando Diaz
 Plaintiff and Class Representative

DEFENDANTS:

Dated: _____

Riverbed Dairy
 R & J Haringa Dairy

By: _____

Title: _____

1 Dated: _____

Orlando Diaz
Plaintiff and Class Representative

2
3
4 **DEFENDANTS:**

5 Dated: 5-22-2023

Riverbed Dairy
R & J Haringa Dairy

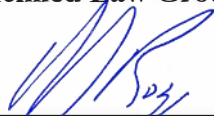
7
8 
9 By: Ronald Haringa
10 Title: Partner

11
12 **APPROVED AS TO FORM BY COUNSEL**

13 **CLASS COUNSEL:**

14 Dated: May, 23 2023

Melmed Law Group P.C.

16 
17 Megan E. Ross
Attorneys for Plaintiff

18
19 **DEFENDANTS' COUNSEL:**

20 Dated: 5/22/2023

**PALMIERI, TYLER, WIENER, WILHELM &
WALDRON LLP**

22 
23 **ERIN K. OYAMA**
24 Attorneys for Defendants Riverbed Dairy and R &
25 J Haringa Dairy
26
27
28