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Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

BRETT CONSTANT, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

ROOTER RANGER, LLC, an Arizona
Limited Liability Company; BEEBE
ENTERPRISES, INC., a California
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVSB 2206149
*[Assigned to Hon. Judge David Cohn, Dept
S26, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing
Date: June 22, 2023
Time: 10:00 a.m.
Dept: S26

Complaint filed: March 21, 2022

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment law department and am a partner with the law firm of Lauby Mankin Lauby LLP, which has offices in Orange County and Riverside County. I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Final Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

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1 **COUNSEL’S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled well over 500 employee vs. employer litigation matters during my
7 22 years in practice. Over the last 15 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled well over 250 class action and
10 representative action wage/hour cases, and have been appointed by the court as class counsel and
11 have received final court approval and judgment in over half of those actions to date, and
12 anticipate receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). My team and I once held the record for the largest known PAGA-only
17 case in California’s history, which followed extensive litigation, summary adjudication and writs
18 to the CA Supreme Court against a Fortune 50 company (Garcia v. Macy’s, San Bernardino
19 Superior Court).

20 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
21 2018, I was lead counsel in a PAGA case that my firm tried in the Orange County Superior Court
22 and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case against
23 Walmart in District Court, wherein the jury awarded Plaintiffs and the class over \$6 million.
24 Both cases were appealed.

25 6. Over the last four or five consecutive years, I have been selected by my peers as a
26 “Super Lawyer” in Employment Litigation, a distinction that only 5% of lawyers receive.

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8. As set forth in the Declaration of the Settlement Administrator, the Net Settlement Amount is approximately \$202,126.05, after the deductions set forth in the chart below:

9. The process of mailing the Class Notice was very successful, as 100% of the Notices were deemed deliverable by the Settlement Administrator.

10. The response from the Class Members was overwhelmingly positive, as no Class Members objected or opted-out of the Settlement.

11. As discussed at length in Plaintiff's motion for preliminary approval, as well as in the Motion for Final Approval, this Settlement is very favorable to the Class with an average payment of \$1,240.04 per Class Member based on a payment of over \$51 per week worked, and the release is narrowly limited to the claims alleged.

12. Sufficient information existed to allow Class Counsel to intelligently value this case. Given the parties' arms' length bargaining facilitated by a reputable and experienced wage and hour mediator, the exchange of informal discovery, the experience of Class Counsel, the fact that 100% of the Class elected to participate and no objections were submitted, the presumption of fairness is justified.

13. I believe that the Settlement is fair, reasonable and adequate, and in the best interests of the Class, given the litigation risks and delay inherent in further litigation and possible appeals. As set forth in Plaintiff's motion for preliminary approval and the declarations

submitted in support thereof, Defendant contested Plaintiff's claims, and Plaintiff faced real challenges moving forward and obtaining a recovery in this matter. Nonetheless, the Parties concluded that further litigation would be protracted and expensive, and that it is desirable that the action be fully and finally settled in the manner and upon the terms and conditions set forth in the Settlement Agreement in order to limit further expense, inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit the operation of Defendant's business without further expensive litigation and the distraction and diversion of its personnel with respect to matters at issue. All parties took into account the uncertainty of risks inherent in any litigation, especially in complex cases such as this case. The Parties determined that it is desirable and beneficial to both the Class and Defendant that this case be settled. Risks on both sides were considered in reaching the Settlement Agreement. The recoveries contemplated by the Settlement represent a good result for the Class, fairly proportioned to the likely risk-adjusted recovery in litigation.

ADEQUACY OF COUNSEL AND
REASONABLENESS OF REQUESTED FEE AND COST AWARDS

14. As set forth above, I have handled well over 250 class and representative actions, have been appointed as class counsel and have successfully resolved approximately half of those actions, and many others remain pending and will successfully resolve in the future while recovering in excess of \$250 million dollars for my clients and Class Members. This is substantially better than average accordingly to Mayer Brown LLP's study entitled, An Empirical Analysis of Class Actions, cited in *Laguna v. Coverall North America, Inc.* (9th Cir. 2014) 753 F.3d 918, which found that only one-third of class actions are successful, compared to two-thirds that are defeated and result in no payment to the class members.¹

15. When this case was taken on a contingency fee basis, with my firm agreeing to assume responsibility for all litigation costs, the ultimate result was far from certain. In the course of this litigation, Class Counsel paid all costs including filing fees, court costs, research fees, and mediation costs. There was never a guarantee that we would recoup those expenditures.

¹ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

1 16. It has been my experience that the benchmark for attorney fee awards in
2 California state cases is one-third of a common settlement fund, which the CA Supreme Court
3 upheld in the *Robert Half* case. Here, in accordance with the Settlement Agreement, Class
4 Counsel is seeking a fee of \$133,333.33, which is one-third of the Settlement Amount.

5 17. There are several additional factors why I believe that the Court should award
6 one-third of the common fund as reasonable attorneys' fees. First, Class Counsel's efforts
7 resulted in a common fund settlement amount of \$400,000, and the employees will receive over
8 \$51 per week worked. This is a very good result in light of the disputed nature of the claims
9 alleged. This result was achieved by the work and success of my office, who negotiated the
10 settlement after extensive preparation, investigation, mediation, and substantial work thereafter.

11 18. Second, Plaintiff faced significant risks going forward with the litigation. As
12 discussed in the motion for preliminary approval, Defendant raised various defenses throughout
13 this litigation, any one of which, if successful, could have decimated Plaintiff's case. And
14 Defendant vowed to raise all these defenses at trial. Accordingly, Plaintiff faced risky issues
15 going forward with this litigation, and it would have taken several more years to realize any
16 recovery in this action along with the possibility of post-trial appeals.

17 19. Third, Class Counsel are experienced class action litigators. This experience and
18 expertise, combined with the high quality of work performed in this case, resulted in the
19 settlement achieved in this case.

20 20. Fourth, Class Counsel have been representing Plaintiff in this matter strictly on a
21 contingency fee basis. To that end, we have incurred the risk of non-recovery after investing a
22 substantial amount of time, money, and resources, and have done so since the inception of this
23 case without any payment or compensation. If Plaintiff had lost this case, we would have
24 recovered nothing, and would have lost our out-of-pocket costs. This is not an easy burden for
25 my office, which is a small firm.

26 21. Fifth, the request for attorney's fees in the amount of one-third of the common
27 fund falls well within the norms accepted by state and federal courts in California in comparable
28 wage and hour actions actually handled by my office. Moreover, the award of a one-third fee

1 recovery under the common fund doctrine was recently approved by the California Supreme
2 Court in *Laffitte v. Robert Half*.

3 22. For all of the above reasons, a common fund fee award here in the amount of one-
4 third of the common fund created by Plaintiff and Class Counsel is fair and reasonable.

5 23. At my office, this case was primarily handled by my associate attorney, Kristina
6 Carlson, while I performed the role of the supervising attorney. As set forth in his declaration,
7 Ms. Carlson works exclusively with me on employment law matters and has been in practice for
8 9 years. She bills at the hourly rate of \$550/hour. I have been in practice for 22 years, with most
9 of those years handling complex litigation and for over the last 15 years, my practice has almost
10 entirely consisted of handling class action wage and hour matters. My billing rate is \$775/hour.
11 I believe these rates are consistent with Plaintiff and Defense attorneys who handle complex
12 class action litigation, if not somewhat lower.

13 24. The hourly rates above are comparable to those of other attorneys with equal or
14 similar experience, if not somewhat lower (i.e., the Laffey Matrix at www.laffeymatrix.com
15 indicates that the benchmark rate for an 8–10-year attorney to be \$676/hour and a 11-19 year
16 attorney at \$764/hour, and a 20+ year attorney at \$919/hour). Moreover, the Wolters Kluwer
17 Real Rate Report (“Real Rate Report”), provides directly applicable information in this regard.
18 The Real Rate Report is based on an enormous and statistically significant compilation of data.
19 For instance, in 2017, the report was based on 25.8 million billing entries and 23.9 million hours
20 billed by over 112,100 individual timekeepers from 4,620 law firms, totaling \$9.02 billion in fees
21 billed. The Real Rate Report then compiles and analyzes this data to provide the hourly rates for
22 partners and associates in major metropolitan areas. In 2018, for the southern California area,
23 which is based on billing entries for 999 partners and 1,361 associates, the Real Rate Report
24 states that: (a) the median rate for partners in Los Angeles is \$695 and the upper quartile is \$995
25 per hour, and (b) the median rate for associates in Los Angeles is \$550 and the upper quartile is
26 \$721 (2018 Kluwer Real Rate Report, page 21). And, perhaps most importantly, the information
27 provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or
28 reviews or other publications – instead, the Real Rate Report is based on the actual hours and

fees billed by law firms.

25. The table below includes a summary of the hours worked, plus an estimated 25 hours that I will bill in finalizing and filing the motion, preparing for and attending the approval hearing, and working with the claims administrator and defense counsel to finalize this matter. The total lodestar for my firm is approximately \$140,560 through the conclusion of this matter, as shown in the chart below:

Attorney/Timekeeper	Rate	Hours	Fee
Brian J. Mankin <i>Trial Counsel / Partner</i> (22 Years)	\$775	73²	\$56,575
Kristina Carlson <i>Associate</i> (9 Years)	\$550	152.7	\$83,985
Grand Total for All Attorneys			\$140,560

26. The fee is warranted because of the results achieved for the Class Members, both in terms of the immediate cash settlement, as well as the fact that the Class Members resoundingly supported the Settlement. Defendants do not oppose this fee request.

27. In the course of prosecuting this action, Class counsel have incurred expenses that were incidental and necessary to the effective representation of the Class. These expenses included but were not limited to: court filings, copying and management of documents, on-line Lexis research, messenger services, postage, fax transmission expenses, transportation, mediator fees including travel to mediation, and other incidental expenses directly related to this action. The Settlement Agreement provided up to \$20,000 in costs. Through final approval, my office incurred \$8,040.62 in litigation costs (see Exhibit "B" attached hereto). The saving will be placed in the Net Settlement Amount for payment to the Class Members. Defendant does not oppose this request for costs.

² Includes an estimated 25 hours of additional work preparing for and attending the hearing, as well as anticipated work to be performed after the final approval hearing with counsel, administrator, employees, and the court.

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29. The Motion and declarations, including the Settlement Agreement, have concurrently been submitted to the LWDA. (See Exhibit “C”).

EXHIBITS AND CONCLUSION

31. Attached hereto as Exhibit “B” is a true and correct copy of an itemized statement of my firm’s litigation costs.

33. For the foregoing reasons, it is respectfully requested that the Court grant final approval of the settlement as being fair, reasonable, and in the best interest of the class, and approve the requested attorneys' fees, costs, and service award.

By: Brian J. Mankin
Brian J. Mankin, Esq.

EXHIBIT “A”

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Attorneys for Defendant Rooter Ranger, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

BRETT CONSTANT, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

ROOTER RANGER, LLC, an Arizona
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Defendants.

Case No.: CIVSB 2206149
*[Assigned to Hon. Judge David Cohn, Dept
S26, for all purposes]*

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint filed: March 21, 2022

1 This Class Action and PAGA Settlement Agreement and Release of Claims is entered
2 into by and between Plaintiff Brett Constant, individually and on behalf of all others similarly
3 situated, and Defendant Rooter Ranger, LLC, and is approved by their respective counsel of
4 record, subject to the terms and conditions hereof and the Court's approval.

5 **A. Definitions**

6 As used herein, for the purposes of this Settlement Agreement and Release of Claims
7 only, the following terms shall be defined as set forth below:

8 1. "Action" means and refers to the case entitled *Brett Constant v. Rooter Ranger,*
9 *LLC, et al.*, Superior Court of California, County of San Bernardino, Case No. CIVSB 2206149.

10 2. "Agreement" shall mean this Class Action and PAGA Settlement Agreement and
11 Release of Claims.

12 3. "Aggrieved Employees" means all current and former nonexempt employees
13 employed by Defendant in California at any time during the PAGA Period.

14 4. "Class Counsel" refers to Brian Mankin and Kristina Bui Carlson of Lauby
15 Mankin Lauby LLP.

16 5. "Class Data" means a complete list that Defendant will diligently and in good
17 faith compile from its records and provide to the Settlement Administrator on one or more
18 spreadsheets and shall include the Class Members' and Aggrieved Employees' full names; last
19 known addresses; last known telephone numbers (if available); Social Security Numbers; the
20 total Pay Periods Worked during the PAGA Period for each Aggrieved Employee; and the total
21 Weeks Worked during the Class Period for each Class Member.

22 6. "Class Member" means all current and former nonexempt employees employed
23 by Defendant in California at any time during the Class Period.

24 7. "Class Period" is deemed to be any time during the period of March 21, 2018
25 through and including January 9, 2023.

26 8. "Class Representative" or "Plaintiff" means and refers to Brett Constant.

27 9. "Complaint" refers to the operative complaint in the Action, alleging Class
28 Claims and representative PAGA Claims and including the March 18, 2022 LWDA Notice.

1 10. “Court” (or “Judge”) means the Superior Court of California, County of San
2 Bernardino.

3 11. “Defendant” refers to Defendant Rooter Ranger, LLC.

4 12. “Defendant’s Counsel” means and refers Greenberg Traurig, LLP.

5 13. “Effective Date” means the latest of the following dates: (i) if no Class Member
6 timely and properly intervenes or files a motion to vacate the Judgment under Code of Civil
7 Procedure § 663, then the date the Court enters an order granting Final Approval of the
8 Settlement; (ii) if a Class Member intervenes or files a motion to vacate the Judgment, then
9 sixty-one (61) calendar days following the date the Court enters an order granting final approval,
10 assuming no appeal is filed; or (iii) if a Class Member timely and properly intervenes or files a
11 motion to vacate the Judgment under Code of Civil Procedure § 663, and if a timely appeal is
12 filed, then the date of final resolution of that appeal (including any requests for rehearing and/or
13 petitions for *certiorari*), resulting in final judicial approval of the Settlement. Defendants shall
14 deliver the Court-approved Gross Settlement Amount to the Settlement Administrator by no later
15 than thirty (30) days after the Effective Date.

16 14. “Final Approval” refers to the order of the Court granting final approval of this
17 Agreement and entering a judgment approving this Agreement on substantially the terms
18 provided herein or as the same may be modified by subsequent agreement of the Parties.

19 15. “Gross Settlement Amount” shall have the meaning ascribed to it in Paragraph
20 48(a) below.

21 16. “Individual Settlement Payment(s)” shall have the meaning ascribed to it in
22 Paragraph 48(g) below.

23 17. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 48(b)
24 below.

25 18. “Non-Participating Class Member” means any and all Class Members who submit
26 a valid and timely Request for Exclusion. Non-Participating Class Members shall not receive an
27 Individual Class Payment or have the right to object to the class action components of the
28 Agreement. Non-Participating Class Members who are Aggrieved Employees are nevertheless

1 deemed to release, on behalf of themselves and their respective former and present
2 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released
3 Parties from all claims for PAGA penalties that were alleged, or reasonably could have been
4 alleged, based on the facts alleged in the Complaint, as set forth in paragraphs 121-184 and as set
5 forth in paragraphs 7 and 8 in the Prayer for Relief. Non-Participating Class Members who are
6 Aggrieved Employees will receive an Individual PAGA Payment.

7 19. “Notice” means the notice of class action and PAGA settlement that will be sent
8 to the Class Members and Aggrieved Employees.

9 20. “Notice Response Deadline” is thirty (30) calendar days from the date the Notice
10 is mailed to the Class Members and Aggrieved Employees.

11 21. “Objecting Participating Class Member” means a Participating Class Member,
12 other than Plaintiff, who submits a valid and timely objection to the terms of this Agreement
13 with respect to the Class Claims, pursuant to Paragraph 73(c) below.

14 22. “PAGA” means the California Private Attorneys General Act of 2004, California
15 Labor Code §§ 2698 *et seq.*

16 23. “PAGA Penalties” means the total amount of civil penalties that the Parties have
17 agreed will be paid from the Gross Settlement Amount to settle the PAGA Claims, allocated
18 75% to the California Labor and Workforce Development Agency (“LWDA”) in accordance
19 with PAGA, and 25% for the individual PAGA payments to Aggrieved Employees, as set forth
20 further below in Paragraph 48(f).

21 24. “PAGA Period” is deemed to be any time during the period of March 21, 2021,
22 through and including January 9, 2023.

23 25. “PAGA Claims” means the claims listed in this paragraph which will be released
24 as noted herein: Upon Final Approval of the Settlement by the Court and Defendants funding of
25 the settlement, Plaintiff, on behalf of the State of California and the Aggrieved Employees, shall
26 completely release and discharge the Released Parties of the PAGA claims that Plaintiff alleged
27 against the Released Parties, on behalf of the Aggrieved Employees and the State of California,
28 based on the facts stated in the Complaint and in the relevant LWDA notice letters or claims

arising out of or related to facts pled in the operative Complaint and relevant LWDA notice letters, including all PAGA claims seeking civil penalties premised upon: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to reimburse business expenses, (f) failure to timely pay wages each period, (g) failure to time pay wages upon separation of employment, and (h) failure to provide accurate itemized wage statements, and (i) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the LWDA Notice and the Complaint.

26. “Participating Class Member” means any and all Class Members who do not submit a timely and valid Request for Exclusion. All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint as set forth in paragraphs 121-184 and as set forth in paragraphs 7 and 8 in the Prayer for Relief Participating Class Members will receive an Individual Class Payment as set forth in Paragraph 48(g).

27. “Parties” means Plaintiff and Defendant, collectively.

28. “Pay Period(s) Worked” means all pay periods during the PAGA Period in which an Aggrieved Employee was employed by Defendant in California as a nonexempt employee and worked at least one shift during the pay period. For purposes of calculating Pay Periods Worked, there will no fractional calculations (*i.e.*, a situation where an individual worked only one shift during a pay period still counts as one Pay Period Worked).

29. “Preliminary Approval Date” means the date the Court preliminarily approves the Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

30. “Preliminary Approval Order” means the judicial Order to be entered by the Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement and providing for the issuance of the Notice to the Class Members and Aggrieved Employees, an opportunity for Class Members to opt-out of the Settlement, an opportunity to submit timely

1 objections to the Agreement, and setting a hearing on the fairness of the terms of Settlement,
2 including approval of attorneys' fees and costs.

3 31. "QSF" means the Qualified Settlement Fund set up by the Settlement
4 Administrator for the benefit of the Participating Class Members and Aggrieved Employees, and
5 from which the settlement payments shall be made, and which is intended to be a fund that
6 qualifies under Internal Revenue Code Sec. 468.

7 32. "Class Claims" means the claims listed in this paragraph which will be released
8 as noted herein: Upon Final Approval of the Settlement by the Court and Defendants funding the
9 Gross Settlement Amount, the Participating Class Members will fully release and discharge the
10 Released Parties of the claims stated in the operative complaint and those arising out of or related
11 to the facts pled in the Complaint, including: (a) failure to pay minimum wages, (b) failure to pay
12 overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure
13 to reimburse business expenses, (f) failure to timely pay wages, (g) failure to timely pay wages
14 upon separation of employment, (h) failure to provide accurate itemized wage statements, (i)
15 unfair and unlawful competition, and (j) all other claims that reasonably could have arisen out of
16 the allegations made and based on the facts alleged in the Complaint.

17 33. "Released Parties" means all Defendants named in the Action and LWDA Notice
18 letter and each of its former and present directors, officers, shareholders, owners, limited
19 partners, attorneys, insurers, predecessors, successors, employees, assigns, parents, subsidiaries,
20 and affiliates, and all persons acting by, through, under, or in concert with them, and each of
21 these entities' present or past officers, directors, former and present directors, officers,
22 shareholders, owners, limited partners, attorneys, insurers, predecessors, successors, employees,
23 assigns, parents, subsidiaries, and affiliates.

24 34. "Release" shall mean (1) the release and discharge of the Class Claims by
25 Plaintiff and all Participating Class Members, and (2) the release and discharge of the PAGA
26 Claims by Plaintiff, the State of California, and all of the Aggrieved Employees. The *res*
27 *judicata* effect of the Judgment will be the same as that of the Release of the Class Claims and
28 PAGA Claims.

1 35. “Request for Exclusion” means and refers to a valid and timely request for
2 exclusion from the Settlement of the Class Claims, which may be submitted by any Class
3 Member, other than Plaintiff, pursuant to Paragraph 73(a) below.

4 36. “Service Payment” means, as set forth further in Paragraph 48(d) below, the
5 amount approved by the Court to be paid from the Gross Settlement Amount to the Class
6 Representative, Brett Constant, in addition to his Individual Settlement Payment as a
7 Participating Class Member and Aggrieved Employee.

8 37. “Settlement Administrator” means and refers to Phoenix Settlement
9 Administrators, the third-party class action settlement administrator agreed to by the Parties, that
10 will provide the Notice to the Class Members and Aggrieved Employees and distribute the
11 settlement amounts as described in this Agreement.

12 38. “Settlement Administration Costs” means the costs payable from the Gross
13 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
14 but not limited to, printing, distributing, and tracking documents for this Settlement, tax
15 reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property
16 due diligence, reporting and remittance obligations, distributing the Gross Settlement Amount,
17 and providing necessary reports and declarations, as requested by the Parties.

18 39. “Work Week(s)” or “Weeks Worked” means all calendar weeks in which the
19 Class Member was employed by Defendant in California as a nonexempt employee and worked
20 at least one shift during the week. For purposes of calculating Weeks Worked, there will no
21 fractional calculations (*i.e.*, a situation where an individual worked only one shift during a week
22 does not equal 1/7th of a Work Week, it counts as one Work Week).

23 **B. General Terms**

24 40. Pursuant to California Labor Code § 2699.3(a), Plaintiff gave timely written
25 notice to Defendant and the LWDA by sending his LWDA notice letter on March 18, 2022.

26 41. On March 21, 2022, Plaintiff filed a class action complaint and representative
27 PAGA claims, including the following causes of action: (1) failure to pay minimum wages, (2)
28 failure to pay overtime, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5)

1 failure to reimburse business expenses, (6) failure to timely pay final wages, (7) failure to
2 provide accurate itemized wage statements, (8) unfair and unlawful competition pursuant to
3 California Business and Professions Code §§ 17200 *et seq.*, and (9)-(16) related claims under
4 PAGA, including but not limited to, failure to timely pay wages.

5 42. Defendant denies Plaintiff's claims and allegations and contend that the Action is
6 not suitable for class certification or manageable as a class or representative action.

7 43. The Class Representative believes he can proceed with his representative and
8 class claims, that the Action is meritorious, and that class certification is appropriate.

9 44. The Parties have conducted a thorough investigation into the facts of the Action.
10 This includes conducting an extensive exchange of informal discovery, including Defendant's
11 written policies and practices and confirmation regarding the uniform payroll and timekeeping
12 practices for Class Members and Aggrieved Employees. Class Counsel is both knowledgeable
13 about and has done extensive research with respect to the applicable law and potential defenses
14 to the claims of the Class Members and Aggrieved Employees. Class Counsel has diligently
15 pursued an investigation of the Class Members' and Aggrieved Employees' claims against
16 Defendant. Based on the foregoing data and on their own independent investigation and
17 evaluation, Class Counsel is of the opinion that the settlement with Defendant for the
18 consideration and on the terms set forth in this Agreement is fair, reasonable, and adequate and is
19 in the best interest of the Class Members and Aggrieved Employees in light of all known facts
20 and circumstances, including the risk of significant delay and uncertainty associated with
21 litigation, various defenses asserted by Defendant, and numerous potential appellate issues.

22 45. On November 10, 2022, Plaintiff and Defendant participated in mediation before
23 Hon. Jonathan Cannon (Ret.), a well-respected wage and hour mediator. The Action resolved at
24 mediation and, thereafter, the Parties continued to negotiate the terms embodied in this
25 Agreement.

26 46. The Parties agree that neither the Parties' settlement, this Agreement, nor the acts
27 to be performed or judgments to be entered pursuant to the terms of the settlement and
28 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of

any statute or law or liability on the claims or allegations in the Action.

47. Stipulation to Class Certification and Representative Treatment. For settlement purposes only, Defendant will stipulate that the Class described herein may be conditionally certified as a settlement class as to all claims asserted in the Complaint, and that the Aggrieved Employees' claims are appropriate for representative treatment for purposes of settlement. This stipulation to certification and representative treatment is in no way an admission that class action certification and/or representative treatment is proper and shall not be admissible in this or in any other action except for the sole purpose of enforcing this Agreement. Nor should Defendant's stipulation to conditional class certification and representative treatment be deemed as a waiver to any additional defenses against class or representative action treatment. Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to class certification and representative treatment as part of the Settlement shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification and/or representative treatment would be appropriate in a non-settlement context. Defendant expressly reserves its rights and declare that they would continue to oppose class certification, representative treatment, and the substantive merits of the case should the Court decline to issue Final Approval. Plaintiff expressly reserves his rights and declares that he will continue to pursue class certification, representative treatment, and a trial should the Court decline to issue Final Approval.

C. Terms of Settlement

48. The financial terms of the Settlement are as follows:

(a) Gross Settlement Amount: The Parties agree to settle this Action for Four Hundred Thousand Dollars (\$400,000) ("the Gross Settlement Amount"). The Gross Settlement Amount is the maximum amount that will be paid, and includes Individual Settlement Payments, Attorneys' Fees and Costs Award, the Service Payment to the Class Representative, all Settlement Administration Costs, PAGA Penalties, and interest. Defendant shall separately pay the employer's share of applicable payroll tax obligations due on the wage portions of the Individual Settlement Payments, which shall be reported through the Settlement Administrator.

1 (b) Net Settlement Amount: The “Net Settlement Amount” is defined as the
2 Gross Settlement Amount less the court-approved Attorneys’ Fees and Costs Award, the court-
3 approved Service Payment to the Class Representative, the court-approved Settlement
4 Administration Costs, and PAGA Penalties. If the Court reduces the Attorneys’ Fees and Costs
5 Award, Service Payment to the Class Representative, or Settlement Administration Costs, or
6 either increases or decreases the amount allocated to the PAGA Penalties, the Net Settlement
7 Amount shall be increased or decreased accordingly.

8 (c) Attorneys’ Fees and Costs Award: Defendant agrees to not oppose a
9 request by Class Counsel to the Court for an award of attorneys’ fees of not more than one-third
10 of the Gross Settlement Amount (\$133,333.33), plus reasonable litigation costs not to exceed
11 \$20,000 (“Attorneys’ Fees and Cost Award”), subject to Court approval. The Attorneys’ Fees
12 and Cost Award shall be paid from the Gross Settlement Amount, and except for this award,
13 Defendant shall have no further obligation to pay any attorneys’ fees, costs, or expenses to Class
14 Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the
15 difference shall be added to the Net Settlement Amount to be distributed to the Participating
16 Class Members. The Parties agree that any amount awarded as attorneys’ fees and costs to Class
17 Counsel less than the requested amount shall not be a basis for Class Counsel to rescind or
18 otherwise void this Agreement. The Settlement Administrator shall issue to Class Counsel an
19 IRS Form 1099 reflecting the amount of attorneys’ fees and costs awarded by the Court.

20 (d) Service Payment to Class Representative: The amount, if any, awarded to
21 the Class Representative as a Service Payment will be set by the Court in its discretion, not to
22 exceed \$10,000, in exchange for the services Plaintiff performed on behalf of the Class
23 (including taking steps to support the Settlement) and for entering into the general and expansive
24 release discussed hereinafter. Defendant agrees not to oppose this request and Plaintiff agrees to
25 participate in the Settlement and not take any action, directly or indirectly, to undercut this
26 Settlement. The Service Payment to Plaintiff will be paid out of the Gross Settlement Amount.
27 The Class Representative will be issued IRS Form 1099 in connection with this payment.
28 Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on this

1 payment. The Parties agree that any amount awarded as the Service Payment to Plaintiff less
2 than the requested amount shall not be a basis for Class Counsel to void this Agreement or to
3 appeal this aspect of the Court’s ruling. Should the Court approve a lesser amount for the
4 Service Payment, the difference shall be added to the Net Settlement Amount to be distributed to
5 the Participating Class Members.

6 (e) Settlement Administration Costs: The fees and other charges of the
7 Settlement Administrator will be paid from the Gross Settlement Amount, not to exceed \$6,500,
8 unless approved by all Parties and the Court.

9 (f) PAGA Penalties: The Parties agree that \$40,000 is allocated to PAGA
10 Penalties and is to be paid from the Gross Settlement Amount, subject to the Court’s approval.
11 Of this amount, \$30,000 (75%) shall be paid to the LWDA in satisfaction of civil penalties under
12 the Private Attorney General Act of 2004 (“PAGA”) and \$10,000 (25%) will be paid to the
13 Aggrieved Employees based upon the number of Pay Periods Worked by each Aggrieved
14 Employee during the PAGA Period, which will be treated entirely as civil penalties and reported
15 as required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the
16 Settlement.

17 (g) Individual Settlement Payments: Individual Settlement Payments include
18 Individual Class Payments and Individual PAGA Payments (as applicable), as described herein:

19 (i) Individual Class Payments: “Individual Class Payment” means the
20 Participating Class Member’s pro rata share of the Net Settlement Amount calculated
21 according to the number of Work Weeks the Participating Class Member worked during
22 the Class Period. Each specific Individual Class Payment will be calculated by:
23 (a) dividing the Net Settlement Amount by the total number of Weeks Worked by all
24 Participating Class Members during the Class Period, and (b) multiplying the result by
25 each Participating Class Members’ Weeks worked. The entire Net Settlement Amount
26 will be disbursed to all Participating Class Members. If there are any valid and timely
27 Requests for Exclusion, the Settlement Administrator shall remove the Weeks Worked by
28 the Non-Participating Class Member(s) and proportionally increase the Individual Class

1 Payment for each Participating Class Member according to the number of Weeks
2 Worked, so that the amount actually distributed to Participating Class Members equals
3 100% of the Net Settlement Amount.

4 (ii) Allocation of Individual Class Payments: The Individual Class
5 Payments will be allocated based on the allegations in the Action as follows: twenty
6 percent (20%) will be allocated as wages subject to withholding of all applicable local,
7 state and federal taxes; and the remaining eighty percent (80%) will be allocated as
8 interest and penalties (pursuant to, *e.g.*, California Labor Code sections 203, 210, 226,
9 2699) from which no taxes will be withheld. The Settlement Administrator will issue to
10 each Participating Class Member an Internal Revenue Service Form W-2 and comparable
11 state forms with respect to the wage allocation and a Form 1099 with respect to the
12 penalties and interest allocations.

13 (iii) Individual PAGA Payments: “Individual PAGA Payment” means
14 the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated
15 according to the number of Pay Periods worked during the PAGA Period. Each specific
16 Individual PAGA Payment will be calculated by: (a) dividing the 25% Aggrieved
17 Employee share of the PAGA Penalties by the total number of Pay Periods worked by all
18 Aggrieved Employees during the PAGA Period, and (b) multiplying the result by each
19 Aggrieved Employees Pay Periods Worked. The entire 25% of the PAGA Penalties will
20 be disbursed to all Aggrieved Employees.

21 (h) Tax Liability: Class Counsel, Defendant, and Defendant’s counsel make
22 no representations as to the tax treatment or legal effect of Settlement Amounts called for
23 hereunder, and Plaintiff, Class Members, and Aggrieved Employees are not relying on any
24 statement or representation by Class Counsel, Defendant, or Defendant’s counsel in this regard.
25 Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree that they
26 will be solely responsible for the payment of any taxes and penalties assessed on their respective
27 Settlement Amounts described herein. The amount of federal income tax withholding will be
28 based upon a flat withholding rate for supplemental wage payments in accordance with Treas.

1 Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be
2 made pursuant to applicable state and/or local withholding codes or regulations. Forms W-2
3 and/or Forms 1099 will be distributed at the times and in the manner required by the Internal
4 Revenue Code of 1986 (the “Code”) and consistent with this Agreement. If the Code, the
5 regulations promulgated thereunder, or other applicable tax law, are changed after the date of this
6 Agreement, the processes set forth in this Section may be modified in a manner to bring
7 Defendant into compliance with any such changes. Plaintiff, Participating Class Members, and
8 Aggrieved Employees understand and agree that they will be solely responsible for the payment
9 of any taxes and penalties assessed on their respective payments described herein and will hold
10 Defendant harmless from and against any claims resulting from treatment of such payments as
11 non-taxable damages.

12 (i) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
13 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
14 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
15 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
16 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
17 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
18 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
19 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
20 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
21 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
22 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
23 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
24 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
25 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
26 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
27 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
28 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY

1 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
2 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
3 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
4 ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
5 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
6 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
7 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

8 (k) For any Class Member whose Individual Class Payment check or Individual
9 PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall
10 transmit the funds represented by such checks to a Court-approved nonprofit organization or
11 foundation consistent with Code of Civil Procedure Section 384, subd. (b) ("Cy Pres Recipient")
12 Su Casa – Ending Domestic Violence . The Parties, Class Counsel and Defense Counsel
13 represent that they have no interest or relationship, financial or otherwise, with the intended Cy
14 Pres Recipient.

15 49. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
16 Participating Class Members under this Agreement, as well as any other payments made
17 pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any
18 benefit plans to which any Participating Class Members may be eligible, including, but not
19 limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase or other types of
20 equity plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it
21 is the Parties' intention that this Settlement will not affect any rights, contributions, or amounts
22 to which any Participating Class Members may be entitled under any benefit plans. The Parties
23 agree that the amounts paid pursuant to this Settlement are not for days or hours worked, and
24 shall not be included toward any regular rate of pay calculation, or any benefit vesting or accrual
25 purpose.

26 50. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
27 no circumstances will any portion of the Gross Settlement Amount revert to Defendant.
28 Participating Class Members will not have to make a claim in order to receive an Individual

1 Settlement Payment, and Aggrieved Employees will not have to make a claim in order to receive
2 their share of PAGA Penalties. Distributions, in the form of Individual Settlement Payments,
3 will be made directly to each Participating Class Member and Aggrieved Employee. The
4 Settlement Administrator shall be responsible for accurately and timely reporting and remittance
5 obligations with respect to unclaimed funds as a result of a Participating Class Member or
6 Aggrieved Employee not cashing an Individual Settlement Payment by the check cashing
7 deadline, as set forth herein.

8 51. Class Size Estimate and Escalator Clause. Based on a review of its records,
9 Defendant estimated, that as of September 12, 2022 (the date of Defendant's Response to
10 Plaintiff's Pre-Mediation Requests for Data and Information) there were 122 Class Members
11 who collectively worked a total of 3,349 Workweeks, and 70 Aggrieved Employees who worked
12 a total of 1,121 PAGA Pay Periods, and that as of November 10, 2022 (the date of mediation),
13 the Class Members collectively worked approximately 3,700 workweeks during the Class
14 Period. As such, the Parties agree that, should the total number of workweeks during the Class
15 Period exceed 4,070 (10% more than Defendants' representation), then the Settlement Amount
16 shall increase by \$98.28 (\$400,000 divided by 4,070) for each additional workweek above 4,070.

17 52. Defendant's Right to Withdraw. If the number of valid Requests for Exclusion
18 identified exceeds 5% of the class list, and/or if Richard "Rick" Constant opts out, Defendant
19 may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if
20 Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever,
21 and that neither Party will have any further obligation to perform under this Agreement;
22 provided, however, Defendant will remain responsible for paying all Settlement Administration
23 Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its
24 election to withdraw not later than [seven] days after the Administrator sends the final Exclusion
25 List to Defense Counsel; late elections will have no effect.

26 53. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
27 adequate, and will so represent same to the Court.

28 **D. Release by Plaintiff, Participating Class Members, and Aggrieved Employees**

1 54. Upon entry of the Final Approval Order and Defendant's funding of the entire
2 Gross Settlement Amount, and except as to such rights or claims as may be created by this
3 Agreement, the Participating Class Members will forever completely release and discharge the
4 Released Parties from the Class Claims for the Class Period. It is the intent of the Parties that the
5 Final Approval Order and judgment entered by the Court shall have full equitable and collateral
6 estoppel and *res judicata* effect and be final and binding upon Participating Class Members
7 regarding the Class Claims.

8 55. Each Participating Class Member will be deemed to have made the foregoing
9 Release as if by manually signing it.

10 56. Upon entry of the Final Approval Order and Defendant's funding of the entire
11 Gross Settlement Amount, Plaintiff, standing in the shoes of the Labor Commissioner/LWDA,
12 and on behalf of the State of California and all Aggrieved Employees, will forever completely
13 release and discharge the Released Parties from the PAGA Claims for the PAGA Period. It is
14 the intent of the Parties that the Final Approval Order and judgment entered by the Court shall
15 have full equitable and collateral estoppel and *res judicata* effect and be final and binding upon
16 Aggrieved Employees regarding the PAGA Claims.

17 57. Each Aggrieved Employee and the LWDA will be deemed to have made the
18 foregoing Release as if by manually signing it.

19 58. Plaintiff and Defendant intend that the Settlement described in this Agreement
20 will release and preclude any further claim, whether by lawsuit, administrative claim or action,
21 arbitration, demand, or other action of any kind, by each and all of the Participating Class
22 Members to obtain a recovery based on, arising out of, and/or related to any and all of the Class
23 Claims. The Class Members shall be so notified in the Notice. This paragraph only applies to
24 Participating Class Members and, thus, does not apply to any Class Member who timely and
25 validly submits a Request for Exclusion.

26 59. Plaintiff and Defendant also intend that the Settlement described in this
27 Agreement will release and preclude any further PAGA claim, whether by lawsuit,
28 administrative claim or action, arbitration, demand, or other PAGA action of any kind, by each

1 and all of the Aggrieved Employees to obtain a recovery based on, arising out of, and/or related
2 to any and all of the PAGA Claims. The Aggrieved Employees shall be so notified in the Notice
3 and Class Counsel shall provide appropriate notice to the LWDA of this Agreement prior to the
4 filing of the Motion for Preliminary Approval. This paragraph is not intended to preclude any
5 Aggrieved Employee other than Plaintiff from bringing any claim other than a PAGA claim.

6 60. Class Representative, on behalf of himself and the Participating Class Members,
7 acknowledges and agrees that the claims, including claims for unpaid and/or untimely payment
8 of wages and/or penalties and/or unreimbursed expenses are disputed, and that the payments set
9 forth herein constitute payment of all sums allegedly due to them. Class Representative, on
10 behalf of himself and the Participating Class Members, acknowledges and agrees that California
11 Labor Code § 206.5 and 2804 are not applicable to the Parties hereto. Section 206.5 provides in
12 pertinent part as follows:

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

16 **E. Release by Class Representative**

17 61. As a material inducement to Defendant to enter into this Agreement and in
18 consideration of the Service Payment, and in addition to the Class Representative's release of the
19 Class Claims and PAGA Claims:

20 (a) Class Representative does hereby, for himself and for his respective
21 spouses, domestic partners, marital community, children, estates, attorneys, heirs, successors,
22 beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians,
23 personal representatives, and assigns ("Individual Releasing Parties") forever and completely
24 release and discharge and covenants not to sue the Released Parties with respect to any and all
25 claims, demands, liens, agreements, contracts, covenants, actions, suits, causes of action, wages,
26 obligations, debts, liquidated damages, penalties, interest, costs, expenses, attorneys' fees,
27 damages, judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise,
28 whether now known or unknown, suspected or unsuspected, concealed or hidden, which Plaintiff

1 now owns or holds or has at any time heretofore owned or held as against said Released Parties,
2 or any of them. This release includes, to the fullest extent permissible, but is not limited to, any
3 and all claims in law, equity, tort and/or contract; all claims of violation of public policy,
4 including a claim for wrongful and/or constructive termination of employment; claims for
5 discrimination, harassment, and/or retaliation; claims for misclassification; claims for untimely
6 or unpaid minimum and overtime wages, claims for any wage and hour violations, including but
7 not limited to meal period and rest break violations and reimbursement of business expenses;
8 assault, battery, false imprisonment, intentional interference with contractual relations,
9 intentional or negligent infliction of emotional distress, invasion of privacy, negligence,
10 defamation, intentional or negligent misrepresentation, fraud; breach of contract, oral or written,
11 express or implied, breach of any covenant of good faith and fair dealing, express or implied,
12 and/or promissory estoppel; any claim for unlawful or unfair business practices; any claims
13 under Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the
14 Americans with Disabilities Act of 1990, as amended; the Rehabilitation Act of 1973, as
15 amended; the Rehabilitation Act of 1973, as amended; the National Labor Relations Act
16 (NLRA), as amended; the Labor-Management Relations Act, as amended; the Family and
17 Medical Leave Act (FMLA); the Employee Retirement Income Security Act (ERISA); the Lily
18 Ledbetter Fair Pay Act; the Pregnancy Discrimination Act; the California Occupational Safety
19 and Health Act and the Federal equivalent (OSHA); the Federal Worker Adjustment and
20 Retraining Notification Act; the California Worker Adjustment and Retraining Notification Act;
21 the Fair Labor Standards Act (including the Equal Pay Act); the Sarbanes-Oxley Act of 2002; the
22 Immigration Control and Reform Act; the California Government Code; the California Business
23 & Professions Code; the California Family Rights Act; the California Labor Code; the California
24 Industrial Welfare Commission Wage Orders; the California Fair Employment and Housing Act;
25 the California and United States Constitutions; and any local ordinance or federal or state statute,
26 regulation, or constitution (collectively, the “Class Representative’s Claims”).

27 (b) ***Specific release of ADEA claims.*** Class Representative, on behalf of
28 himself and the Individual Releasing Parties knowingly and voluntarily waives, releases and

1 forever discharges Released Parties from any and all claims, whether known or unknown,
2 suspected or unsuspected, that Plaintiff may possess against any of the Released Parties under
3 the Age Discrimination in Employment Act ADEA, as amended, and its implementing
4 regulations. Plaintiff acknowledges and agrees that Plaintiff (i) has read this Settlement
5 Agreement in its entirety and understands all of its terms; (ii) has been advised to consult with an
6 attorney of Plaintiff's choosing before signing this Settlement Agreement; (iii) knowingly,
7 freely, and voluntarily agrees to all of the terms and conditions in this Settlement Agreement
8 including, but not limited to, the waiver, release, and covenants set forth herein; (iv) is signing
9 this Settlement Agreement, including the waiver and release, in exchange for good and valuable
10 consideration in addition to anything of value to which Plaintiff is otherwise entitled; (v) was
11 given at least twenty-one (21) days to consider the terms of this Settlement Agreement and
12 consult with an attorney of Plaintiff's choice, although Plaintiff may sign this Agreement sooner
13 if desired, and any changes, whether material or immaterial, do not restart the 21-day period; (vi)
14 understands that Plaintiff has seven (7) days after signing this Agreement (the "Revocation
15 Period") to revoke the release in this Section 61(b) by delivering notice of revocation to Lisa
16 Herald (by email to Lisa.h@rooterranger.com), before the end of the Revocation Period; and
17 (vii) understands that the release in this Section 61(b) does not apply to rights and claims that
18 may arise after the date on which Plaintiff signs this Settlement Agreement.

19 62. Class Representative agrees that there is a risk that any injury that he may have
20 suffered by reason of the Released Parties' relationship with his might not now be known, and
21 there is a further risk that said injuries, whether known or unknown at the date of this
22 Agreement, might possibly become progressively worse, and that as a result thereof further
23 damages may be sustained. Nevertheless, Class Representative agrees to forever and fully
24 release and discharge the Released Parties, and understands that by the execution of this
25 Agreement no further claims for any such injuries that existed at the time of the execution of this
26 Agreement may ever be asserted by Class Representative with respect to claims arising in the
27 time period from the beginning of time to the execution of this Agreement.

28 63. Class Representative expressly waives and relinquishes all rights and benefits

1 afforded by Section 1542 of the Civil Code of the State of California and does so understanding
2 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil
3 Code of the State of California states:

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

11 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
12 full and complete release and discharge of all parties, Class Representative and Class Counsel
13 expressly acknowledge that this Agreement is intended to include in its effect, without limitation,
14 all claims that Class Representative knew of, as well as all claims that she does not know or
15 suspect to exist in his favor against the Released Parties, or any of them, for the time period from
16 the beginning of time to the execution of this Agreement, and that this Agreement contemplates
17 the extinguishment of any such Class Representative's claims. Notwithstanding the above, the
18 general release by Class Representative shall not extend to claims for workers' compensation
19 benefits, claims for unemployment benefits, or other claims that may not be released by law.

20 64. Class Representative represents and warrants that he has not filed and will not file
21 any other lawsuit, administrative claim or action, arbitration, demand, or other action of any kind
22 against Defendant or the Released Parties. Class Representative represents and warrants that the
23 only pending claims against Defendant or the Released Parties are included in this Action.

24 **F. Interim Stay of Proceedings**

25 65. Pending completion of all of the prerequisites necessary to effectuate this
26 Settlement, the Parties agree, subject to Court's approval, to a stay of all proceedings in the
27 Action except such as are necessary to effectuate the Settlement.

28 **G. Notice Process**

66. Appointment of Settlement Administrator. The Parties have agreed to the
appointment of the Settlement Administrator to perform the duties of a settlement administrator,

1 including mailing the Notice, using standard devices to obtain forwarding addresses,
2 independently reviewing and verifying documentation associated with any claims or opt-out
3 requests, resolving any disputes regarding the calculation or application of the formula for
4 determining the Individual Settlement Payments, drafting and mailing the settlement checks to
5 Participating Class Members, and Aggrieved Employees, issuing W-2 and 1099 Tax Forms,
6 performing unclaimed funds due diligence, reporting and performing remittance obligations, and
7 performing such other tasks as set forth herein or as the Parties mutually agree or that the Court
8 orders.

9 67. Disputes Regarding Settlement Administration. Any and all disputes relating to
10 administration of the Settlement by the Settlement Administrator (except for disputes regarding
11 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
12 over the terms and conditions of this Agreement, until Plaintiff and Defendant notify the Court
13 that all payments and obligations contemplated by this Agreement have been fully carried out.
14 Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to
15 resolve the dispute without the necessity of Court intervention. The Settlement Administrator
16 shall also be responsible for issuing to Plaintiff, Participating Class Members, Aggrieved
17 Employees, and Class Counsel any W-2, 1099, or other Tax Forms as may be required by law for
18 all amounts paid pursuant to this Agreement. The Settlement Administrator shall also be
19 responsible for setting up all necessary tax accounts and forwarding all payroll taxes and
20 penalties to the appropriate government authorities.

21 68. Class Data. Within fourteen (14) calendar days after entry of the Preliminary
22 Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The
23 Settlement Administrator will run a check of the Class Members' addresses against those on file
24 with the U.S. Postal Service's National Change of Address Database. The Class Data provided
25 to the Settlement Administrator will remain confidential, shall be used solely to administer the
26 Settlement, and it will not be used or disclosed to anyone (including Class Counsel), except as
27 required by applicable tax authorities, pursuant to Defendant's express written consent, or by
28 order of the Court. Although Class Counsel will not be provided with the list of Class Data,

nothing herein shall prevent Class Counsel from communicating with Class Members regarding the Action and Settlement.

69. Notice. The Notice, as approved by the Court, shall be sent by the Settlement Administrator to the Class Members and Aggrieved Employees, by first class mail, in English, within ten (10) calendar days following the Settlement Administrator's receipt of the Class Data. The Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding addresses of Class Members and Aggrieved Employees if any envelopes are returned.

70. Returned Notices of Settlement. The Settlement Administrator will take steps to ensure that the Notice is received by all Class Members and Aggrieved Employees, including utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update a mailing address. Notices of Settlement will be re-mailed to any Class Member for whom an updated address is located within ten (10) calendar days following both the Settlement Administrator learning of the failed mailing and its receipt of the updated address. The re-mailed Notice shall be identical to the original Notice, except that it shall notify the Class Member that the exclusion (opt-out) request or objection must be returned by the later of the Notice Response Deadline or fifteen (15) calendar days after the remailing of the Notice.

71. Disputes Regarding Information on Notices of Settlement. Class Members are deemed to participate in the Settlement, unless they timely opt-out, and Aggrieved Employees may not opt-out of the PAGA Claims. The Notice will inform Class Members of his/her estimated Individual Settlement Payment and the number of Weeks Worked during the Class Period and Pay Periods Worked during the PAGA Period, if applicable. Class Members and Aggrieved Employees may dispute their Weeks Worked and/or Pay Periods Worked as applicable if they feel they should be credited with more than represented on the Notice by timely submitting evidence to the Settlement Administrator. Defendant's records will be presumed determinative absent reliable evidence to rebut Defendant's records, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and/or Aggrieved

Employee and provide the evidence submitted to Class Counsel and Defendant's Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member and/or Aggrieved Employee's actual number of Weeks Worked and/or Pay Periods Worked and estimated Individual Settlement Payment. If Class Counsel and Defendant's Counsel are unable to agree, they agree to submit the dispute to the Settlement Administrator to render a final decision. Class Members and Aggrieved Employees will have until the Notice Response Deadline to dispute Weeks Worked and/or Pay Periods Worked, object or opt-out, unless extended by the Court. In the event that the Settlement Administrator increases the number of Weeks Worked and/or Pay Periods Worked for any Class Member or Aggrieved Employee, then the Settlement Administrator will recalculate the Participating Class Members' Individual Settlement Payments accordingly. In no event will Defendant be required to increase the Gross Settlement Amount.

72. Declaration of Due Diligence. The Settlement Administrator shall provide counsel for the Parties, at least twenty-five (25) calendar days prior to the Final Approval Hearing, a declaration of due diligence and proof of mailing with regard to the mailing of the Notices of Settlement.

73. Class Members' Rights. Each Class Member will be fully advised of the Settlement, the ability to object to the provisions in the Settlement related to the Class Claims, and the ability to opt-out or request exclusion from the Settlement with respect to the Class Claims. The Notice will inform the Class Members of the Court-established deadlines for filing objections or requesting exclusion from the Settlement with respect to the Class Claims in accordance with the following guidelines:

(a) Requests for Exclusion from Participating in the Settlement. Any Class Member, other than Plaintiff, may request to be excluded from the Settlement by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on or before the Notice Response Deadline. The Request for Exclusion should state:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT IN
THE CONSTANT v. ROOTER RANGER, LLC LAWSUIT. I

1 UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM
2 THE SETTLEMENT, I WILL NOT RECEIVE ANY MONEY
3 FROM THE CLASS ACTION PORTION OF THIS LAWSUIT.”

4 To be valid, any Request for Exclusion must include the full name, address, telephone
5 number, last four digits of the social security number or date of birth, and signature of the Class
6 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
7 Settlement Administrator at the specified address set forth in the Notice. Any such Request must
8 be made in accordance with the terms set forth in the Notice. A Request for Exclusion will be
9 timely only if postmarked by the Notice Response Deadline, unless the Parties otherwise agree in
10 writing. Any Class Member who timely requests exclusion in compliance with these
11 requirements: (i) will not have any rights under this Agreement with respect to the Class Claims,
12 including the right to object, appeal, or comment on the Settlement; (ii) will not be entitled to
13 receive any payments under this Agreement for the Class Claims; and (iii) will not be bound by
14 this Agreement, or the Judgment, with respect to the Class Claims. Any Aggrieved Employee
15 who requests timely exclusion will still be subject to the PAGA Claims to the fullest extent
16 permitted by law and shall be sent his or her share of PAGA Penalties.

17 (b) Binding Effect on Participating Class Members. Except for those Class
18 Members who exclude themselves in compliance with the procedures set forth above, all Class
19 Members will: (i) be deemed to be Participating Class Members for all purposes under this
20 Agreement; (ii) will be bound by the terms and conditions of this Agreement, the Judgment, and
21 the releases set forth herein; and (iii) except as otherwise provided herein, will be deemed to
22 have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the
23 Settlement.

24 (c) Objections to Settlement of the Class Claims. Any Participating Class
25 Member, other than Plaintiff, may object to the terms of this Agreement, except as to the PAGA
26 Claims. To object, a Participating Class Member shall inform the Settlement Administrator, in
27 writing, of his or her objection which must be postmarked by the Notice Response Deadline at
28 the address set forth in the Notice. Such objection shall include the objecting Participating Class

1 Member's full name, address, telephone number, last four digits of the social security number or
2 date of birth, signature, and dates of employment with Defendant, in addition to the case name
3 and number, the basis for the objection, including any legal support and each specific reason in
4 support of the objection, as well as any documentation or evidence in support thereof, and, if the
5 Objecting Participating Class Member is represented by counsel, the name and address of his or
6 her counsel. The Settlement Administrator shall provide objections, if any, to Class Counsel and
7 Defendant's Counsel within three (3) calendar days of receipt, and the Settlement Administrator
8 shall attach the same to its declaration of due diligence and file with the Court prior to the Final
9 Approval Hearing. Any Participating Class Member who files an objection remains eligible to
10 receive monetary compensation from the Settlement. Plaintiff and Defendant shall not be
11 responsible for any fees, costs, or expenses incurred by any Class Member and/or his or her
12 counsel related to any objections to the Settlement. Submitting an objection does not preserve
13 the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party
14 of record by timely and properly intervening or filing a motion to vacate the judgment under
15 California Code of Civil Procedure Section 663. Class Members and Aggrieved Employees may
16 not object to or opt-out of the Settlement with respect to the PAGA Claims.

17 (d) Failure to Object. Any Class Member who desires to object to the Class
18 Claims in the Settlement but fails to timely submit a written objection or in person objection at
19 the Final Approval Hearing waives any right to object and will be foreclosed from making any
20 objection to this Settlement. Any Class Member who does not timely and properly become a
21 party of record by intervening or filing a motion to vacate the judgment waives any and all rights
22 to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate
23 proceeding, such as a motion to vacate judgment, motion for new trial, a motion under California
24 Code of Civil Procedure Section 473, and extraordinary writs.

25 (e) Responses to Objections. Counsel for the Parties may file a response to
26 any objections submitted by objecting Participating Class Members at least five (5) court days
27 before the date of the Final Approval Hearing.

28 (f) Class Members will have until the Notice Response Deadline to object or

1 submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement
2 Administrator shall disclose jointly to Class Counsel and Defendant's counsel what objections or
3 Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class
4 Counsel or Defendant's Counsel.

5 (g) Defective Submissions. If a Class Member's Request for Exclusion or
6 objection is defective as to the requirements listed herein, that Class Member will be given an
7 opportunity to cure the defect(s). The Settlement Administrator will mail the Class Member a
8 cure letter within three (3) business days of receiving the defective submission to advise the
9 Class Member that his or her submission is defective and that the defect must be cured to render
10 the Request for Exclusion or objection valid. The Class Member will have the later of (i) the
11 Notice Response Deadline or (ii) fifteen (15) calendar days from the date of the cure letter to
12 postmark or fax a revised Request for Exclusion or objection. If the revised Request for
13 Exclusion or objection is not postmarked or received by fax within that period, it will be deemed
14 untimely and disregarded.

15 74. Funding of the Settlement Amount. Defendant shall make a one-time deposit into
16 the QSF of the Gross Settlement Amount, plus the employer's share of payroll taxes, no later
17 than thirty (30) calendar days after the Effective Date. Once Defendant has complied with their
18 obligation set forth in this paragraph, it shall be deemed to have satisfied all of the terms and
19 conditions of this Agreement, shall be entitled to all the protections afforded it under the
20 Agreement, and shall have no further obligations under the Agreement, regardless of what occurs
21 with respect to the further administration of the Settlement. The Settlement Administrator (and
22 not Defendant) shall issue the applicable W-2s and IRS Form 1099 reflecting all payments to the
23 Class Members.

24 75. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
25 payment into the QSF, the Settlement Administrator will mail the Individual Settlement
26 Payments to the Participating Class Members, the payment to Class Counsel for the Attorneys'
27 Fees and Costs Award, any Service Payment to the Class Representative, the payment to the
28 LWDA for PAGA Penalties, the payments to Aggrieved Employees for PAGA Penalties, and

1 will pay itself the Settlement Administration Costs.

2 76. Deadline for Cashing Settlement Checks. Participating Class Members and
3 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement
4 Administrator to cash each settlement check. If any Participating Class Member's or Aggrieved
5 Employee's check is not cashed within that period, the check will be void and a stop-payment
6 will be issued, and the Settlement Administrator shall issue the unclaimed funds to the California
7 State Controller's Office in the name of the Class Member or Aggrieved Employee. The release
8 will be binding upon all Participating Class Members and Aggrieved Employees who do not cash
9 their checks within the 180-day period. In the event that any settlement check is returned to the
10 Settlement Administrator within 180 days of mailing, the Settlement Administrator will, within
11 five (5) business days of receipt of the returned settlement check, perform a skip trace to locate
12 the individual, and notify Defendant's Counsel and Class Counsel of the results. If a new
13 address is located by these means, the Administrator will have ten (10) business days to re-issue
14 the check. Neither Defendant, Defendant's Counsel, Class Counsel, Plaintiff, nor the Settlement
15 Administrator will have any liability for lost or stolen settlement checks, forged signatures on
16 settlement checks, or unauthorized negotiation of settlement checks. Without limiting the
17 foregoing, in the event a Participating Class Member or Aggrieved Employee notifies the
18 Settlement Administrator that he or she believes that a settlement check has been lost or stolen,
19 the Settlement Administrator shall immediately stop payment on such check. If the check in
20 question has not been negotiated prior to the stop payment order, the Settlement Administrator
21 will issue a replacement check.

22 77. No person shall have any claim against Defendant or the Released Parties,
23 Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on
24 mailings, distributions, payments or reports made in accordance with or pursuant to this
25 Agreement. This provision does not, however, prevent a Party from seeking enforcement of this
26 Agreement.

27 78. Without prejudice to any other remedies, the Settlement Administrator shall agree
28 to be responsible for any breach of its obligations (whether committed by the Settlement

Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from and against all liabilities, claims, causes of action, costs and expenses (including legal fees and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

H. Duties of the Parties Prior to the Court's Approval

79. Promptly after execution of this Agreement, Plaintiff will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

(a) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable and adequate as to the Class Members and Aggrieved Employees and a hearing on fees, costs and the Service Payment;

(b) Approving as to form and content of the proposed Notice;

(c) Directing the mailing of the Notice by first class mail to the Class Members and Aggrieved Employees;

(d) Preliminarily approving this Settlement; and

(e) Preliminarily certifying the class solely for purposes of this Settlement.

80. Reallocation of Settlement Proceeds. In the event the Court fails, on its first hearing, to approve this Agreement because the amount of the PAGA Penalties is not adequate, then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within this Agreement, in order to try to achieve Final Approval of the Agreement upon any subsequent Court hearings.

I. Duties of the Parties Following Court's Final Approval

81. In connection with the Final Approval Hearing provided for in this Agreement, Class Counsel shall submit a proposed Final Approval Order:

a. Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

b. Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Class Representative, and the payment to the Settlement Administrator for costs of administering the settlement; and

1 c. Entering judgment approving settlement, thereby permanently barring all
2 Participating Class Members from prosecuting any Class Claims against any of the Released
3 Parties and permanently barring all Aggrieved Employees and the LWDA from prosecuting any
4 PAGA Claims against any of the Released Parties.

5 82. Final Judgment. The Settlement Administrator shall give the Participating Class
6 Members and Aggrieved Employees notice of the entry of Final Judgment on a postcard or letter
7 that will be included with the Individual Settlement Payments.

8 **J. Voiding the Agreement**

9 83. All Parties, signatories, and their counsel shall not encourage opt-outs or
10 objections to this Agreement. The Parties specifically agree not to solicit opt-outs, directly or
11 indirectly, through any means.

12 84. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will
13 have no further obligations under the Settlement, including any obligation by Defendant to pay
14 the Gross Settlement Amount, or any amounts that otherwise would have been owed under this
15 Settlement.

16 85. If the Settlement is voided or fails for any reason, any costs incurred by the
17 Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise
18 specified in this Agreement.

19 **K. Other Terms**

20 86. Waiver. The waiver by one Party of any breach of this Agreement by another
21 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

22 87. Full and Complete Defense. This Agreement may be pleaded by any Released
23 Party as a full and complete defense to, and may be used as the basis for an injunction against,
24 any action, suit, or other proceeding that has been or may be instituted, prosecuted or attempted,
25 asserting any Released Class Claim or PAGA Released Claim.

26 88. Parties' Authority. The signatories hereto represent that they are fully authorized
27 to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof. The
28 signatories hereto further represent that the Parties to this Agreement are represented by

competent counsel, and they have had an opportunity to consult with counsel prior to authorizing its execution.

89. No Publicity. The Parties will not publicize the Settlement or disclose it to third parties, except as required or necessary to effectuate its terms and comply with law, including the payment of taxes. Specifically, Plaintiff and Plaintiff's counsel shall not publicize the settlement on their websites or make any other public representation regarding the settlement, including posting any information pertaining to this Agreement on social media(Instagram, Facebook, Twitter, LinkedIn, YouTube, etc.), or in advertising/marketing materials. The Parties and their counsel agree that they will not issue any press releases or initiate any contact with the media about the fact, amount, or terms of the settlement. Nothing in this provision shall prevent Defendant from making any required disclosure.

90. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as practicable after execution of this Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval of the settlement, and the final entry of judgment. Class Counsel shall provide Defendant's Counsel with copies of the Preliminary Approval Motion and Final Approval Motion for review at least five (5) court days prior to the filing deadline.

91. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Agreement.

92. No Admission. Defendant denies any and all liability to Plaintiff, any Class Member, and/or any Aggrieved Employee in this Action, as to any and all causes of action that

1 were asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes to
2 settle and compromise the matters at issue in the Complaint to avoid further substantial expense
3 and the inconvenience and distraction of protracted and burdensome litigation. Defendant also
4 has taken into account the uncertainty and risks inherent in litigation, and without conceding any
5 infirmity in the defenses that they have asserted or could assert against Plaintiff, has determined
6 that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the
7 terms and conditions set forth in this Agreement.

8 93. Inadmissibility of Agreement. Whether or not the Court issues the Final
9 Approval Order, nothing contained herein, nor the consummation of this Agreement, is to be
10 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
11 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into
12 this Agreement with the intention of avoiding further disputes and litigation with the attendant
13 inconvenience and expenses. This Agreement is a settlement document, and it, along with all
14 related documents such as the notices, and motions for preliminary and final approval, shall,
15 pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
16 inadmissible in evidence in any proceeding, except an action or proceeding to approve the
17 settlement, and/or interpret or enforce this Agreement. The stipulation for class certification as
18 part of this Agreement is for settlement purposes only and if, for any reason the settlement is not
19 approved, the stipulation will have no force or effect.

20 94. Notices. Unless otherwise specifically provided herein, all notices, demands, or
21 other communications pursuant to this Agreement shall be in writing and shall be deemed to
22 have been duly given as of the third business day after mailing by United States registered or
23 certified mail, return receipt requested, addressed:

24 To the Class Members and Aggrieved Employees:

25 Brian J. Mankin
26 *brian@LMLfirm.com*
27 LAUBY MANKIN LAUBY LLP
28 5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

To Defendant:

Ryan C. Bykerk
bykerkr@gtlaw.com
GREENBERG TRAURIG
1840 Century Park East, #100
Los Angeles, CA 90067-2121
Tel: (310) 586-7711| Fax: (310) 586-7800

95. Construction. The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

96. Captions and Interpretations. Paragraph titles or captions contained herein 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 hereof. Each term of this Agreement is contractual and not merely a recital.

97. Modification. This Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

98. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and Plaintiff and Defendant agree to seek the help of the mediator identified in this Agreement to resolve any dispute they are unable to resolve informally. During this period, the Parties shall bear their own attorneys' fees and costs. This provision shall not apply to any legal action or other proceeding instituted by any person or entity other than Plaintiff or Defendant.

1 99. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of
2 dismissal pursuant to the terms of this Agreement, that, pursuant to California Code of Civil
3 Procedure Section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of
4 this Action over all Parties to interpret, enforce, and effectuate the terms, conditions, intents, and
5 obligations of this Agreement.

6 100. Enforceability. Pursuant to California Evidence Code §§ 1123(a) and (b), the
7 Parties intend that this Agreement shall be enforceable, binding, and admissible in a court of law.

8 101. Choice of Law. This Agreement shall be governed by and construed, enforced
9 and administered in accordance with the laws of the State of California.

10 102. Integration Clause. This Agreement contains the entire agreement between the
11 Parties relating to the settlement and transaction contemplated hereby, and all prior or
12 contemporaneous agreements, understandings, representations, and statements, whether oral or
13 written and whether by a Party or such Party's legal counsel, are merged herein. No rights
14 hereunder may be waived except in writing.

15 103. Binding On Assigns. This Agreement shall be binding upon and inure to the
16 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
17 successors, and assigns.

18 104. Signatures of All Class Members and Aggrieved Employees Unnecessary to be
19 Binding. It is agreed that, because the Class Members and Aggrieved Employees are numerous,
20 it is impossible or impractical to have each Class Member and Aggrieved Employee execute this
21 Agreement. The Notice will advise all Class Members and Aggrieved Employees of the binding
22 nature of the releases provided herein and such shall have the same force and effect as if this
23 Agreement were executed by each Class Member and Aggrieved Employee.

24 105. Invalidity of Any Provision. Before declaring any provision of this Agreement
25 invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible
26 consistent with applicable precedents so as to define all provisions of this Agreement valid and
27 enforceable.

28 106. Counterparts. This Agreement may be executed in counterparts, and when each

1 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
2 original, and, when taken together with other signed counterparts, shall constitute one fully
3 signed Agreement, which shall be binding upon and effective as to all Parties. Electronic
4 signatures shall have the same force and effect as an original.

5 107. Request for Dismissal of Beebe Enterprises, Inc. Within 10 days after the full
6 execution of this Agreement, Plaintiff will file a Request for Dismissal of defendant Beebe
7 Enterprises, without prejudice, pursuant to California Rules of Court, Rule 3.770.

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10 --- Signatures on Next Page ---
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Dated: January 24, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:


Brett Constant (Jan 24, 2023 14:48 PST)

Brett Constant

Dated: January 24, 2023

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP


Brian J. Mankin
Attorneys for Plaintiff

Dated: January 24, 2023

DEFENDANT:
ROOTER RANGER, LLC



By: Kurt Bratton

Title: Chief Executive Officer

Dated: January 25, 2023

DEFENDANT'S COUNSEL:
GREENBERG TRAURIG, LLP


Ryan C. Bykerk
Attorneys for Defendants

END OF DOCUMENT

EXHIBIT “B”

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00494 Constant v Rootler
Ranger (Active Only)

Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
Brett Constant 14000-00494 Constant v Rootler Ranger									
03-17-2022	Approved		Non-Billable	E112 Court fees L.	Grossi, Tracie	75.00	0.00	1.00	75.00
LWDA fee to submit PAGA ltr									
03-18-2022	Approved		Non-Billable	E101 Copying L.	Grossi, Tracie	0.06	0.00	176.00	10.56
176 copies @ \$0.06 for LWDA and letters to employer									
03-23-2022	Approved		Non-Billable	Attorney Service	Aguilera, Monica A	1,629.20	0.00	1.00	1,629.20
Bosco Inv 6834588 File and conform. -Certificate of Assignment -Civil Case Cover Sheet -Summons -Complaint *Advance fees: \$1435.00* Court: San Bernardino County Superior Court - Central District									
03-30-2022	Approved		Non-Billable	E101 Copying L.	Grossi, Tracie	0.06	0.00	168.00	10.08
168 copies @ \$0.06 for Amended LWDA to employer									
03-31-2022	Approved		Non-Billable	E108 Postage L.	Grossi, Tracie	79.40	0.00	1.00	79.40
Postage for the month of March 2022									
07-07-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	94.00	0.00	1.00	94.00
Courtcall ID#11548838 for 7/5/22 CMC									
07-27-2022	Approved		Non-Billable	E125 Mediation fees	Chiarito, Tracie	5,275.00	0.00	1.00	5,275.00
JAMS Inv #1240025215 for 11/10/22 mediation w Judge Cannon									
08-01-2022	Approved		Non-Billable	E101 Copying	Chiarito, Tracie	0.06	0.00	8.00	0.48
8 copies @ .06 for Nlc of Change of Address									
11-30-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	94.00	0.00	1.00	94.00
Courtcall ID #11626211 for 11/30/22 CMC									
01-27-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	230.95	0.00	1.00	230.95
Bosco Inv #8283498 File and conform. -Motion -Declaration x3 -Proposed Order *advance fee*									
Court: San Bernardino County Superior Court - Central District Completed on: 01/25/2023									

All Expenses
Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00494 Constant v Rootler Ranger
Ranger (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Brett Constant</u> <u>14000-00494 Constant v Rootler Ranger</u>									
02-20-2023	Approved		Non-Billable	Attorney Service	Chiarto, Tracie	72.00	0.00	1.00	72.00
Courtcall ID #11660576 for 2/17/23 MPA									
02-23-2023	Approved		Non-Billable	E112 Court fees	Chiarto, Tracie	3.00	0.00	1.00	3.00
San Bernardino Superior Court fee for copy of signed PA order									
02-23-2023	Approved		Non-Billable	Attorney Service	Chiarto, Tracie	9.95	0.00	1.00	9.95
TurboCourt Order #7709379 - file RFD re Beebe Enterprise									
03-01-2023	Approved		Non-Billable	E112 Court fees	Chiarto, Tracie	3.00	0.00	1.00	3.00
San Bernardino Superior Court fees for copy of signed order on RFD of Beebe									
05-31-2023	Approved		Non-Billable	Attorney Service	Chiarto, Tracie	300.00	0.00	1.00	300.00
Estimated costs to file MFA and supporting documents via Bosco									
06-23-2023	Approved		Non-Billable	E112 Court fees	Chiarto, Tracie	10.00	0.00	1.00	10.00
San Bernardino Superior Court fees for copy of signed order on FA									
06-23-2023	Approved		Non-Billable	Attorney Service	Chiarto, Tracie	144.00	0.00	1.00	144.00
Estimated costs for Courtcall for MFA									

Project Total 8,040.62
Client Total 8,040.62
Grand Total 8,040.62

EXHIBIT “C”