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SUPERIOR COURT STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

KACEY HERNANDEZ, KRISTINA
 HALKYARD, and THERESA SIDBURY
 on behalf of themselves, and similarly
 situated employees

Plaintiffs,

vs.

ABA PLUS, INC., a California Corporation,
 VISHAL JAISWAL, an individual,
 SUDDHA MUKHOPADHYAY, an
 individual, DOES 1-20, inclusive,

Defendants.

Case No.: C22-00604

**JOINT STIPULATION REGARDING
 CLASS ACTION AND PAGA
 SETTLEMENT AND RELEASE**

*Assigned to the Honorable Judge Edward
 Weil, Department 39, for all purposes*

Complaint Filed: April 1, 2022
 FAC filed: April 20, 2022
 SAC filed: July 11, 2022
 TAC filed: August 31, 2022

Trial Date: Not Set

This Joint Stipulation Regarding Class Action and PAGA Settlement and Release is made and entered into between the Plaintiffs Kacey Hernandez, Kristina Halkyard, and Theresa Sidbury on behalf of themselves and similarly situated employees, the Labor and Workforce Development Agency through Kacey Hernandez, Kristina Halkyard, and Theresa Sidbury, as authorized representatives under the Private Attorneys General Act, Aggrieved Employees, and Defendants Aba Plus, Inc., Vishal Jaiswal, and Suddha Mukhopadhyay. This Agreement is subject to the terms and conditions set forth below and the approval of the Court.

I. DEFINITIONS

The following terms, when used in this Agreement, have the following meanings:

1.1 "Action" means the above stated lawsuit, *Kacey Hernandez vs. ABA Plus, Inc.*, Contra Costa County Superior Court, Case No. C22-00604, filed April 1, 2022.

1.2 "Aggrieved Employee(s)" means all non-exempt program managers, behavior technicians, and employees with similar job duties, who have or continue to work for Defendants in California during the PAGA Claim Period.

1.3 "Agreement" or "Settlement" or "Settlement Agreement" means this *Joint Stipulation Regarding Class Action and PAGA Settlement and Release*.

1.4 "Claim Amount" means an individual Qualified Claimant's and Aggrieved Employee's allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in Sections 1.21, 1.26, 5.5, and 5.8.

1.5 "Settlement Administrator" means and refers to Simpluris, Inc., the third-party entity that will administer the Agreement as outlined in Sections 4 and 7, or any other third-party class action settlement administrator agreed to by the Parties and approved by the Court for the purposes of administering this Agreement. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

1.6 "Settlement Administrator Costs" means the fees and expenses reasonably

1 incurred by the Settlement Administrator as a result of the procedures and processes expressly
2 required by this Agreement, and shall include all costs of administering the Agreement,
3 including, but not limited to, all tax document preparation, custodial fees, and accounting fees
4 incurred by the Settlement Administrator; all costs and fees associated with preparing, issuing
5 and mailing any and all notices and other correspondence to Class Members and/or Aggrieved
6 Employees; all costs and fees associated with communicating with Class Members and/or
7 Aggrieved Employees, Class Counsel, and Defendants' Counsel; all costs and fees associated
8 with computing, processing, reviewing, and paying the Claim Amounts, and resolving disputes;
9 all costs and fees associated with calculating tax withholdings and payroll taxes, if any, making
10 related payment to federal and state tax authorities, if any, and issuing tax forms relating to
11 payments made under the Agreement; all costs and fees associated with preparing any tax
12 returns and any other filings required by any governmental taxing authority or agency; all costs
13 and fees associated with preparing any other notices, reports, or filings to be prepared in the
14 course of administering Claim Amounts; and any other costs and fees incurred and/or charged
15 by the Settlement Administrator in connection with the execution of its duties under this
16 Agreement.

17 1.7 "Class Counsel" means Drew Lewis and Jessica L. Hart, of Drew Lewis, PC.

18 1.8 "Class Member(s)" means all non-exempt program managers, behavior
19 technicians, and employees with similar job duties, who have or continue to work for
20 Defendants over the Class Period. The estimated number of Class Members is 312.

21 1.9 "Class Period" means from April 1, 2018, up to the Preliminary Approval Date.

22 1.10 "Class Representatives" means Plaintiffs Kacey Hernandez, Kristina Halkyard,
23 and Theresa Sidbury.

24 1.11 "Complaint" means the operative Complaint on file in the Action with the Court.

25 1.12 "Court" means the Contra Costa County Superior Court.

26 1.13 "Defendants" means Aba Plus, Inc., Vishal Jaiswal, and Suddha Mukhopadhyay.

27 1.14 "Defendants' Counsel" means Reed E. Harvey of Schinner and Shain, LLP.

1.15 "Defendants' Offset" means a \$123,511.59 maximum reduction to the Gross Settlement Amount, derived from prior payments to approximately 198 putative class members. (See Section 5.8 for further discussion.)

1.16 "Effective Date" means the day the Court files a signed order granting final approval of this Agreement unless there is a timely objection lodged that has not later been withdrawn, in which case the effective date will be either (a) the 60th calendar day after a signed order granting final approval of this Agreement has been filed provided no motion to vacate the judgment, appeal, writ or other appellate proceeding having been filed; or (b) the seventh (7th) calendar day after any motion to vacate the judgment, appeal, writ, or other appellate proceeding opposing the Agreement has been finally dismissed with no material change to the terms of this Agreement and there is no right to pursue further remedies or relief, whichever is later.

1.17 "Enhancement Payment" means the amount approved by the Court to be paid to the Class Representatives in recognition of the time and effort expended on behalf of Class Members for the benefit of Class Members, which is in addition to any Claim Amount paid to the Class Representatives as a Qualified Claimant.

1.18 "Final Approval Date" means the date a signed order granting final approval of this Agreement is filed with the Court.

1.19 "Gross Settlement Amount" is the sum of Seven-Hundred Twenty-Three Thousand and Five Hundred Dollars and Fifty-Nine Cents (\$723,511.59), subject to Defendants' Offset as set forth in Sections 1.15 and 5.8 when allocating amounts due to individual Qualified Claimants. This Gross Settlement Amount excludes Defendant's tax obligations (*e.g.* employer FICA, FUTA and SDI contributions on wage payments) on any monies distributed to Qualified Claimants that are allocated as wages under the Agreement, which will be paid in addition to the Gross Settlement Amount.

1.20 "LWDA" means the California Labor and Workforce Development Agency.

1.21 "Net Settlement Amount" is the portion of the Gross Settlement Amount available for distribution to Qualified Claimants, as described in this Agreement, after deduction

of Plaintiffs attorneys' fees and litigation costs, Settlement Administrator Costs, the PAGA Payment, and Enhancement Payment to the Class Representatives.

1.22 "Notice of Settlement" means the document substantially in the form attached hereto as **Exhibit 1**.

1.23 "Notice Period" means sixty (60) calendar days from the initial mailing of the Notice of Settlement to Class Members and Aggrieved Employees.

1.24 "PAGA" means Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.*

1.25 "PAGA Payment" means the amount allocated from the Gross Settlement Amount towards resolving claims under the PAGA.

1.26 "PAGA Claim Period" means from March 30, 2021 up to the Preliminary Approval Date.

1.27 "Parties" mean Defendants and Plaintiffs.

1.28 "Plaintiffs" mean Kacey Hernandez, Kristina Halkyard, and Theresa Sidbury.

1.29 "Preliminary Approval Date" means the date a signed order granting preliminary approval of this Agreement is filed with the Court.

1.30 "QSF" means a Qualified Settlement Fund set up by the Settlement Administrator for the benefit of the Qualified Claimants and/or Aggrieved Employees and from which the payments under this Agreement shall be made. Any amounts Defendants have agreed to pay under this Agreement shall remain the property of Defendants until the payments required under the Agreement are made.

1.31 "Qualified Claimant" means Plaintiffs and any and all Class Members who have not made any timely request to opt-out of the Agreement.

1.32 "Qualified Claimant's Released Claims" means any and all claims, debts, liabilities, demands, obligations, costs, expenses, attorneys' fees, damages, and/or causes of action (whether contingent or accrued) that are asserted in the Complaint and any additional wage and hour claims that could have been brought based on the facts alleged in the operative

Complaint, through the Class Period, including, without limitation claims under state, federal and local law arising out of the allegations made in the Complaint, and that reasonably arise or could have arisen out of the facts alleged in the Complaint, including California Labor Code sections 200, 201, 202, 203, 204, 210, 216, 218.5, 225.5, 226, 226.3, 226.7, 246, 246.5, 248.5, 256, 500, 510, 516, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, 2698, 2699, 2699.3, 2699.5, 2902, 2926, 2927, California Industrial Commission Wage Orders, Cal. Code Regs., tit. 8, sections 11040, *et seq.* Business and Professions Code section 17200, *et seq.*, and all class claims, unpaid wages, overtime, double time, minimum wages, off-the-clock work, reporting time pay, hours worked during meal and rest periods, rest period violations, regular rate of pay for overtime and sick leave pay purposes, timely and complete payment of wages during employment and at separation, reimbursement for business expenses, failure to provide accurate and itemized wage statements, failure to maintain accurate payroll records, unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, waiting-time penalties, civil penalties, penalties of any nature, interest, fees, costs, failure to pay additional 401(k) or employee stock option plan benefits and/or deferred compensation benefits and/or matching benefits for payments received under the Settlement, and any other claims alleged in the Complaint through final approval of the Settlement. The Qualified Claimant's Released Claims exclude claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do timely opt out of the Settlement.

1.33 "Qualifying Workweeks" are weeks worked by Class Members and/or Aggrieved Employees during the Class Period and/or PAGA Claim Period, respectively, in California. For Class Members, workweeks shall be defined as the total length of service (in days) in California during the Class Period divided by seven. For Aggrieved Employees workweeks shall be defined as the total length of service (in days) in California during the PAGA Claim Period divided by seven. Partial workweeks will not be counted; however, if a Class Member worked for Defendants for less than one workweek as a Class Member, such Class Member will be

credited with having worked one workweek for purposes of this Agreement. The calculation of a Class Member's and/or Aggrieved Employee's workweeks and a determination as to whether a Class Member and/or Aggrieved Employee was actively employed in California in a particular workweek shall be construed from Defendants' records.

1.34 "Released PAGA Claims" means any and all claims for statutory and/or civil penalties during the PAGA Claim Period that could have been sought by the Labor Commissioner for the violations identified in Plaintiffs' pre-filing letters to the LWDA submitted in conjunction with the Complaint, including California Labor Code sections 200, 201, 202, 203, 204, 210, 216, 218.5, 225.5, 226, 226.7, 226.3, 246, 246.5, 248.5, 256, 500, 510, 512, 516, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, 2698, 2699, 2699.3, 2699.5, 2902, 2926, 2927, and the wage orders of the California Industrial Welfare Commission and any other Labor Code section or Wage Order based the facts alleged in any of Plaintiffs' pre-filing letters to the LWDA; Plaintiffs do not release any Aggrieved Employees' claims for wages or damages. Aggrieved Employees cannot opt out of this waiver of claims.

1.35 "Released Parties" means Defendants, as well as Defendants' officers, directors, employees, and agents.

1.36 "Request for Exclusion" or "Request to Opt-Out" means a written request to opt out of the Settlement, as described in the Notice of Settlement and below in Section 7.5.1.

II. DESCRIPTION OF THE LITIGATION

2.1 On or about March 30, 2022, Plaintiffs sent notice to the LWDA to exhaust administrative remedies under the PAGA for 1) violations of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime Wages); 2) violations of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § 4 (Failure to Pay Minimum Wages); 3) violations of Labor Code §§ 204, 210; (Failure to Pay All Wages During Pay Period); 4) violations of Labor Code §§ 226 (Inaccurate Wage Statement Penalties); 5) violations of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records); 6) violations of Labor Code § 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order); 7) violations of Labor

Code §§ 201-203, 256 (Waiting-Time Penalties); 8) violations of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave at the Correct Rate of Pay).

2.2 Plaintiffs, thereafter amended their PAGA notice on April 19, 2022, May 6, 2022, June 24, 2022, and August 19, 2022 to include additional factual allegations and claims, including 1) Failure to Provide Rest Breaks, or Pay Penalties in Lieu Thereof (Lab. Code § 226.7; IWC Wage Order 4, § 12; 2) Failure to Provide Meal Breaks, or Pay Penalties in Lieu Thereof (Labor Code §§ 512, 226.7; IWC Wage Order 4, § 11; and 3) Failure to Reimburse Business Expenses (Labor Code § 2802).

2.3 The LWDA did not respond to the initial notices or amended notices within the statutorily required time frame and, as such, Plaintiffs became authorized to act as a Private Attorneys General on all alleged PAGA claims.

2.4 On or about April 1, 2022, Plaintiff Kacey Hernandez filed a class action Complaint in Contra Costa County Superior Court on behalf of herself and Class Members alleging claims for 1) Failure to Pay Minimum Wages; 2) Failure to Pay Overtime Wages; 3) Inaccurate Wage Statement Penalties; 4) Failure to Timely Pay Wages During Employment; and 5) Unlawful Competition. Plaintiff Hernandez then filed a First Amended Complaint on approximately April 20, 2022 to add claims for 6) Waiting-Time Penalties; and 7) Failure to Reimburse Expenses and add Plaintiffs Kristina Halkyard and Theresa Sidbury, as named Plaintiffs. Thereafter, the Parties stipulated to, and Plaintiffs filed a Second and Third Amended Complaint respectfully on July 11, 2022 and August 31, 2022, adding additional factual allegations and causes of action for rest period violations and PAGA violations.

2.5 Through informal discovery, Defendants and Defendants' Counsel provided Class Counsel with copies of all applicable versions of its policies and procedures, employee handbooks, payroll information for Aggrieved Employees and Class Members including, but not limited to, the number of workweeks and pay periods at issue within the Class Period and PAGA Claim Period, dates of employment, total number of Class Members and Aggrieved Employees, average rates of pay, and timecard data, drive-time records and payroll reports for a randomly

1 selected sample of Class Members and Aggrieved Employees.

2 2.6 After Class Counsel received and analyzed the data, the parties participated in a
3 lengthy mediation with private mediator Jeffrey Owensby on July 12, 2022. After the case did
4 not resolve, the Parties participated in a subsequent mediation with Jeffrey Owensby on August
5 11, 2022, which resulted in a resolution on essential terms, which was further memorialized and
6 detailed through this Agreement. At all times, the Parties' settlement negotiations have been non-
7 collusive, adversarial, and at arm's length.

8 2.7 Discussions between Plaintiffs and Class Counsel, between counsel for the
9 Parties, document productions, extensive legal analysis, the provision of information by
10 Defendants to Class Counsel and the detailed analysis of the records, have permitted each side to
11 assess the relative merits of the claims and the defenses to those claims.

12 2.8 In the Action, Plaintiffs contend that Defendants violated California law by 1)
13 failing to pay employees for their drive time between client locations, which resulted in an
14 underpayment on minimum wages and overtime wages; 2) failing to pay for all off-the-clock
15 time, including cutting and laminating stimuli essential for use with clients, time spent on client
16 session notes, training time, and time spent communicating and coordinating with client
17 families, caregivers, and the other members of the treatment team, which resulted in an
18 underpayment of minimum and overtime wages; 3) failing to provide meal and rest periods in
19 compliance with California law due to the length of client sessions and associated tasks and
20 driving requirements to and from client sessions; 4) failing to pay reimbursements for business-
21 related cell phone use; and 5) failing to accurately itemize the hours and wages earned on
22 paystubs issued to Class Members and Aggrieved Employees. The waiting time penalties, unfair
23 competition, and PAGA claims are derivative of these violations. Defendants have denied each
24 of Plaintiffs' claims and Defendants have denied that this Action is appropriate for class
25 certification for anything other than settlement purposes. The agreed upon Gross Settlement
26 Amount was reached after evaluating the Parties' theories of potential exposure for the
27 underlying claims and the class data supporting these claims. The Parties, with the assistance of
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1 the mediator, also assessed appropriate discounts to the potential liability based on Defendants'
2 financial limitations, and factual and legal contentions and defenses.

3 2.9 Plaintiffs and Class Counsel recognize the expense and length of continued
4 protracted litigation necessary to litigate Plaintiffs disputes in the Action through trial and
5 through any possible appeals. Plaintiffs also have taken into account the uncertainty and risks of
6 the outcome of further litigation, and the difficulties and delays inherent in such litigation.
7 Plaintiffs and Class Counsel are also aware of the burdens of proof necessary to establish
8 liability for the claims asserted in the Action, both generally and in response to Defendants'
9 defenses thereto, and the difficulties in establishing damages, penalties, restitution and other
10 relief sought in the Action. Plaintiffs and Class Counsel also have taken into account
11 Defendants' agreement to enter into a settlement that confers substantial benefits upon the Class
12 Members. Based on the foregoing, Plaintiffs and Class Counsel have determined that the
13 Settlement set forth in this Agreement is fair, adequate, and reasonable, and is in the best
14 interests of all Class Members.

15 2.10 Defendants have concluded that any further defense of this litigation would be
16 protracted and expensive for all Parties. Substantial amounts of Defendants' time, energy, and
17 resources have been, and unless this Settlement is completed, will continue to be devoted to the
18 defense of the Plaintiffs' claims. Defendants have also taken into account the risks of further
19 litigation in reaching its decision to enter into this Settlement. Even though Defendants continue
20 to contend that they are not liable for any of the claims set forth by Plaintiffs in this Action,
21 Defendants have agreed, nonetheless, to settle in the manner and upon the terms set forth in this
22 Agreement to put to rest the claims in this Action. Defendants have claimed and continue to
23 claim that the Released Claims have no merit and do not give rise to liability. This Agreement is
24 a compromise of disputed claims. Nothing contained in this Agreement, no documents referred
25 to herein, and no action taken to carry out this Agreement, may be construed or used as an
26 admission by or against Defendants as to the merits or lack thereof of the claims asserted in the
27 Action. Defendants contend that they have complied with all applicable state, federal, and local

1 laws.

2 2.11 The Parties agree that the above-described investigation and evaluation, as well
3 as discovery and the information exchanged to date, are more than sufficient to assess the merits
4 of the respective Parties' positions and to compromise the issues on a fair and equitable basis.
5 Plaintiffs, Class Counsel, Defendants, and Defendants' Counsel have concluded that it is
6 desirable that the Action be settled in a manner and upon such terms and conditions set forth
7 herein in order to avoid further expense, inconvenience and distraction of further legal
8 proceedings, and the risk of an adverse outcome each of the Parties potentially face in the
9 Action. Therefore, the Parties desire to resolve the claims in the Action. Plaintiffs, Class
10 Counsel, Defendants, and Defendants' Counsel are of the opinion that the Agreement is a fair,
11 reasonable, and adequate compromise of the disputed claims in light of all known facts and
12 circumstances and warrants approval by the Court.

13 **III. THE CONDITIONAL NATURE OF THIS AGREEMENT**

14 3.1 This Agreement and all associated exhibits or attachments are made for the sole
15 purpose of settling the Action. This Agreement and the settlement it evidences are made in
16 compromise of disputed claims. Because the Action was pled as a class action, this Agreement
17 must receive preliminary and final approval by the Court. Accordingly, the Parties enter into this
18 Agreement and associated settlement on a conditional basis. If the Court does not enter an order
19 granting final approval of the Agreement, or if the Court's approval of the settlement is reversed
20 or materially modified on appellate review, this Agreement shall be deemed null and void; it
21 shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose
22 whatsoever; all payments made under the terms of this Agreement, if any, will be returned to
23 Defendants in full; and the negotiation, terms and entry of the Agreement shall remain subject to
24 the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence
25 408, and any other analogous rules of evidence that may be applicable. The Parties agree to
26 work together in good faith to resolve any potential issues identified by the Court that may
27 materially modify this Agreement.

3.2 Defendants have denied all claims as to liability, damages, liquidated damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendants have agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or the Effective Date does not occur, Defendants do not waive, but rather expressly reserve, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

IV. SCOPE OF THE CLASS

4.1 The scope of the class of individuals encompassed under the Agreement, who are entitled to all benefits as authorized under the Agreement and subject to all obligations and duties required under the Agreement, shall include all Class Members as defined in Section 1.8 and all Aggrieved Employees as defined in Section 1.2. However, it shall not include any Class Members who opt out, as set forth in Section 7.5.1.

4.2 Individuals entitled to recover under this Agreement will include only those individuals who are identified as being within the scope of this Agreement under Section 4.1.

4.3 Any person who believes that he or she is a Class Member or Aggrieved Employee and wishes to participate in the Agreement, but did not receive a Notice of Settlement because his or her name did not appear on the class list provided to the Settlement Administrator prior to mailing, may submit a data request to the Settlement Administrator. The data request must contain all of the following information: (a) the individual's full name and the last four digits of their Social Security Number; (b) the name used by such employee at the time his or her employment with Defendants ended, if different from the name provided under (a); (c) the dates during which the individual was employed by Defendants; and (d) a return address to which a response may be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or otherwise submitted to the Settlement Administrator such that it is received before the conclusion of the Notice Period. Upon receipt of any data requests, the

1 Settlement Administrator shall promptly (in no event more than two business days) transmit the
2 data requests to Defendants' Counsel and request that Defendants review their records.

3 4.4 If Defendants do agree that the person listed in a data request is a Class Member
4 and/or Aggrieved Employee, the Settlement Administrator shall promptly mail a Notice of
5 Settlement to the person who submitted the data request, at the address designated for that
6 purpose in the data request. All provisions of this Agreement relating to the Notice of Settlement
7 shall apply to Notice of Settlement sent in response to data requests, and any person who
8 submits a data request and is sent a Notice of Settlement in response shall be treated by the
9 Settlement Administrator as a Class Member and/or Aggrieved Employee for all other purposes.

10 4.5 If Defendants disagree that the person listed in a data request is a Class Member
11 and/or Aggrieved Employee, Defendants' Counsel and Class Counsel shall attempt to resolve
12 any such dispute in good faith within seven (7) calendar days of Class Counsel being advised in
13 writing of the data request dispute. Defendants' records shall control unless the individual
14 submitting the data request provides persuasive evidence to doubt the accuracy of those records.
15 Each data request dispute that Defendants' Counsel and Class Counsel cannot timely resolve
16 shall be resolved by the Settlement Administrator. The Settlement Administrator must accept
17 and weigh all the evidence provided in a good faith attempt to resolve the dispute. The
18 Settlement Administrator must resolve any dispute submitted to it within seven (7) calendar days
19 after Defendants' Counsel and Class Counsel submit the dispute to the Settlement Administrator.
20 The decision by the Settlement Administrator shall be final and there shall be no right of appeal.

21 **V. TERMS OF THE SETTLEMENT**

22 The Parties agree as follows:

23 5.1 Gross Settlement Amount: In consideration and exchange for the releases
24 described in Section 6, Defendants shall pay the Gross Settlement Amount (\$723,511.59),
25 subject to any and all reductions as set forth in this Agreement, including Defendants' Offset as
26 set forth in Sections 1.15 and 5.8. Funding of the Gross Settlement Amount shall occur
27 consistent with the payment schedule set forth in Section 5.10 to be held in trust in a QSF by the

1 Settlement Administrator. The Gross Settlement Amount includes payments to Qualified
2 Claimants, Aggrieved Employees, all attorneys' fees, costs and litigation expenses related to the
3 Action incurred to date, as well as all such fees and costs incurred in documenting the
4 Agreement, administering the Agreement (including Settlement Administrator Costs), and
5 obtaining final approval of the Agreement, the Enhancement Payment to the Class
6 Representatives, the PAGA Payment and any monies necessary to satisfy Defendants' tax
7 obligations (e.g. employer FICA, FUTA and SDI contributions on wage payments) on any
8 monies distributed to Qualified Claimants.

9 5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's
10 fees of thirty-five (35%) percent of the Gross Settlement Amount, which shall be paid from the
11 Gross Settlement Amount. Defendants have agreed to not oppose Class Counsel's application for
12 attorneys' fees so long as it does not exceed the thirty-five (35%) percent threshold. Class
13 Counsel will also be entitled to reimbursement for advanced litigation expenses not to exceed
14 \$10,000, which shall be paid from the Gross Settlement Amount. Defendants have agreed to not
15 oppose Class Counsel's request for reimbursement for advanced litigation expenses so long as
16 they do not exceed the \$10,000 threshold. The Settlement Administrator will issue Class
17 Counsel an IRS Form 1099 for the attorneys' fees and costs paid under this Agreement. In the
18 event that the Court awards less than the requested attorney's fees and/or costs, the portion of the
19 requested amounts not awarded to Class Counsel shall be added to the Net Settlement Amount
20 to be distributed to Qualified Claimants on a pro rata basis.

21 5.3 Settlement Administrator Costs: The Settlement Administrator Costs shall be
22 paid from the Gross Settlement Amount and shall not exceed \$15,000. The difference between
23 any actual costs and the allocated \$15,000 shall be added to the Net Settlement Amount.

24 5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiffs, shall apply to the
25 Court for an Enhancement Payment to the Class Representatives in an amount not to exceed Ten
26 Thousand Dollars (\$10,000) for each Plaintiff, for a total of Thirty Thousand Dollars (\$30,000)
27 collectively, to compensate for the risks, time, and expense of their involvement in the Action

1 and securing the benefits of this Agreement for Class Members. The Enhancement Payment is in
2 addition to the Claim Amount Plaintiffs would otherwise be due under the Agreement as a
3 Qualified Claimant. Defendants have agreed to not oppose Class Counsel's request for an
4 Enhancement Payment to the Class Representatives so long as it does not exceed the amount
5 stated herein. The Enhancement Payment will be designated as a non-wage payment and
6 reported on an IRS Form 1099. In the event that the Court awards less than the Enhancement
7 Payment amount requested, then any portion of the requested amount not awarded to the Class
8 Representatives shall be added to the Net Settlement Amount to be distributed to Qualified
9 Claimants on a pro rata basis.

10 5.5 PAGA Payment: Fifteen Thousand Dollars (\$20,000) of the Gross Settlement
11 Amount shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of
12 the PAGA Payment will be paid to the LWDA and Twenty-Five percent (25%) will be paid to
13 Aggrieved Employees on a pro rata basis as described below in Section 5.8. Any amount not
14 approved by the Court for the allocated PAGA Payment shall be added to the Net Settlement
15 Amount to be distributed to Qualified Claimants on a pro rata basis.

16 5.6 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount
17 or PAGA Payment allocated to Qualified Claimants and/or Aggrieved Employees that were not
18 claimed by cashing their respective settlement checks before the deadline to do so, that
19 remaining amount shall be donated to Santa Clara University School of Law's Katherine and
20 George Alexander Community Law Center (Law Center). The Law Center fulfills the purpose of
21 this lawsuit, as it trains law students and provides community education on workers' rights,
22 particularly in low wage communities. Neither Class Counsel nor Defendants' counsel have
23 received any compensation for designating the Law Center as the *cy pres* beneficiary. No
24 portion of the Gross Settlement Amount will revert to Defendants for any reason.

25 5.7 No Additional Benefits Contributions: All Claim Amounts paid to Qualified
26 Claimants and Aggrieved Employees shall be deemed to be income solely in the year in which
27 such amounts were actually received. It is expressly understood and agreed that the receipt of
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1 such Claim Amounts will not entitle any Qualified Claimant or Aggrieved Employee to any new
2 or additional compensation or benefits under any company bonus or other compensation or
3 benefit plan or agreement in place during the period covered by the Agreement, nor will it entitle
4 any Qualified Claimant Aggrieved Employee to any increased retirement, 401(k) and/or 403(b)
5 benefits or matching benefits, or deferred compensation benefits. It is the intent of this
6 Agreement that the Claim Amounts provided for in this Agreement are the sole payments to be
7 made by Defendants to the Qualified Claimants and Aggrieved Employees in connection with
8 this Agreement (notwithstanding any contrary language or agreement in any benefit or
9 compensation plan document that might have been in effect during the period covered by this
10 Agreement).

11 5.8 Pro Rata Distribution Formula: Payment to Qualified Claimants and Aggrieved
12 Employees of their Claim Amount will not require the submission of a claim form. A Net
13 Settlement Amount will be determined by subtracting from the Gross Settlement Amount any
14 amounts for approved attorneys' fees and costs, any Enhancement Payment to the Class
15 Representatives, the Settlement Administrator Costs, employer payroll taxes, and the PAGA
16 Payment. To the extent a Class Member's or Aggrieved Employee's short duration of
17 employment resulted in Qualifying Workweeks is some fraction less than one (1) total
18 Qualifying Workweek, their Qualifying Workweek number shall be rounded up to equal one (1)
19 Qualifying Workweek. Each Class Member's share will be determined by dividing their total
20 Qualifying Workweeks within the Class Period by the total Qualifying Workweeks of all Class
21 Members within the Class Period. That fraction will then be multiplied by the Net Settlement
22 Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each
23 Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by
24 dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by
25 all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied
26 by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual
27 share. During the Action, Defendants paid Defendants' Offset to an estimated 198 Class
28

Members. Any payment due to one of these individuals based on the allocation formula for the Net Settlement Amount set forth above will be offset by the amount previously paid under Defendants' Offset to that individual. To the extent the amount owed to a Class Member would be less than the amount actually paid through Defendants' Offset, Defendants will not be able to recover that amount paid to the Class Member or offset that amount against payment to other Class Members. To cover any potential overpayment (*e.g.* the amount paid through Defendants' Offset is more than the Class Members' individual settlement share) Defendants have agreed to contribute up to \$5,000 of additional funds to the Net Settlement Amount to ensure that any overpayments will not impact the total Net Settlement Amount available for distribution to the class. Regardless, to the extent the calculation of the Claim Amount (including the Defendants' Offset) results in an amount less than the equivalent of one workweek, that Class Member shall receive an allocation of one (1) Qualifying Workweek. In the case that a prior payment made by Defendants to any Class Member (Defendants' Offset) is returned as undeliverable, and/or remains uncashed at the time Defendants' first payment installment is due, the balance of these returned payments will be added to the total amount owed by Defendants under the terms of the payment plan set forth in this Agreement (§5.10), so that the Gross Settlement Amount (§1.19) paid by Defendants will not be reduced even if the actual offset amount is reduced. Moreover, any Class Member that was issued a prior payment by Defendants which was returned or uncashed, will be paid their full pro rata share of the settlement pursuant to this Agreement with no individual offset.

5.9 Tax Allocation: The Parties recognize that the Claim Amounts to be paid to Qualified Claimants and/or Aggrieved Employees reflect a settlement of a dispute over claimed penalties and wages. The Settlement Administrator shall calculate the employer's share of payroll taxes on the amounts paid to Qualified Claimants as wages as well as calculating all required withholdings and deductions from said wage payments. The characterization of Claim Amounts to Qualified Claimants and Aggrieved Employees are as follows:

5.9.1 One-Third (1/3) of each Qualified Claimants' Claim Amount shall be

1 allocated for payment of disputed wages and shall be subject to required employer taxes.

2 Qualified Claimants shall receive an IRS Form W-2 for reporting of this portion of their Claim
3 Amount.

4 5.9.2 Two-Thirds (2/3) of each Qualified Claimants' Claim Amount shall be
5 allocated for disputed statutory penalties and interest, and no amount shall be deducted for any
6 taxes. This portion of the Claim Amount consists of other income, not wages, for which the
7 Qualified Claimants shall receive an IRS Form 1099-MISC.

8 5.9.3 The entirety (100%) of each Aggrieved Employee's share of the 25%
9 portion of the PAGA Payment shall be allocated for payment of disputed civil penalties, and no
10 amount shall be deducted for any taxes. This portion of the Claim Amount consists of other
11 income, not wages, for which the Aggrieved Employees shall receive an IRS Form 1099-MISC.

12 5.10 Funding of the Settlement Amount and Payment Schedule: Defendants will pay
13 to the Claims Administrator Six Hundred Thousand Dollars and No Cents (\$600,000.00) (*i.e.*,
14 the Gross Settlement Amount less Defendants' Offset)¹ to be held in trust in a Qualified
15 Settlement Fund ("QSF") for the benefit of Class Members and/or PAGA Members from which
16 payment under this Settlement shall be made. Funding of the Gross Settlement Amount, subject
17 to Defendant's Offset, shall be made pursuant to the following payment schedule ("Funding
18 Schedule")

19 5.10.1 One Hundred and Ninety-Five Thousand Dollars (\$195,000) as a lump
20 sum payment, in addition to the total amount of any uncashed and/or returned payments made
21 to Class Members by Defendants, shall be paid within fifteen (15) calendar days following the
22 Court's preliminary approval of the Settlement, or by December 25, 2022, whichever is earlier

23 5.10.2 The remaining Four Hundred and Five Thousand Dollars (\$405,000) shall
24 be paid by Defendants in five (5) quarterly installments (\$81,000 each) over a period of twenty
25 (20) months commencing on the start of the first quarter after the Court's preliminary approval

26
27 ¹ In the case that any of Defendants' payments to Class Members were returned or uncashed at the time the initial
28 settlement installment is due, this amount will be added to the remaining \$600,000.00 Gross Settlement Amount
due and shall be paid at the time of the initial installment.

1 of the Settlement, or the first quarter following the initial lump sum payment (\$195,000),
2 whichever is earlier. The five (5) quarterly payment together with the \$195,00 lump sum
3 payment are hereinafter referred to as the "Settlement Payments". For the purposes of this
4 Settlement, the yearly quarters are as follows: January 1st – March 31st, April 1st – June 30th,
5 July 1st – September 30th, and October 1st – December 31st.

6 5.10.3 Above represents the funding schedule agreed to by the Parties, but
7 nothing in this funding schedule or Agreement prevents Defendants from funding the settlement
8 in a shorter time frame if they chose to do so.

9 5.10.4 In the event any of the Settlement Payments is not timely made, as
10 reported by the Claims Administrator, Plaintiffs shall give written notice to Defendants' attorney
11 Reed E. Harvey via email of the default (harvey@schinner.com) with a copy to Defendants
12 (management@abaplus.net). Defendants shall then have ten (10) days from the date of email
13 notice of default to cure said default. If the default is not cured within ten (10) days from the
14 date of the email notice of default, Plaintiffs shall have the right to file the Conditional
15 Stipulation for Entry of Judgment and thereafter have judgment entered against Defendants in
16 accordance with the Conditional Stipulation for Entry of Judgment. In the event of an uncured
17 default under this Settlement, followed by the filing of the Conditional Stipulation For Entry of
18 Judgment and the entering of a judgment pursuant thereto against Defendants for the judgment
19 amount after credits for payments received, Plaintiffs shall be entitled to recover reasonable
20 attorney fees and costs against Defendants incurred in enforcing the judgment, together with
21 interest on the judgment amount at the legal rate of ten percent (10%) form the date of entry of
22 judgment until paid in full.

23 5.11 Qualified Claimants and Aggrieved Employees shall be solely responsible for the
24 reporting and payment of their share of any federal, state and/or municipal income or other taxes
25 on payments made pursuant to this Agreement, and shall hold the Parties, Class Counsel, and
26 Defendants' Counsel free and harmless from any claims resulting from treatment of such
27 payments as non-taxable, including the treatment of such payments as not subject to withholding

1 or deduction for payroll and employment taxes. No party has made any representation to any of
2 the other Parties as to the taxability of any payments pursuant to this Agreement, including the
3 payments to Qualified Claimants, the payments to Aggrieved Employees, the payments to Class
4 Counsel, the payments to the Class Representatives, the payroll tax liability of Defendants, or
5 the allocation of the Net Settlement Amount or PAGA Payment to wage and non-wage income
6 as provided in this Section, or otherwise as to tax implications of any provision of this
7 Agreement.

8 5.12 No Additional Contribution by Defendants: Defendants' monetary obligation
9 under this Agreement is limited to the Gross Settlement Amount, which includes employer side
10 payroll taxes owed on amounts characterized as wages under this Agreement. All other costs and
11 expenses arising out of or in connection with the performance of this Agreement shall be paid
12 from the Gross Settlement Amount, unless expressly provided otherwise herein. However, in the
13 event this agreement is deemed null and void as described in Section 3 because the Court, in its
14 independent determination, finds that the Agreement does not meet the standards for settlement
15 approval, then Defendants and Plaintiffs shall be equally responsible for the costs of the
16 Settlement Administrator incurred between the date the Agreement was executed and the date of
17 such event. Furthermore, if the Court finds that the Agreement does not meet the standards for
18 settlement approval, all Settlement Payments made by Defendants pursuant to Section 5.10, if
19 any, will be returned to Defendants in full.

20 5.13 Certification For Settlement Purposes: The Parties agree that, for purposes of
21 settlement only, certification of the class as defined in Section 1.8 and 4.1 is appropriate and the
22 requisites for establishing class certification have been met and are met.

23 5.14 Adequacy of Class Counsel and Class Representatives: The Parties agree that, for
24 purposes of settlement only, Class Counsel and Plaintiffs are adequate representatives for Class
25 Members and Aggrieved Employees.

26 **VI. RELEASE**

27 6.1 Release of Claims by Qualified Claimants: Upon the Effective Date, all Qualified
28

1 Claimants will be deemed to fully, finally and forever release Qualified Claimant's Released
2 Claims (Section 1.32) as to all Released Parties. In addition, on the Effective Date, all Qualified
3 Claimants and their successors in interest will be permanently enjoined and forever barred from
4 prosecuting any of Qualified Claimant's Released Claims against any of the Released Parties.
5 (*See* Section 1.32.)

6 6.2 Release of PAGA Claims By Plaintiffs: Upon the Effective Date, Plaintiffs will
7 be deemed to fully, finally and forever release the Released PAGA Claims as to all Released
8 Parties on behalf of themselves and the LWDA, who shall also be bound by this release. (*See*
9 Section 1.34.)

10 6.3 Upon the Effective Date, in addition to Plaintiffs waiving of the Qualified
11 Claimant's Released Claims, Plaintiffs will also expressly waive all rights and benefits under the
12 terms of section 1542 of the California Civil Code with respect to those claims. Section 1542
13 reads:

14 "A general release does not extend to claims that the creditor or releasing party does not
15 know or suspect to exist in his or her favor at the time of executing the release and that,
16 if known by him or her, would have materially affected his or her settlement with the
17 debtor or released party."

18 Notwithstanding the provisions of section 1542, and for the purpose of implementing a full and
19 complete release and discharge, Plaintiffs expressly acknowledges that this Settlement is
20 intended to include in its effect, without limitation, all Qualified Claimant's Released Claims
21 which Plaintiffs do not know or suspect to exist in her favor at the time of execution hereof, and
22 that the Settlement contemplates the extinguishment of all such claims with respect to her.

23 **VII. SETTLEMENT ADMINISTRATION**

24 7.1 Duties of Settlement Administrator: The Settlement Administrator shall be
25 responsible for: 1) receiving Class Member and Aggrieved Employee contact information and
26 confirming addresses are valid; 2) calculating estimated Claim Amounts and any and all taxes
27 associated with the Claim Amounts, including Employer taxes and providing a report to the

Parties, including any distribution amounts to Class Members, which due to Defendants Offset amount to less than one (1) Qualifying Workweek; 3) taking appropriate steps to trace and locate any individual Class Members and Aggrieved Employee whose address or contact information as provided to the Settlement Administrator is inaccurate or outdated and mailing the Notice of Settlement to Class Members; 4) maintaining a web address where Class Members and Aggrieved Employees may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court; 5) providing notification to the appropriate state and federal officials of this Agreement where required under the law; 6) receiving, independently reviewing, and resolving any challenges (in consultation with Class Counsel and Defendants' Counsel) from Class Members or Aggrieved Employees, including any associated documentation, regarding their Qualified Workweek calculations; 7) receiving and serving on Class Counsel, Defendants' Counsel, and the Court, copies of any opt-outs or objections submitted by Class Members; 8) establishing a toll free telephone line and responding to inquiries and requests for information or assistance from Class Members and/or Aggrieved Employees; 9) maintaining a QSF; 10) reporting to Class Counsel all payments, or non-payments made by Defendants' under the Funding Schedule, outlined in Section 5.10; 11) determining and paying the final amounts due to be paid under the Agreement after resolution of all challenges, disputes, opt-outs, awarded attorneys' fees and costs, Settlement Administrator Costs, PAGA Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability to locate Class Members or Aggrieved Employees; 12) determining the validity of any disputes or late opt outs by previously unidentified Class Members or Aggrieved Employees; 13) paying any residual funds from uncashed checks; 14) reporting to Class Counsel and Defendants' Counsel regarding the statistics of the administration, including (a) the number of initial Notice of Settlement Forms mailed; (b) the number of forwarded mailings; (c) the number of re-mailed Notice of Settlement Forms; (d) the number of total undeliverable mailings; (e) the number of address traces performed for undeliverable mailings; (f) the number of mailings undeliverable from traced addresses; (g) the

1 number of total objections to the settlement received; (h) the number of opt-outs received; (i) the
2 number of disputes received; G) the number of disputes resolved; 15) providing a declaration to
3 the Court regarding the final statistics of the administration and compliance with all payment
4 obligations under the Agreement; 16) completing all necessary tax reporting on the QSF and
5 payment of the Claim Amounts to Qualified Members and Aggrieved Employees; and 17)
6 carrying out other related tasks as necessary to effectuate the terms of this Agreement and any
7 Order of the Court. All disputes relating to the Settlement Administrator's ability and need to
8 perform its duties shall be referred to the Court, if necessary, which will have continuing
9 jurisdiction over the terms and conditions of this Agreement, until all payments and obligations
10 contemplated by the Agreement have been fully executed.

11 7.2 Notice to Class Members and Aggrieved Employees: Defendants warrant that
12 Class Members and Aggrieved Employees are all over the age of eighteen (18) and are able to
13 read, write, and understand English such that no translation of the Notice of Settlement is
14 required. The nature of Class Members' and Aggrieved Employees' employment required a well-
15 educated workforce with a strong ability to communicate in, and understand, English. The
16 Notice of Settlement will provide Class Members and Aggrieved Employees with a summary of
17 the terms and conditions of the Agreement, how to participate in the settlement, how to object to
18 the Agreement, how to dispute the individual's Qualifying Workweeks, and how to opt-out from
19 the Agreement. The Notice of Settlement will also inform Class Members and Aggrieved
20 Employees of the Gross Settlement Amount, Net Settlement Amount, proposed attorneys' fees
21 and costs allocations, any proposed Enhancement Payments, proposed Settlement Administrator
22 Cost allocations, proposed PAGA Payment allocations, Defendants' Offset, the scope of the
23 class, the nature and extent of the released claims, dates set for a fairness hearing and hearing on
24 Class Counsels' motion for attorneys' fees and costs. The Notice of Settlement shall include
25 information regarding Class Member's and Aggrieved Employee's estimated Claim Amount.

26 7.3 Class Member Data and Mailing: No later than thirty (30) calendar days after the
27 Preliminary Approval Date, Defendants shall provide the Settlement Administrator with the

1 name, last known mailing address, last known telephone number, Social Security Number, start
2 and end date of employment (if any) of each Class Member, and any other information the
3 Settlement Administrator needs to effectuate notice to Class Members and Aggrieved
4 Employees as outlined herein. The Settlement Administrator shall review the data to determine
5 the number of Qualifying Workweeks for each Class Member and Aggrieved Employee. No
6 later than fifteen (15) calendar days after receipt of such address information, the Settlement
7 Administrator will perform a national change of address ("NCOA") search, update the addresses
8 per the results of the NCOA search, and then mail the Notice of Settlement to each Class
9 Member and Aggrieved Employee by first-class mail, postage prepaid. Class Counsel shall also
10 provide the Settlement Administrator with the Complaint, Class Counsel's motion for
11 preliminary approval, the Agreement, and any other documents required by the Court that are to
12 be posted at the web address as stated in Section 7.1 The Settlement Administrator shall
13 maintain all information received from Defendants confidential to itself, and Defendants'
14 Counsel. However, Class Counsel shall be able to review the breakdown of Qualified
15 Workweeks and estimated Claim Amounts for Class Members and Aggrieved Employees prior
16 to mailing for quality assurance provided the personal identifying information is redacted and/or
17 omitted.

18 7.4 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of
19 Settlement is returned to the Settlement Administrator as non-delivered on or before the
20 conclusion of the Notice Period, the Notice of Settlement shall be sent to the forwarding address
21 affixed thereto within five (5) calendar days. If no forwarding address is provided, then the
22 Settlement Administrator shall promptly attempt to determine a correct address using a single
23 skip-trace search using the name, address and/or Social Security number of the individual
24 involved, and shall then perform a single re-mailing within five (5) calendar days. Following
25 each search that does not result in a corrected address, for those Class Members who appear to
26 be current employees of Defendants at the time of the Preliminary Approval Date, the
27 Settlement Administrator shall contact Defendants' Counsel for assistance and Defendants shall

1 cooperate in good faith with the Settlement Administrator's reasonable efforts to obtain valid
2 mailing addresses for Class Members to the extent they are active employees of Defendants. In
3 the event the Notice of Settlement is forwarded to a new address and/or re-mailed to a Class
4 Member, the deadline for the Class Member to submit an objection, opt out, or dispute their
5 Qualifying Workweek allocation shall be the end of the Notice Period or 10 calendar days from
6 the date of the re-mailing, whichever is later. In the event the procedures in this Section are
7 followed and the Class Member does not timely and properly opt-out the Class Member shall be
8 bound by all terms of the Agreement, including the releases contained in Section 6.

9 7.5 Responses to Notice of Settlement:

10 7.5.1 *Opting Out of the Settlement:* For those Class Members who do not wish
11 to participate in the Settlement, such Class Members may exclude themselves by submitting a
12 timely written request to the Settlement Administrator. The written request ("Request for
13 Exclusion") should state that he/she has received the Notice of Settlement, decided not to
14 participate in the Settlement, and words to the effect that he/she desires to be excluded from the
15 Settlement. The Request for Exclusion must also state the individual's full name, address, date
16 of birth, and the dates he/she worked as a non-exempt employee for Defendants in California.
17 The Request for Exclusion must also state that it is in reference to the case of *Kacey Hernandez*
18 *vs. ABA Plus, Inc.*, Contra Costa County Superior Court, Case No. C22-00604. The Request for
19 Exclusion Form must be post-marked no later than the conclusion of the Notice Period or the re-
20 mailing timeline stated in Section 7.4. The Request for Exclusion must be signed, dated and
21 mailed by First Class U.S. Mail, or the equivalent, to the Settlement Administrator. The date of
22 the postmark on the return-mailing envelope shall be the exclusive means used to determine
23 whether a Request for Exclusion Form has been timely submitted. Any Class Member who
24 submits a timely opt-out request will not be entitled to any benefit of the Agreement as a Class
25 Member, will not be bound by the Agreement, nor will they have any right to object, appeal or
26 comment thereon. Class Members who fail to properly opt out shall be bound by all terms of the
27 Agreement and any order or final judgment thereon, regardless of whether they otherwise have

1 requested to opt-out of the Agreement. Aggrieved Employees cannot opt out of this Agreement
2 as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out
3 of being a Class Member.

4 7.5.2 *Objection Procedures:* Any Class Member who does not opt-out can
5 object to this Agreement or otherwise to be heard concerning this Agreement. To object, the
6 individual may file a written objection and a notice of intention to appear at the Final Approval
7 hearing with the Clerk of the Contra Costa County Superior Court of the State of California and
8 send copies to the Settlement Administrator, Class Counsel and counsel for Defendant. Any
9 written objection should state each specific reason in support of the objection and any legal
10 support for each objection. The individual must state his/her full name, address, date of birth,
11 and the dates he/she worked as a Class Member in California for Defendants. To be valid and
12 effective, any written objections to approval of the Settlement must be filed with the Clerk of the
13 Court or delivered to the Settlement Administrator, Class Counsel and/or counsel for Defendant
14 no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4.
15 Objections may also be made at the Final Approval hearing without a written objection being
16 submitted, but only with the Court's express permission. If the Court rejects the objection, the
17 individual will be bound by the terms of the Settlement.

18 7.5.3 *Dispute Procedures:* Any Class Member who disputes the number of
19 Qualifying Workweeks on the Notice of Settlement shall contact the Settlement Administrator.
20 The dispute must (a) identify the nature of the dispute; (b) provide any information or
21 documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than the
22 conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. The Settlement
23 Administrator shall promptly (in no event more than two business days) forward all such
24 disputes to Defendants' Counsel and request that Defendants review the dispute. Defendants'
25 records shall presumptively control unless the Class Member can produce documentation
26 evidencing other periods of employment worked. If Defendants agree with submitted
27 information, the Class Member shall be credited or subtracted Qualifying Workweeks in

1 accordance with their submitted dispute and that final number of Qualified Workweeks shall
2 govern the calculation of that Class Member's Claim Amount. If Defendants do not agree with
3 the submitted information, Defendants' Counsel will promptly advise Class Counsel of the
4 dispute, which includes turning over any documentation submitted by the Class Member as part
5 of the dispute. Defendants' Counsel and Class Counsel shall attempt in good faith to resolve any
6 such dispute within five (5) calendar days of Class Counsel being advised of the dispute. Each
7 dispute that Defendants' Counsel and Class Counsel cannot timely resolve shall be resolved by
8 the Settlement Administrator or Court.

9 7.5.4 *Deficient Opt Outs, Objections, and/or Disputes*: In the event that a
10 deficient opt out or objection or dispute is received on or before the conclusion of the Notice
11 Period, the Settlement Administrator shall mail a letter to the Class Member within five (5)
12 calendar days informing them of the deficiency. If a deficiency letter is mailed to a Class
13 Member, the deadline for the Class Member to cure the deficiency shall be the end of the Notice
14 Period or 10 calendar days from the date of the deficiency letter, whichever is later.

15 7.6 Due Process Acknowledgement: Compliance with the procedures set forth in
16 Sections 7.1 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action
17 and the Agreement and shall satisfy Class Members' due process rights. Nothing else shall be
18 required of the Parties, Class Counsel or Defendants' Counsel to provide notice of the proposed
19 Agreement, unless otherwise ordered by the Court.

20 7.7 Settlement Administrator Declaration Regarding Notice Period: Within twenty-
21 one (21) calendar days after the conclusion of the Notice Period, the Settlement Administrator
22 shall provide Class Counsel and Defendants' Counsel with a signed declaration under penalty of
23 perjury providing a complete and detailed report regarding the statistics and responses of
24 settlement administration to date and all the Settlement Administrators' obligations under
25 Sections 5.8 to 5.9, 7.1 to 7.5.4, and 7.9.

26 7.8 Settlement Administrator Payments to Qualified Claimants, Class Counsel and
27 Plaintiffs: Within seven (7) calendar days after the Gross Settlement Amount has been fully

1 funded pursuant to the Funding Schedule outlined in Section 5.10, or seven (7) calendar days
2 after the Final Approval Date, whichever is later, the Settlement Administrator shall calculate
3 the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or
4 Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations
5 Class Counsel and Defendants' Counsel. Within twenty-eight (28) calendar days after the
6 Effective Date (*a.k.a.* Final Approval Date), or twenty-eight (28) days after the Gross Settlement
7 Amount has been fully funded, whichever is later, the Settlement Administrator shall deliver
8 payment of Class Counsels' attorney's fees and costs, the Enhancement Payment payable to
9 Plaintiffs, the 75% portion of the PAGA Payment payable to the LWDA, Settlement
10 Administrator Costs, and payment to Qualified Claimants and/or Aggrieved Employees as
11 required under this Agreement and approved by Court.

12 7.8.1 The Settlement Administrator shall send, via UPS or other similar
13 overnight carrier that allows for tracking of delivery, a check for the Court-approved attorneys'
14 fees and costs to Class Counsel unless other method is requested by Class Counsel. Class
15 Counsel shall provide the Settlement Administrator with the pertinent taxpayer identification
16 number and payment instructions after the Final Approval Date.

17 7.8.2 The Settlement Administrator shall send a check by mail for the Court-
18 approved Enhancement Payment to the Class Representatives, care of Class Counsel unless
19 other method is requested by Class Counsel.

20 7.8.3 Only Qualified Claimants and Aggrieved Employees will receive their
21 Claim Amount.

22 7.8.4 The Settlement Administrator shall remit and report the applicable
23 portions of the payroll tax payment to the appropriate taxing authorities on a timely basis
24 pursuant to its duties under this Agreement. Defendants agree to reasonably cooperate with the
25 Settlement Administrator to the extent necessary to determine the amount of the payroll tax
26 payment required.

27 7.9 Settlement Check Expiration and Uncashed Checks: The Settlement
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Administrator shall issue Claim Amounts to Qualified Claimants and Aggrieved Employees in the form of a check, which shall become null and void if not deposited within ninety (90) calendar days of issuance. After ninety (90) calendar days of issuance, the checks shall be voided and funds from all uncashed checks shall be transmitted in accordance with Section 5.6. The Settlement Administrator shall deliver these funds within fourteen (14) calendar days after the check cashing deadline.

7.10 Settlement Administrator Declaration Regarding Compliance and Settlement Administration: Within twenty-one (21) calendar days after the last day for Qualified Claimants and Aggrieved Employees to cash their settlement checks, the Settlement Administrator shall provide Class Counsel and Defendants' Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the settlement administration documenting that all payments under the Agreement have been made, that the Court's final approval order has been complied with, and that all the obligations of the Settlement Administrator have been completed.

VIII. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE

The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Class Members, and sets further hearings. The schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

Last day for Defendants to make the initial lump-sum payment toward the Gross Settlement Amount pursuant to the Funding Schedule identified in Section 5.10 of this Agreement	Within 15 calendar days after the Preliminary Approval Date, or December 25, 2022, whichever is earlier. <i>Thereafter, installment payments will be made in accordance with this Agreement at the start of each Quarter following the Preliminary Approval Date, or</i>
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	<i>initial payment date, whichever is earlier</i>
Last day for Defendants to provide Settlement Administrator with Class Member information	Within 30 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member mailing information, and mail Notice of Settlement	Within 15 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendants (aka 45 days from the Preliminary Approval Date)
Last day for Class Members to submit opt-out, objection, dispute, and/or data requests	60 calendar days after mailing of Notice of Settlement or within 10 calendar days after they re-mailed, whichever is later Preliminary Approval Date
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 21 calendar days after end of the Notice Period
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants' Counsel	Within 7 days after the Gross Settlement Amount has been fully funded pursuant to the Funding Schedule outlined in Section 5.10 of this Agreement, or seven (7) calendar days after the Final Approval Date, whichever is later
Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within twenty-eight (28) calendar days after the Effective Date (<i>a.k.a.</i> Final Approval Date), or twenty-eight (28) days after the Gross Settlement Amount has been fully funded, whichever is later,
Last day for Qualified Members and Aggrieved Employees to cash settlement checks	90 calendar days after issuance of checks to Qualified Members and Aggrieved Employees

Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiary	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

IX. DUTIES OF THE PARTIES

9.1 The Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final approval. Within one week of signing this Agreement Class Counsel shall provide a draft of the Preliminary Approval Motion to Defendants' Counsel. Defendants' Counsel will provide comments and/or proposed revisions within one week after receipt of the draft Preliminary Approval Motion from Class Counsel. With regard to the final approval documents, a similar one-week maximum review and response time shall be observed by the Parties. The Parties will request that the Court's preliminary approval of this Agreement be embodied in an Order Granting Preliminary Approval of Class Action and PAGA Settlement.

9.1.1. Plaintiffs' motion shall seek an order: 1) Preliminarily approving the Agreement; 2) Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the Notice of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily appointing Plaintiffs and Class Counsel as

representatives of Class Members; 5) Preliminarily approving settlement administration services to be provided by the Settlement Administrator; 6) Preliminarily approving the proposed Enhancement Payment to Plaintiffs; 7) Preliminarily approving the application for payment of reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8) Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally approved as fair, reasonable and adequate as to the Class Members.

9.1.2. Defendants shall not oppose Plaintiffs' motion for approval of the proposed Agreement.

9.1.3 The Parties shall cooperate with each other and the Settlement Administrator during the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and appropriate to assure effective communication to individual Class Members of information about their rights and obligations under this Agreement.

9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the Agreement, a declaration by the Settlement Administrator of due diligence and proof of mailing of the Notice of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results of the Claim Administrator's mailings including tracing and re-mailing efforts.

9.3 Class Counsel will submit a proposed order and judgment for final approval, which shall include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair, reasonable and adequate, and directing that its terms and provisions be carried out; 2) Approving the payment of an Enhancement Payment to the Class Representatives; 3) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4) Approving the Settlement Administrator Costs; and 5) Providing that the Court will retain jurisdiction to oversee administration and enforcement of the

1 terms of the Agreement and the Court's orders.

2 9.3.1 Following entry of the Court's Order granting final approval of the
3 Agreement, the Parties will each act to ensure the fulfillment of all its provisions, including but
4 not limited to the following: 1) Should an appeal be taken from the final approval of the
5 Agreement or motion to set aside the judgement be filed, all parties will support the final
6 approval order on appeal or otherwise; 2) Class Counsel will assist the Settlement Administrator
7 as needed or requested in the process of identifying and locating Qualified Claimants and
8 Aggrieved Employees entitled to payments under the Agreement and assuring delivery of such
9 payments; 3) Class Counsel and Defendants' Counsel will cooperate with each other and assist
10 the Settlement Administrator as needed or requested in completing the distribution of any
11 residual amounts, as specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in
12 conjunction with the Settlement Administrator, will certify to the Court completion of all
13 payments required to be made by this Agreement.

14 9.4 Final Judgment: If the Court approves this Agreement at the final approval and
15 fairness hearing, the Parties will request that the Court enter an Order Granting Final Approval
16 of Class Action and PAGA Settlement and Final Judgment.

17 9.5 Notice to LWDA Class Counsel agrees to provide notice to the Labor and
18 Workforce Development Agency ("LWDA") of this settlement in accordance with Labor Code§
19 2699(1)(2).

20 9.6 Other Proceedings Pending Final Approval: The Parties further agree that
21 pending final approval of the Settlement, they will request an order from the Court enjoining
22 Class Members from filing claims before the California Division of Labor Standards
23 Enforcement (DLSE), or from initiating other proceedings regarding the Released Claims
24 against the Released Parties; this provision is intended to provide all Class Members the
25 opportunity to participate in or to opt out of the Settlement, and to ensure finality of the
26 Settlement and the Released Claims to the fullest extent permitted by law.

1 **X. MISCELLANEOUS TERMS**

2 10.1 Defendants' Right to Withdraw Based on Opt-Outs: If, prior to the Final
3 Approval Date, 10% or more of the Class Members have opted out in accordance with the
4 provisions of the Agreement, Defendants may, at their election, rescind the Agreement and all
5 actions taken in its furtherance will be thereby null and void. Defendants must exercise this right
6 of rescission, in writing, to Class Counsel, within seven (7) calendar days after the Settlement
7 Administrator notifies the Parties of the total number of opt outs submitted. If the option to
8 rescind is exercised, then any Settlement Administrator Costs shall be paid by Defendants.

9 10.2 Elevator Clause. Defendants have represented that there are no more than 9,675
10 workweeks during the Class Period as of August 11, 2022. In the event the number of
11 workweeks during the Class Period is more than 10,642.5 (*i.e.*, greater than 10% more than
12 9.675), then Defendants shall have the option of: 1) selecting a new end date for the Class Period
13 and PAGA Claim Period that limits the number of workweeks to no more than 10,642.5; or 2)
14 increasing the Gross Settlement Amount proportionally by the workweeks in excess of 10,642.5,
15 multiplied by the workweek value. For example, if there were 11,900 workweeks represented to
16 exist during the Class Period, but there are actually 15,000 workweeks in the Class Period, and
17 the actual workweek value is \$5.00 per workweek, Defendants would have to increase the Gross
18 Settlement Amount by \$15,500.00 (15,000 workweeks - 11,900 workweeks = 3,100 workweeks
19 x \$5.00/workweek).

20 10.3 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR
21 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH
22 PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
23 PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO
24 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION
25 OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
26 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
27 SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE

1 CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING
2 OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART
3 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
4 EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND
5 TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION
6 WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT
7 BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
8 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
9 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY
10 ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX
11 PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY;
12 AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED
13 ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH
14 ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER
15 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
16 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE
17 OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
18 BY THIS AGREEMENT.

19 10.4 No Prior Assignments: The Parties represent, covenant, and warrant that they
20 have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
21 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
22 cause of action or right released and discharged in this Agreement.

23 10.5 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable
24 law, by signing this Agreement Defendants are waiving any rights to appeal from the Court's
25 approval of the settlement unless the Court materially modifies the settlement. Furthermore, by
26 signing this Agreement Plaintiffs are waiving any right or ability to opt out of this Agreement
27 during the Notice Period or otherwise and is, therefore, a Qualified Claimant.

1 10.6 Exhibits Incorporated by Reference: The terms of this Agreement include the
2 terms set forth in any attached Exhibits, which are incorporated by this reference as though fully
3 set forth in this Agreement. Any Exhibits to this Agreement are an integral part of the
4 Settlement.

5 10.7 Judgment and Retention of Jurisdiction to Enforce: Upon the Final Approval
6 Date, judgment will be entered according to this Agreement, with the Court to retain jurisdiction
7 over the parties to enforce the terms therein.

8 10.8 Mutual Cooperation: The Parties agree to cooperate fully with one another to
9 accomplish and implement the terms of this Agreement. Such cooperation shall include, but not
10 be limited to, execution of such other documents and the taking of such other action as may
11 reasonably be necessary to fulfill the terms of this Agreement. The Parties to this Agreement
12 shall use their best efforts, including all efforts contemplated by this Agreement and any other
13 efforts that may become necessary by Court order, or otherwise, to effectuate this Agreement
14 and the terms set forth herein.

15 10.9 No Admission of Liability: Neither the acceptance nor the performance by
16 Defendants of the terms of this Agreement, nor any of the related negotiations or proceedings, is
17 or shall be claimed to be, construed as, or deemed to be, an admission by Defendants of the truth
18 of any of the allegations in the Complaint, the representative character of the Action, the validity
19 of any of the claims that were or could have been asserted by Plaintiffs and/or Class Members in
20 the Action, or of any liability or guilt of Defendants in the Action. Nothing in this Agreement
21 shall be construed to be or deemed an admission by Defendants of any liability, culpability,
22 negligence, or wrongdoing toward Plaintiffs, the Class Members, or any other person, and
23 Defendants specifically disclaim any liability, culpability, negligence, or wrongdoing toward
24 Plaintiffs, the Class Members, or any other person. Each of the Parties has entered into this
25 Stipulation with the intention to avoid further disputes and litigation.

26 10.10 Notices: Unless otherwise specifically provided herein, all notices,
27 demands, or other communications given hereunder shall be in writing and shall be deemed to

1 have been duly given as of the third business day after mailing by United States certified mail,
2 return receipt requested, addressed as follows:

3 To Plaintiffs and the Class:

4 Drew Lewis

5 Jessica Hart

6 Drew Lewis, PC

7 2999 Douglas Blvd. Ste. 180

8 Roseville, CA 95661

9 To Defendants:

10 Reed Harvey

11 Schinner & Shain, LLP

12 96 Jessie Street

13 San Francisco, CA 94105

14 10.11 Mutual Drafting of Agreement: The Parties hereto agree that the terms
15 and conditions of this Agreement are the result of lengthy, intensive, arm's-length negotiations
16 between the Parties and that this Agreement shall not be construed in favor of or against any
17 party by reason of the extent to which any party or its counsel participated in the drafting of this
18 Agreement.

19 10.12 Binding Effect of Agreement: The Parties, by signing this Agreement, are bound
20 by the terms herein. The Parties waive their rights to file an appeal, writ, or any challenge
21 whatsoever to the terms of this Agreement. This Stipulation shall be binding upon and inure to
22 the benefit of the Parties hereto and their respective heirs, trustees, executors, Settlement
23 Administrators, successors, and assigns.

24 10.13 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other
25 attorneys acting for, or purporting to act for, the Class, Class Members, or Plaintiffs, may
26 recover or seek to recover any amounts for fees, costs, or disbursements from the Releasees or
27 the Gross Settlement Amount except as expressly provided in this Agreement. The Parties
28 stipulate and agree that the Contra Costa County Superior Court shall have continuing
jurisdiction to enforce the terms of the Agreement pursuant to Civil Procedure Code section
664.6 and that the prevailing party any action necessary to enforce the terms of the Agreement

after default by the other party may recover reasonable attorney's fees and costs related thereto.

10.14 No Modifications: This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be discharged except by performance in accordance with its terms.

10.15 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Agreement.

10.16 Class Member Signatories: Because the Action has not yet been certified, and the Class Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement may be executed on behalf of all Class Members by the Class Representatives.

10.17 Counterparts: This Agreement shall become effective upon its execution by all of the undersigned. Plaintiffs, Class Counsel, Defendants and Defendants' Counsel may execute this Agreement in counterparts, and execution of counterparts shall have the same force and effect as if each had signed the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force and effect of originals.

10.18 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with, and governed by, the substantive laws of the State of California without giving effect to that State's choice of law principles.

10.19 Headings and Captions: Section titles or captions contained in the Agreement are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement, or any provision thereof.

1 10.20 No Retaliation or Discouragement: The Parties agree they will take no action that
2 could be construed as retaliation against any Class Members for participating or seeking to
3 participate in this class action settlement. The Parties will not discourage any class member from
4 participating or seeking to participate in this class action settlement. This is a material term of
5 the Agreement and non-breaching Parties will seek court intervention if this provision is
6 breached. Should non-breaching Party prevail, they shall be entitled to further attorneys' fees and
7 costs.

8 10.21 Integrated Agreement: This Agreement and the *Class & PAGA Settlement*
9 *Memorandum of Understanding* sets forth the entire understanding between the Parties and
10 supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
11 Each party acknowledges that there is no representation, inducement, promise or agreement
12 which has been made, orally or otherwise, by the other party, concerning the terms or conditions
13 of this Agreement, which is not expressly embodied in this Agreement. In entering into this
14 Agreement, the Parties represent that the terms of this Agreement are fully understood and
15 voluntarily accepted by the Parties.

16 10.22 Binding on Successors and Assigns: This Agreement will be binding upon, and
17 inure to the benefit of, the successors or assigns of the Parties to this Agreement, as previously
18 defined.

19 10.23 Invalidity of Any Provision: Before declaring any provision of this Agreement
20 invalid, the Court will first attempt to construe the provision as valid to the fullest extent
21 possible consistent with applicable precedents so as to define all provisions of this Settlement
22 Agreement valid and enforceable.

23 10.24 Waiver of Compliance: No waiver of any condition or covenant contained in this
24 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be
25 considered to imply or constitute a further waiver by such party of the same or any other
26 condition, covenant, right or remedy.

IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

Dated: Oct 07 2022

Kacey Hernandez

Kacey Hernandez

Dated: Oct 12 2022

Theresa Sidbury

Theresa Sidbury

Dated: Oct 12 2022

Kristina Halkyard

Kristina Halkyard

DREW LEWIS, PC

Dated:

By: Drew Lewis

Attorney for Plaintiffs

Dated:

ABA Plus, Inc

By: Vishal Jaiswal

Its Authorized Officer or Agent

Dated:

Vishal Jaiswal

Dated:

Suddha Mukhopadhyay

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SCHINNER & SHAIN, LLP

Dated:

By: Reed Harvey
Attorney for Defendants

1 APPROVED AS TO FORM

2 **DREW LEWIS, PC**

3 Dated: October ___, 2022

4 By: _____
5 Drew Lewis
6 Attorney for Plaintiffs

7
8 APPROVED AS TO FORM

9 **SCHINNER & SHAIN, LLP**

10 Dated: October ___, 2022

11 By: _____
12 Reed Harvey
13 Attorney for Defendants