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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

NELSON MIRANDA, an individual, and on
behalf of all others similarly situated,

Plaintiff,

v.

CA GLATT MART, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 22STCV13006

[Assigned for all purposes to the
Hon. Elaine Lu in Dept. 9]

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

Action Filed: April 18, 2022

Trial Date: None Set

1 This Class Action and PAGA Settlement Agreement and Release of Class Action
2 (“Settlement Agreement”) is made by and between plaintiff Nelson Miranda (“Plaintiff”) and
3 defendant CA Glatt Mart, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant
4 collectively as “Parties,” or individually as “Party.” This Settlement Agreement is subject to the
5 approval of the Court, pursuant to California Rules of Court, rule 3.769, subdivisions (c), (d),
6 and (e), and is made for the sole purpose of attempting to consummate settlement of the action
7 on a class-wide basis subject to the following terms and conditions. As detailed below, if the
8 Court does not enter an order granting final approval of this Settlement Agreement or the
9 conditions precedent are not met for any reason, this Settlement Agreement is void and of no
10 force or effect whatsoever.

11 1. DEFINITIONS

12 As used in this Settlement Agreement, the following terms shall have the meanings
13 specified below. To the extent terms or phrases used in this Settlement Agreement are not
14 specifically defined below, but are defined elsewhere in this Settlement Agreement, they are
15 incorporated by reference into this definition section.

16 1.1. “Action” means the Plaintiff’s civil lawsuit alleging wage and hour violations against
17 Defendant, captioned *Nelson Miranda v. CA Glatt Mart, Inc.*, Case No. 22STCV13006, initiated
18 on April 18, 2022, and currently pending in Superior Court of the State of California, County of
19 Los Angeles.

20 1.2. “Administrator” means ILYM Group, Inc. (“ILYM”), the neutral entity the Parties have
21 agreed to appoint to administer the Settlement.

22 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid
23 from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance
24 with the Administrator’s “not to exceed” bid submitted to the Court in connection with
25 Preliminary Approval of the Settlement.

26 1.4. “Aggrieved Employee” means a person employed by Defendant in California and
27 classified as a non-exempt, hourly-paid employee who worked for Defendant during the PAGA
28 Period.

1 1.5. “Applicable Wage Order” means the California Industrial Welfare Commission (“IWC”)
2 Wage Order applicable to the facts of this case, including IWC Wage Order 7-2001 and others
3 that may be applicable. (Cal. Code of Regs., tit. 8, § 11070.)

4 1.6. “Class” or “Settlement Class” means all persons currently or formerly employed by
5 Defendant in California and classified as a non-exempt, hourly-paid employee who worked for
6 Defendant during the Class Period.

7 1.7. “Class Counsel” means David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group,
8 P.C.

9 1.8. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean
10 the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
11 expenses, respectively, incurred to prosecute the Action.

12 1.9. “Class Data” means Class Member identifying information in Defendant’s custody,
13 possession, or control, including the Class Member’s (1) name; (2) last known address(es); (3)
14 last known telephone number(s); (4) last known Social Security Number(s); and (5) the dates of
15 employment (i.e., hire dates, and, if applicable, re-hire date(s) and/or separation date(s)).

16 1.10. “Class Member” means a member of the Class, as either a Participating Class Member or
17 Non-Participating Class Member (including a Non- Participating Class Member who qualifies as
18 an Aggrieved Employee).

19 1.11. “Class Member Address Search” means the Administrator’s investigation and search for
20 current Class Member mailing addresses using all reasonably available sources, methods and
21 means including, but not limited to, the National Change of Address database, skip traces, and
22 direct contact by the Administrator with Class Members.

23 1.12. “Class Notice” means the COURT APPROVED NOTICE OF CLASS AND
24 REPRESENTATIVE ACTION SETTLEMENT AND DATE FOR FINAL APPROVAL
25 HEARING, to be mailed to Class Members in English and Spanish in the form, without material
26 variation, attached as Exhibit A and incorporated by reference into this Settlement Agreement.

27 1.13. “Class Period” means the period from April 18, 2018 through April 9, 2024.

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1.14. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

1.15. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.16. “Court” means the Superior Court of California, County of Los Angeles.

1.17. “Defendant” means named defendant CA Glatt Mart, Inc.

1.18. “Defense Counsel” means Philip J. Azzara and Zachary A. Princi of Fisher & Phillips LLP.

1.19. “Effective Date” means the date by which both of the following have occurred: (a) the Court enters the Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

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

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

1.22. “Final Approval” means the Court’s order granting final approval of the Settlement.

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1 1.23. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval
2 of the Settlement held to ascertain the fairness, reasonableness, and adequacy of the Settlement.

3 1.24. “Final Judgment” or “Judgment” means the Judgment entered by the Court based upon
4 the Final Approval.

5 1.25. “Gross Settlement Amount” means \$440,000.00 (Four Hundred Forty Thousand Dollars
6 and Zero Cents) which is the total amount Defendant agrees to pay under the Settlement
7 Agreement, except as provided in Paragraph 10.1 below and any and all Employer’s Taxes owed
8 on the Individual Class Payments. The Gross Settlement Amount will be used to pay Individual
9 Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees
10 Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment,
11 Administration Expenses Payment, and Employee’s Taxes and Required Withholding.

12 1.26. “Hearing on Preliminary Approval” means the hearing held on the motion for preliminary
13 approval of the Settlement.

14 1.27. “Individual Class Payment” means the Participating Class Member’s pro rata share of the
15 Net Settlement Amount calculated according to the number of Workweeks worked during the
16 Class Period, less any Employee’s Taxes and Required Withholdings. The Individual Class
17 Payment does not include any portion of the Individual PAGA Payment or the LWDA PAGA
18 Payment.

19 1.28. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of
20 the PAGA Penalties calculated according to the number of Pay Periods worked during the PAGA
21 Period.

22 1.29. “LWDA” means the California Labor and Workforce Development Agency, the agency
23 entitled to the LWDA PAGA Payment, under Labor Code section 2699, subd. (i).

24 1.30. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA
25 under Labor Code section 2699, subd. (i).

26 1.31. “Net Settlement Amount” means the Gross Settlement Amount, less the following
27 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
28 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel

Litigation Expenses Payment, and Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.32. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion in accordance with the terms of the Class Notice.

1.33. “Operative Complaint” means the First Amended Class and Private Attorneys’ General Act (“PAGA”) Representative Action Complaint on file in the Action.

1.34. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

1.35. “PAGA Period” means the period from April 27, 2021 through April 9, 2024.

1.36. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

1.37. “PAGA Notice” means Plaintiff’s April 27, 2022 letter to Defendant and the LWDA, providing notice pursuant to Labor Code section 2699.3 subd. (a).

1.38. “PAGA Penalties” means the total amount of PAGA civil penalties that the Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action. The PAGA Penalties are to be approved by the Court pursuant to Labor Code section 2699 and to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$7,500) and the 75% to the LWDA (\$22,500) in settlement of PAGA claims.

1.39. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.40. “Plaintiff” means Nelson Miranda, the named plaintiff in the Action.

1.41. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

1.42. “Preliminary Approval Order” means the proposed Order granting Preliminary Approval and Approval of PAGA Settlement.

1.43. “Released Class Claims” means the claims being released as described in Paragraph 7.2 below.

1.44. “Released PAGA Claims” means the claims being released as described in Paragraph 7.4 below.

1.45. “Released Parties” means: Defendant and each of its former, present and future owners, parents and subsidiaries, and all of their current, former and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, predecessors, successors, assigns, accountants, insurers, reinsurers, affiliates, and/or legal representatives.

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

1.47. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.48. “Response Deadline” means forty-five (45) days after the Administrator first mails the Class Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) mail Requests for Exclusion from the Settlement, or (b) mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 15 days beyond the Response Deadline has expired.

1.49. “Settlement” means the disposition of the Action effected by this Settlement Agreement and the Judgment, which is subject to Court approval.

1.50. “Workweek” means any week during which a Class Member worked for Defendant, for at least one day during the Class Period, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

2. RECITALS

2.1. On April 18, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of actions against Defendant for: (1) failure to pay overtime wages in violation of Labor Code

1 sections 510 and 1194, and the Applicable Wage Order; (2) failure to pay minimum wage for all
2 hours worked in violation of Labor Code sections 1197, and the Applicable Wage Order; (3)
3 failure to provide compliant meal periods and pay missed meal period premiums in violation of
4 Labor Code sections 512, 226.7, and the Applicable Wage Order; (4) failure to provide compliant
5 rest periods and pay missed rest period premiums in violation of Labor Code section 226.7 and
6 the Applicable Wage Order; (5) failure to pay all wages due upon termination in violation of
7 Labor Code sections 201, 202, and 203; (6) failure to provide accurate wage statements in
8 violation of Labor Code section 226; (7) failure to timely pay wages during employment in
9 violation of Labor Code sections 204 and 210; (8) failure to reimburse business expenses in
10 violation of Labor Code section 2802; (9) violation of California’s Unfair Competition Law (Bus.
11 & Prof. Code, §§ 17200 and 17203); and (10) claims for injunctions, liquidated damages,
12 penalties, interest, fees, expenditures, losses, and costs based on the foregoing. (the “Class
13 Action”).

14 2.2. On June 23, 2022, after sixty-five (65) days had passed without any action by the LWDA
15 with respect to the alleged Labor Code violations, Plaintiff filed a separate representative action
16 under PAGA against Defendant in the Superior Court of California, County of Los Angeles, Case
17 No. 22STCV20480, for the Labor Code violations set out in the PAGA Notice (the “PAGA
18 Action”). In the PAGA Action, Plaintiff alleged a cause of action for statutory penalties based
19 on the foregoing pursuant to PAGA (Lab. Code, §§ 2698–2699.6); and Labor Code sections 210,
20 226.3, 558, 1174.5, 1197.1.

21 2.3. On or about September 13, 2023, Plaintiff filed the Operative Complaint in the Class
22 Action, adding the claims alleged in the PAGA Action, and dismissed the PAGA Action without
23 prejudice, effectively consolidating the PAGA Action into the Class Action.

24 2.4. Thereafter, the Parties agreed to exchange informal discovery and attend mediation.

25 2.5. Class Counsel and the Class Representative have vigorously prosecuted this case, and
26 Defendant has vigorously contested it. The Parties have engaged in sufficient investigation and
27 discovery to assess the relative merits of the claims of the Class Representative and of the
28 defenses to them.

1 2.6. Class Counsel has conducted significant informal discovery during the prosecution of the
2 Action. This discovery, investigation, and prosecution has included, among other things, (a) over
3 a dozen telephonic conferences with Plaintiff; (b) inspection and analysis of time and payroll
4 records for the estimated 155 putative class members; (c) analysis of putative class data points,
5 including the number of putative class members from August 10, 2018 through mediation, the
6 number of employees separated during the waiting time penalty period, the average hourly rate
7 of pay, the number of Workweeks, Pay Periods and shifts from August 10, 2018 through
8 mediation, and the number of Pay Periods from April 27, 2021 through mediation; (d) analysis
9 of other employment data from a sample of Class Members; (e) an analysis of the legal positions
10 taken by Defendant; (f) investigation into the viability of class treatment of the claims asserted
11 in the Action; (g) analysis of potential class-wide damages, including information sufficient to
12 understand Defendant's potential defenses to Plaintiff's claims; (h) research of the applicable law
13 with respect to the claims asserted in the Complaint and the potential defenses thereto; and (i)
14 assembling and analyzing of data for calculating damages. The informal discovery conducted in
15 this Action and the information exchanged by the Parties through pre-mediation discussions are
16 sufficient to reliably assess the merits of the Parties' respective positions and to compromise the
17 issues on a fair and equitable basis.

18 2.7. On April 9, 2024, the Parties participated in an all-day mediation presided over by
19 Katherine J. Edwards, Esquire, an experienced employment law mediator, which led to this
20 Settlement Agreement to settle the Action.

21 2.8. The Court has not granted class certification.

22 2.9. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any
23 other pending matter or action asserting claims that will be extinguished or affected by the
24 Settlement.

25 2.10. The Class Representative and Class Counsel believe that the claims, causes of action,
26 allegations, and contentions asserted in the Action have merit. However, the Class Representative
27 and Class Counsel recognize and acknowledge the expense and delay of continued lengthy
28 proceedings necessary to prosecute the Action against Defendant through trial and through

1 appeals. Class Counsel has taken into account the uncertain outcome of the litigation, the risk of
2 continued litigation in complex actions such as this, as well as the difficulties and delays inherent
3 in such litigation, and the potential difficulty of obtaining certification of the Settlement Class as
4 well as trying the claims of the class. Class Counsel is mindful of the potential problems of proof
5 under, and possible defenses to, the claims alleged in the Action.

6 2.11. The Class Representative and Class Counsel believe that the settlement set forth in this
7 Settlement Agreement confers substantial benefits upon Plaintiff and the Settlement Class and
8 that an independent review of this Settlement Agreement by the Court in the approval process
9 will confirm this conclusion. Based on their own independent investigation and evaluation, Class
10 Counsel has determined that the settlement set forth in this Settlement Agreement is in the best
11 interests of Plaintiff and the Class Members.

12 2.12. Defendant has denied and continues to deny all allegations, claims, and contentions
13 alleged by Plaintiff in the Action. Defendant has expressly denied and continues to deny all
14 charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts,
15 or omissions alleged in the Action. Defendant contends that it complied with California and
16 federal wage and hour laws and has dealt legally and fairly with Plaintiff and the Class Members.

17 2.13. Defendant further denies that, for any purpose other than settling this Action, these claims
18 are appropriate for class or representative treatment. Nonetheless, Defendant has concluded that
19 further proceedings in the Action would be protracted and expensive and that it is desirable that
20 the Action be fully and finally settled in the manner and upon the terms and conditions set forth
21 in this Settlement Agreement to dispose of burdensome and protracted litigation, to permit the
22 operation of Defendant's respective businesses without further expensive litigation and the
23 distraction and diversion of their personnel with respect to matters at issue in the Action.
24 Defendant has also taken into account the uncertainty and risks inherent in any litigation,
25 especially in complex cases such as the Action. Defendant has, therefore, determined that it is
26 desirable and beneficial to it that the Action be settled in the manner and upon the terms and
27 conditions set forth in this Settlement Agreement.

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2.14. The Class Settlement set forth herein intends to achieve the following: (1) entry of the Final Approval; (2) entry of the Final Judgment; (3) discharge of the Released Parties from liability for any and all of the Released Class Claims and Released PAGA Claims; and (4) discharge of Defendant from liability for any and all claims arising out of the Action.

3. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS

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

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

4. APPOINTMENT OF CLASS COUNSEL

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

5. MONETARY TERMS

5.1. Gross Settlement Amount. The Gross Settlement Amount and other actions and forbearances taken by Defendant shall constitute adequate consideration for the Settlement and

will be made in full and final settlement of the Released Class and PAGA Claims. Defendant promises to pay \$440,000.00 as the Gross Settlement Amount, unless increased pursuant to Paragraph 10.1 of this Settlement Agreement, and to separately pay any and all Employer's Taxes owed on the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 6.3 of this Settlement Agreement. None of the Gross Settlement Amount will revert to Defendant.

5.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

5.2.1. To Plaintiff: Class Representative Service Payment to Plaintiff of not more than \$7,500.00 to acknowledge their efforts on behalf of the Class in this Action, including assisting in the investigation and consulting with Class Counsel and providing crucial documents to Class Counsel, in addition to any Individual Class Payment and any Individual PAGA Payment Plaintiff is entitled to receive as a Participating Class Member. Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payment prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

5.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 35% of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph 10.1 of this Settlement Agreement, is currently estimated to be \$154,000.00 and a Class Counsel Litigation Expenses Payment of not more than \$25,000.00. Defendant will not oppose requests for these payments provided that do not exceed these amounts. As a condition

1 of this Settlement, Class Counsel has agreed to pursue fees only in the manner reflected
2 by this subsection. Plaintiff and/or Class Counsel will endeavor to file a motion for
3 Class Counsel Fees Payment and Class Litigation Expenses Payment prior to the Final
4 Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class
5 Counsel Litigation Expenses Payment less than the amounts requested, the
6 Administrator will allocate the remainder to the Net Settlement Amount to reflect the
7 actual attorneys' fees and expenses awarded to Class Counsel in the Final Approval
8 Order. Released Parties shall have no liability to Class Counsel or any other Plaintiff's
9 Counsel arising from any claim to any portion any Class Counsel Fees Payment and/or
10 Class Counsel Litigation Expenses Payment. The Administrator will pay the Class
11 Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS
12 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on
13 the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment
14 and hold Defendant harmless, and indemnify Defendant, from any dispute or
15 controversy regarding any division or sharing of any of these Payments.

16 5.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
17 \$6,750.00 except for a showing of good cause and as approved by the Court. To the
18 extent the Administration Expenses are less or the Court approves payment less than
19 \$6,750.00, the Administrator will retain the remainder in the Net Settlement Amount.
20 All costs and expenses due to the Administrator in connection with its administration of
21 the Class Settlement, including, but not limited to, providing the Class Notice, locating
22 Class Members, processing Requests for Exclusions and objections, distributing the
23 portion of the LWDA PAGA Payment, distributing the Individual PAGA Payments
24 payable to members of PAGA Settlement Class, and calculating, administering and
25 distributing Individual Class Payments to the Participating Class Members and related
26 tax forms, shall be paid from the Gross Settlement Amount, and is not expected to
27 exceed \$6,750.00.

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1 5.2.4. To Each Participating Class Member: The Individual Class Payments shall be paid
2 from the Net Settlement Amount. An Individual Class Payment calculated by (a)
3 dividing the Net Settlement Amount by the total number of Workweeks worked by all
4 Participating Class Members during the Class Period and (b) multiplying the result by
5 each Participating Class Member's Workweeks. Each Participating Class Member,
6 including Plaintiff, shall be responsible for the payment of the Employee's Taxes and
7 Required Withholding with respect to his or her Individual Class Payment and shall hold
8 Defendant harmless from any and all liability with regard thereto.

9 5.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating
10 Class Member's Individual Class Payment will be allocated to settlement of
11 wage claims (the "Wage Portion"). The Wage Portions are subject to tax
12 withholding and will be reported on an IRS W-2 Form. 80% of each
13 Participating Class Member's Individual Class Payment will be allocated to
14 settlement of claims for interest and penalties (the "Non-Wage Portion"). The
15 Non-Wage Portions are not subject to wage withholdings and will be reported
16 on IRS 1099 Forms. Prior to the funding of the Gross Settlement Amount and
17 final distribution, the Administrator shall calculate the total Employer's Taxes
18 due on the Wage Portion of the Participating Class Members Individual Class
19 Payments and issue instructions to Defendant to separately fund these tax
20 obligations/withholdings. Participating Class Members assume full
21 responsibility and liability for any employee taxes owed on their Individual
22 Class Payment.

23 5.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual
24 Class Payments. Non-Participating Class Members will not receive any
25 Individual Class Payments. The Administrator will retain amounts equal to their
26 Individual Class Payments in the Net Settlement Amount for distribution to
27 Participating Class Members on a pro rata basis.

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1 5.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
2 \$30,000.00 to be paid from the Gross Settlement Amount, with 75% (\$22,500.00)
3 allocated to the LWDA PAGA Payment and 25% (\$7,500.00) allocated to the Individual
4 PAGA Payments.

5 5.2.5.1. The Administrator will calculate each Individual PAGA
6 Payment by (a) dividing the amount of the Aggrieved Employees' 25% share
7 of PAGA Penalties (\$7,500.00) by the total number of PAGA Period Pay
8 Periods worked by all Aggrieved Employees during the PAGA Period and (b)
9 multiplying the result by each Aggrieved Employee's PAGA Period Pay
10 Periods. Aggrieved Employees assume full responsibility and liability for any
11 taxes owed on their Individual PAGA Payments.

12 5.2.5.2. If the Court approves PAGA Penalties of less than the
13 amount requested, the Administrator will allocate the remainder to the Net
14 Settlement Amount. The Administrator will report the Individual PAGA
15 Payments on IRS 1099 Forms.

16 5.2.5.3. Defendant will provide the Administrator with any
17 information reasonably necessary to perform the calculation of number of pay
18 periods worked for each Aggrieved Employee, and any other reasonably
19 required information the Administrator requests to perform the calculations
20 required under this Settlement Agreement. Defendant shall have no
21 responsibility for deciding the validity of the individual payment amounts
22 allocated to each Aggrieved Employee or any other payments made pursuant to
23 this Settlement Agreement, shall have no involvement in or responsibility for
24 the determination or payment of Employee's Taxes and Required Withholding,
25 and shall have no liability for any errors made with respect to such Employee's
26 Taxes and Required Withholding.

27 5.2.6. No Effect on Employee Benefit Plans: Neither the Settlement nor any amounts
28 paid under the Settlement will modify any previously credited hours, days, or weeks of

1 service under any employee benefit plan, policy or bonus program sponsored by
2 Defendant. Such amounts will not form the basis for additional contributions to, benefits
3 under, or any other monetary entitlement under Defendant's sponsored benefit plans,
4 policies, or bonus programs. The payments made under the terms of this Settlement
5 Agreement shall not be applied retroactively, currently, or on a going forward basis, as
6 salary, earnings, wages, or any other form of compensation for the purposes of any of
7 Defendant's benefit plan, policy, or bonus program. Defendant retains the right to
8 modify the language of its benefits plans, policies, and bonus programs to reflect this
9 intent and to make clear that any amounts paid pursuant to this Settlement Agreement
10 are not for "weeks worked," "weeks paid," "weeks of service," or any similar measuring
11 term as defined by applicable plans, policies, and bonus programs for purpose of
12 eligibility, vesting, benefit accrual, or any other purpose, and that additional
13 contributions or benefits are not required by this Settlement Agreement. Defendant does
14 not consider the Settlement payments "compensation" for purposes of determining
15 eligibility for, or benefit accrual within, any benefit plans, policies, or bonus programs,
16 or any other plan sponsored by Defendant.

17 5.3. Administrator Calculations. After the Court issues the Preliminary Approval, the
18 Administrator will disburse the Class Notice to the Class Members, which shall describe the
19 terms of the Settlement and procedures for a Request for Exclusion, object, or participate in the
20 Settlement, as well as identify the Class Member, the number of Workweeks, as well as the
21 estimated amount of the Individual Settlement Amount the Class Member can expect to receive
22 once the Settlement becomes effective on the Effective Date. Class Members shall be given the
23 opportunity to challenge their Workweeks information. The Administrator shall then distribute
24 the entire Gross Settlement Amount without asking or requiring Participating Class Members or
25 Aggrieved Employees to submit any claim as a condition of payment. For purposes of calculating
26 the estimated Individual Class Payments and Individual PAGA Payments, the Administrator
27 shall calculate the estimated Net Settlement Amount based on the estimated values provided
28 above prior to sending the Class Notice to the Class Members. Prior to final distribution, the

1 Administrator shall recalculate the final Net Settlement Amount based on the actual values of the
2 amounts in each category.

3 **6. SETTLEMENT FUNDING AND PAYMENTS**

4 6.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records
5 to date, Defendant estimates there are approximately 155 Class Members who collectively
6 worked a total of 22,000 Workweeks, and 117 Aggrieved Employees who worked a total of 5,779
7 PAGA Pay Periods.

8 6.2. Class Data. Not later than 21 days after the Court grants Preliminary Approval of the
9 Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft
10 Excel spreadsheet. The Class Data shall be marked “Confidential – Settlement Administrator’s
11 Eyes Only.” Class Counsel shall not receive the class data. To protect Class Members’ privacy
12 rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for
13 purposes of this Settlement and for no other purpose, and restrict access to the Class Data to
14 Administrator employees who need access to the Class Data to effect and perform under this
15 Settlement Agreement. Defendant has a continuing duty to immediately notify Class Counsel if
16 it discovers that the Class Data omitted class member identifying information and to provide
17 corrected or updated Class Data as soon as reasonably feasible. Without any extension of the
18 deadline by which Defendant must send the Class Data to the Administrator, the Parties and their
19 counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any
20 issues related to missing or omitted Class Data.

21 6.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement
22 Amount, and also fund the amounts necessary to fully pay Defendant’s share of payroll taxes by
23 transmitting the funds to the Administrator no later than ninety (90) calendar days after the
24 Effective Date. In no event shall Defendant be obligated to pay or deposit with the Settlement
25 Administrator more than \$440,000.00 plus the Employer’s Taxes, except where the Escalator
26 Provision in Paragraph 10.1 is triggered.

27 6.4. Payments from the Gross Settlement Amount. Within fifteen (15) days after Defendant
28 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class

1 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
2 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
3 Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel
4 Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative
5 Service Payment shall not precede disbursement of Individual Class Payments, and the Individual
6 PAGA Payments. The Administrator shall make every effort to pay the Employee's Taxes and
7 Required Withholding associated with each Participating Class Members' Individual Class
8 Payment. If the Administrator is not able to do so within the time period set forth above, it shall
9 so inform Class Counsel and Defense Counsel and provide an approximate date by which the
10 Employee's Taxes and Required Withholding shall be paid and the Individual Class Payments
11 be mailed. Under no circumstances shall the Administrator distribute checks to Class Participants
12 until all Individual Class Payments have been considered, calculated, and accounted for, and all
13 of the remaining monetary obligations have been calculated and accounted for.

14 6.4.1. The Administrator will issue checks for the Individual Class Payments and/or
15 Individual PAGA Payments and send them to the Class Members via First Class U.S.
16 Mail, postage prepaid. The face of each check shall prominently state the date (not less
17 than 180 days after the date of mailing) when the check will be voided ("the Void Date").
18 The Administrator will cancel all checks not cashed by the Void Date. The
19 Administrator will send checks for Individual Settlement Payments to all Participating
20 Class Members (including those for whom Class Notice was returned undelivered). The
21 Administrator will send checks for Individual PAGA Payments to all Aggrieved
22 Employees including Non-Participating Class Members who qualify as Aggrieved
23 Employees (including those for whom Class Notice was returned undelivered). The
24 Administrator may send Participating Class Members a single check combining the
25 Individual Class Payment and the Individual PAGA Payment. Before mailing any
26 checks, the Settlement Administrator must update the recipients' mailing addresses
27 using the National Change of Address Database.

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1 6.4.2. The Administrator must conduct a Class Member Address Search for all other
2 Class Members whose checks are returned undelivered without USPS forwarding
3 address. Within 7 days of receiving a returned check the Administrator must re-mail
4 checks to the USPS forwarding address provided or to an address ascertained through
5 the Class Member Address Search. The Administrator need not take further steps to
6 deliver checks to Class Members whose re-mailed checks are returned as undelivered.
7 The Administrator shall promptly send a replacement check to any Class Member whose
8 original check was lost or misplaced, requested by the Class Member prior to the Void
9 Date.

10 6.4.3. For any Class Member whose Individual Class Payment check or Individual
11 PAGA Payment check is uncashed and cancelled after the Void Date, the Administrator
12 shall transmit the funds represented by such checks to the California Controller's Office,
13 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid
14 residue" subject to the requirements of California Code of Civil Procedure Section 384.
15 The Parties agree that this disposition results in no "unpaid residue" within the meaning
16 of California Civil Procedure Code section 384, as the entire Net Settlement Amount
17 will be paid out to Participating Class Members, whether or not they all cash their
18 Individual Class Payment checks. Therefore, Defendant shall not be required to pay any
19 interest on said amount. For the purposes of determining whether Defendant has met
20 their financial obligation to pay the Individual Class Payment, Defendant will be
21 deemed to have fulfilled its obligation upon the mailing of the check to the Participating
22 Class Member, regardless of whether such Participating Class Member subsequently
23 negotiates the check.

24 6.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall
25 not obligate Defendant to confer any additional benefits or make any additional
26 payments to Class Members (such as 401(k) contributions or bonuses) beyond those
27 specified in this Settlement Agreement.

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1 6.4.5. Within 60 days of the Void Date, the Administrator shall provide to Class Counsel
2 a declaration of payment. Class Counsel will then file with the Court the declaration of
3 payment. If any Participating Class Member is deceased, payment shall be made payable
4 to the estate of that Participating Class Member and delivered to the executor or
5 administrator of that estate, unless the Administrator has received an affidavit or
6 declaration pursuant to California Probate Code section 13101, in which case payment
7 shall be made to the affiant(s) or declarant(s).

8 6.5. Disputes Regarding Class Member Workweeks Data or Payment of Individual
9 Settlement Shares: Class Member Workweeks and the corresponding Individual Class Payments
10 shall be calculated using the employment and payroll records of Defendant, which presumptively
11 shall be deemed to be full, complete, and accurate for purposes of this Settlement Agreement. To
12 overcome that presumption, any Class Member objecting to the accuracy of the number of
13 Workweeks or amount of the Individual Class Payment must submit documentary evidence, such
14 as pay stubs or other written employment records, to the Settlement Administrator. Each Class
15 Member may dispute the number of Workweeks or their estimated Individual Settlement Amount
16 contained on their Class Notice (“Workweeks Dispute”). Any such Workweeks Dispute must be
17 mailed or faxed to the Administrator by the Class Member, postmarked or fax-stamped on or
18 before the Response Deadline. The Administrator shall immediately provide copies of all
19 disputes to counsel for Defendant, shall inform Class Counsel of the dispute without disclosing
20 the identity of the Class Member making the dispute, and shall immediately attempt to resolve
21 all such disputes directly with relevant Class Members with the assistance of Defendant, Defense
22 Counsel, and Class Counsel. If the dispute cannot be resolved, it shall be submitted to the
23 Administrator for its final, non-appealable decision. The Settlement Administrator shall use its
24 best efforts to resolve all such disputes prior to the Effective Date. If, however, a dispute arises
25 or is not resolved until after the Gross Settlement Amount has been distributed, the initial
26 calculation shall stand (as Defendant shall be under no obligation to pay any amounts in excess
27 of the Gross Settlement Amount under this Settlement Agreement).

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1 **7. RELEASE OF CLAIMS**

2 It is the desire of the Parties to fully, finally, and forever settle, compromise, and
3 discharge the Released Claims. Effective upon entry of Judgment, the order granting Final
4 Approval of this Settlement, and on the date when Defendant fully funds the entire Gross
5 Settlement Amount and funds all Employee's Taxes and Required Withholding owed on the
6 Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel
7 will release claims against all Released Parties as follows:

8 7.1. Plaintiff's Release. Plaintiff, on behalf of himself and his dependents, respective former
9 and present spouses, beneficiaries, devisees, legatees, executors, trustees, conservators,
10 guardians, representatives, agents, attorneys, heirs, administrators, heirs and assigns, and
11 successors-in-interest, whether individual, class, representative, legal, equitable, direct or
12 indirect, or any other type or in any other capacity, shall and does hereby forever release,
13 discharge, and agree to hold harmless the Released Parties from all any and all charges,
14 complaints, claims, liabilities, obligations, promises, agreements, controversies, damages,
15 actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including
16 attorney fees and costs), known or unknown, at law or in equity, which he may now have arising
17 out of or in any way connected with his employment with Defendant including, the Released
18 Class Claims and the Released PAGA Claims, claims that were asserted or could have been
19 asserted in the Complaint, and any and all transactions, occurrences, or matters between the
20 Parties occurring prior to the date this Settlement Agreement is fully executed. Without limiting
21 the generality of the foregoing, this release shall include, but not be limited to, any and all claims
22 under: (a) the Americans with Disabilities Act; (b) Title VII of the Civil Rights Act of 1964; (c)
23 the Civil Rights Act of 1991; (d) 42 U.S.C. § 1981; (e) the Age Discrimination in Employment
24 Act; (f) the Fair Labor Standards Act; (g) the Equal Pay Act; (h) the Employee Retirement
25 Income Security Act, as amended; (i) the Consolidated Omnibus Budget Reconciliation Act; (j)
26 the Rehabilitation Act of 1973; (k) the Family and Medical Leave Act; (l) the Civil Rights Act
27 of 1966; (m) the California Fair Employment and Housing Act; (n) the California Constitution;
28 (o) the California Labor Code; (p) the California Government Code; (q) the California Civil

Code; and (r) any and all other federal, state, and local statutes, ordinances, regulations, rules, and other laws, and any and all claims based on constitutional, statutory, common law, or regulatory grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of contract or implied contract, fraud, misrepresentation, promissory estoppel, or intentional infliction of emotional distress, negligent infliction of emotional distress, or damages under any other federal, state, or local statutes, ordinances, regulations, rules, or laws. This release is for any and all relief, no matter how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain and suffering, and attorney fees and costs, and Plaintiff hereby forever release, discharge and agree to hold harmless Defendant and the Released Parties from any and all claims for attorney fees and costs arising out of the matters released in this Settlement Agreement. Plaintiff's Release does not extend to any claims or actions to enforce this Settlement Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them. Nonetheless, Plaintiff agrees that, upon the Effective Date, Plaintiff shall and hereby do fully, finally, and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or could have been asserted upon any theory of law or equity without regard to the subsequent discovery of existence of such different or additional facts.

7.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release only, Plaintiff, being aware of California Code Civil section 1542, well as any other statutes or common law principles of a similar effect, expressly waives and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

5 7.2. Release of Class Claims: For the duration of the Class Period, all Participating Class
6 Members, on behalf of themselves and their respective former and present representatives,
7 agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all
8 claims that were alleged, or reasonably could have been alleged, based on the facts stated in the
9 Operative Complaint including, but not limited to,: (1) all claims for failure to pay overtime wages
10 in violation of Labor Code sections 510 and 1194, the Applicable Wage Order, and other
11 applicable California law not otherwise referenced herein; (2) all claims for failure to pay
12 minimum wages in violation of Labor Code section 1197 and the Applicable Wage Order; (3) all
13 claims for failure to provide meal periods, or compensation in lieu thereof, in violation of Labor
14 Code sections 512 and 226.7, and the Applicable Wage Order; (4) all claims for failure to provide
15 rest periods, or compensation in lieu thereof, in violation of Labor Code section 226.7 and the
16 Applicable Wage Order; (5) all claims for the failure to pay wages due upon termination or
17 resignation in violation of Labor Code sections 201 and 202 and the Applicable Wage Order;; (6)
18 all claims for non-compliant wage statements in violation of Labor Code section 226; (7) all
19 claims for failure to timely pay wages during employment in violation of Labor Code sections
20 204 and 210, the Applicable Wage order; (8) all claims for failure to reimburse business expenses
21 in violation of Labor Code section 2802; (9) all claims asserted through California Business &
22 Professions Code section 17200, *et seq.* arising out of the Labor Code violations referenced in the
23 Complaint; and (10) claims for injunctions, liquidated damages, penalties, interest, fees,
24 expenditures, losses, restitution, and costs based on the foregoing, as well as Labor Code sections
25 203, 210, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1199, 2802. Participating Class Members
26 will be deemed to have acknowledged and agreed that their claims for wages and/or penalties
27 in the Action are disputed, and that their Individual Class Payment constitutes payment of all
28 sums allegedly due to them. Participating Class Members will be deemed to have

acknowledged and agreed that California Labor Code section 206.5 is not applicable to the Individual Class Payment. That section provides in pertinent part as follows:

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

7.3. Except as set forth in Section 7.2 of this Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

7.4. Release of PAGA Claims: For the duration of the PAGA Period, and to the extent permitted by law, the LWDA and the State of California, by and through Plaintiff as an agent and proxy of the LWDA, release the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, including, but not limited to, claims for PAGA penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 in connection with alleged violations of Labor Code sections Labor Code sections 96, 98.6, 200, 201, 201.3, 202, 203, 204, 204b, 204.1, 205, 205.5, 210, 226, 226.3, 226.7, 227.3, 232, 232.5, 246 *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

8. MOTION FOR PRELIMINARY APPROVAL

As soon as practicable after execution of this Settlement Agreement, Class Counsel will submit this Settlement Agreement to the Court along with a Motion for Preliminary Approval of the Class Settlement (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals. Each party shall cooperate to present the Class Settlement to the Court for preliminary approval in a timely fashion.

8.1. Defendant’s Declaration in Support of Preliminary Approval. Within 7 days of full execution of this Settlement Agreement, Defendant will prepare and deliver to Class Counsel a signed declaration from Defendant and Defense Counsel disclosing all facts relevant to any actual

1 or potential conflicts of interest with the Administrator.

2 8.2. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all
3 documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and
4 memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the
5 Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor
6 Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and
7 Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from
8 the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting
9 to its willingness to serve; competency; operative procedures for protecting the security of Class
10 Data; amounts of insurance coverage for any data breach, defalcation of funds or other
11 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;
12 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense
13 Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve
14 and disclosing all facts relevant to any actual or potential conflicts of interest with Class
15 Members; (vi) a signed declaration from each Class Counsel firm attesting to its competency to
16 represent the Class Members; its timely transmission to the LWDA of all necessary PAGA
17 documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative
18 Complaint (Labor Code section 2699, subd. (l)(1)), this Settlement Agreement (Labor Code
19 section 2699, subd. (l)(2)); and (vii) all facts relevant to any actual or potential conflict of interest
20 with Class Members and the Administrator.

21 8.3. Responsibilities of Counsel. Class Counsel is responsible for expeditiously finalizing and
22 filing the Motion for Preliminary Approval after the full execution of this Settlement Agreement
23 (and Defendant counsel is obligated to expeditiously review, comment, and approve said Motion
24 for Preliminary Approval); obtaining a prompt hearing date for the Motion for Preliminary
25 Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary
26 Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the
27 Administrator.

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1 8.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
2 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
3 Defense Counsel will expeditiously work together on behalf of the Parties by meeting and
4 conferring, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary
5 Approval or conditions Preliminary Approval on any material change to this Settlement
6 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of
7 the Parties by meeting and conferring, and in good faith, to modify the Agreement and otherwise
8 satisfy the Court's concerns.

9 **9. SETTLEMENT ADMINISTRATION**

10 9.1. Selection of Administrator. The Parties have jointly selected ILYM to serve as the
11 Administrator and verified that, as a condition of appointment, ILYM agrees to be bound by this
12 Settlement Agreement and to perform, as a fiduciary, all duties specified in this Settlement
13 Agreement in exchange for payment of Administration Expenses Payment. The Parties and their
14 Counsel represent that they have no interest or relationship, financial or otherwise, with the
15 Administrator other than a professional relationship arising out of prior experiences
16 administering settlements.

17 9.2. Employer Identification Number. The Administrator shall have and use its own Employer
18 Identification Number for purposes of calculating payroll tax withholdings and providing reports
19 state and federal tax authorities.

20 9.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
21 the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section
22 468B-1.

23 9.4. Notice to Class Members

24 9.4.1. No later than three (3) business days after receipt of the Class Data, the
25 Administrator shall notify Class Counsel that the list has been received and state the
26 number of Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the
27 Class Data.

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1 9.4.2. Using best efforts to perform as soon as possible, and in no event later than 14
2 days after receiving the Class Data, the Administrator will send to all Class Members
3 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail,
4 the Class Notice with Spanish translation, substantially in the form attached to this
5 Settlement Agreement as Exhibit A. The Class Notice shall prominently estimate the
6 dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable
7 to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable)
8 used to calculate these amounts. Before mailing Class Notices, the Administrator shall
9 update Class Member addresses using the National Change of Address database. The Class
10 Notice shall also contain an easily-understood statement alerting the Class Members that,
11 unless they submit a Request for Exclusion from the Settlement, the Class Member is
12 releasing and waiving all Released Claims against the Released Parties.

13 9.4.3. Not later than 3 business days after the Administrator’s receipt of any Class Notice
14 returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice
15 using any forwarding address provided by the USPS. If the USPS does not provide a
16 forwarding address, the Administrator shall conduct a Class Member Address Search,
17 and re-mail the Class Notice to the most current address obtained. The Administrator
18 has no obligation to make further attempts to locate or send Class Notice to Class
19 Members whose Class Notice is returned by the USPS a second time.

20 9.4.4. The deadlines for Class Members’ written objections, Challenges to Workweeks
21 and/or Pay Periods, and Requests for Exclusion will be extended an additional 15 days
22 beyond the 45 days otherwise provided in the Class Notice for all Class Members whose
23 notice is re-mailed. The Administrator will inform the Class Member of the extended
24 deadline with the re-mailed Class Notice.

25 9.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
26 discovers any persons who believe they should have been included in the Class Data
27 and should have received Class Notice, the Parties will expeditiously meet and confer,
28 and in good faith, in an effort to agree on whether to include them as Class Members.

1 If the Parties agree, such persons will be Class Members entitled to the same rights as
2 other Class Members, and the Administrator will send, via email or overnight delivery,
3 a Class Notice requiring them to exercise options under this Settlement Agreement not
4 later than 15 days after receipt of Class Notice, or the deadline dates in the Class Notice,
5 which ever are later.

6 9.5. Requests for Exclusion (Opt-Outs).

7 9.5.1. Class Members who wish to exclude themselves (opt-out of) the Class
8 Settlement must send the Administrator, by mail, a signed written Request for
9 Exclusion not later than 45 days after the Administrator mails the Class Notice (plus
10 an additional 15 days for Class Members whose Class Notice is re-mailed). A Request
11 for Exclusion is a letter or postcard from a Class Member or his/her representative that
12 reasonably communicates the Class Member's election to be excluded from the
13 Settlement and includes the Class Member's name, address, and email address or
14 telephone number. To be valid, a Request for Exclusion must be timely postmarked by
15 the Response Deadline. The Request for Exclusion must state the Class Member's
16 name, address, telephone number, and signature. The Request for Exclusion should
17 state something to the effect of:

18 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE NELSON
19 MIRANDA, ET AL. V. CA GLATT MART, INC. LAWSUIT. I UNDERSTAND
20 THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL
21 NOT RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT OF THIS
22 LAWSUIT AND WILL NOT BE RELEASING ANY CLAIMS I MIGHT HAVE."

23 9.5.2. The Administrator may not reject a Request for Exclusion as invalid because it
24 fails to contain all the information specified in the Class Notice. The Administrator shall
25 accept any Request for Exclusion as valid if the Administrator can reasonably ascertain
26 the identity of the person as a Class Member and the Class Member's desire to be
27 excluded. The Administrator's determination shall be final and not appealable or
28 otherwise susceptible to challenge. If the Administrator has reason to question the

1 authenticity of a Request for Exclusion, the Administrator may demand additional proof
2 of the Class Member's identity. The Administrator's determination of authenticity shall
3 be final and not appealable or otherwise susceptible to challenge.

4 9.5.3. Every Class Member who does not submit a timely and valid Request for
5 Exclusion is deemed to be a Participating Class Member under this Settlement
6 Agreement, entitled to all benefits and bound by all terms and conditions of the
7 Settlement, including the Participating Class Members' Releases under Paragraphs 7.2
8 and 7.3 of this Settlement Agreement, regardless whether the Participating Class
9 Member actually receives the Class Notice or objects to the Settlement.

10 9.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a
11 Non-Participating Class Member and shall not receive an Individual Class Payment or
12 have the right to object to the class action components of the Settlement. Because future
13 PAGA claims are subject to claim preclusion upon entry of the Final Judgment, Non-
14 Participating Class Members who are Aggrieved Employees are deemed to release the
15 claims identified in Paragraph 7.4 of this Settlement Agreement and are eligible for an
16 Individual PAGA Payment.

17 9.5.5. If the Administrator determines that a Request For Exclusion returned by a Class
18 Member before the Response Deadline is deficient, then the Settlement Administrator
19 shall mail a deficiency letter to that Class Member identifying the problem. If a Class
20 Member submits both a dispute and a Request for Exclusion, the Administrator shall
21 make reasonable attempts to clarify as if the Request for Exclusion were deficient. If
22 the Class Member fails to cure the deficiency, the Request for Exclusion shall be
23 disregarded and the claim will be paid, and the Class Member will become bound by
24 the Final Judgment.

25 9.5.6. A Class Member's Request for Exclusion regarding the Class Settlement shall not
26 serve to exclude the Class Member from participation as an Aggrieved Employee and
27 that Class Member shall still be entitled to an Individual PAGA Payment. Class
28 Members who are also Aggrieved Employees shall have no right or ability to opt out of

the portion of this Settlement Agreement releasing PAGA claims.

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

9.6. Challenges to Calculation of Workweeks. The Class Notice will inform Class Members of their estimated share of the settlement and the number of workweeks they worked during the Class Period. Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 15 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

9.7. Objections to Settlement

9.7.1. Only Participating Class Members may object to the class action components of the Settlement and/or this Settlement Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

9.7.2. Participating Class Members may send written objections to the Administrator by mail. In the alternative, Participating Class Members may appear in Court (or hire an

attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 15 days for Class Members whose Class Notice was re-mailed).

9.7.3. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

9.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Settlement Agreement or otherwise.

9.8.1.1. Mailing. The Administrator will be responsible for: mailing the Class Notice (Exhibit A) to Class Members; posting notice of entry of final order and judgment certifying the Class Settlement and approving this Settlement Agreement; handling inquiries from Class Members concerning the Class Notice; determining Individual Class Payment amounts; determining Individual PAGA Payment amounts; maintaining the settlement funds in an appropriate interest-bearing account; preparing, administering, and distributing Individual Class Payments to Participating Class Members; preparing, administering, and distributing Individual PAGA Payments to Aggrieved Employees; distributing the LWDA PAGA Payment; issuing a final report and performing such other duties as the Parties may direct. Additionally, Administrator will handle all tax document preparation and reporting, including state and federal tax forms, if any.

9.8.2. Website, Email Address and Toll-Free Number. The Administrator will maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment,

1 Class Counsel Litigation Expenses Payment and Class Representative Service Payment,
2 the Final Approval and the Judgment. The Administrator will also maintain and monitor
3 an email address and a toll-free telephone number to receive Class Member calls and
4 emails.

5 9.8.3. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
6 promptly review on a rolling basis Requests for Exclusion to ascertain their validity.
7 Not later than 5 days after the expiration of the deadline for submitting Requests for
8 Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel
9 containing (a) the names and other identifying information of Class Members who have
10 timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and
11 other identifying information of Class Members who have submitted invalid Requests
12 for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted
13 (whether valid or invalid).

14 9.8.4. Weekly Reports. The Administrator must, on a weekly basis, provide written
15 reports to Class Counsel and Defense Counsel that, among other things, tally the number
16 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for
17 Exclusion (whether valid or invalid) received, objections received, challenges to
18 Workweeks and/or Pay Periods received and/or resolved, and checks mailed for
19 Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The
20 Weekly Reports must include provide the Administrator’s assessment of the validity of
21 Requests for Exclusion and attach copies of all Requests for Exclusion and objections
22 received. The Administrator will serve on Class Counsel and Defense Counsel via e-
23 mail date-stamped copies of the original Requests for Exclusions and objections no later
24 than seven (7) days after their receipt.

25 9.8.5. Workweek and/or Pay Period Challenges. The Administrator has the authority to
26 address and make final decisions consistent with the terms of this Settlement Agreement
27 on all Class Member challenges over the calculation of Workweeks and/or Pay Periods.
28 The Administrator’s decision shall be final and not appealable or otherwise susceptible

1 to challenge.

2 9.8.6. Administrator's Declaration. At least twenty-one (21) days prior to the Final
3 Approval Hearing, the Administrator will provide to Class Counsel and Defense
4 Counsel, a declaration suitable for filing in Court attesting to its due diligence and
5 compliance with all of its obligations under this Settlement Agreement, including, but
6 not limited to, its mailing of Class Notice, the Class Notices returned as undelivered,
7 the re-mailing of Class Notices, attempts to locate Class Members, the total number of
8 Requests for Exclusion from Settlement it received (both valid or invalid), the number
9 of written objections and attach the Exclusion List. The Administrator will supplement
10 its declaration as needed or requested by the Parties and/or the Court. Class Counsel is
11 responsible for filing the Administrator's declaration(s) in Court.

12 9.8.7. Final Report by Settlement Administrator. At least 7 days before any deadline set
13 by the Court, the Administrator will prepare, and submit to Class Counsel and Defense
14 Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of
15 all payments required under this Settlement Agreement. Class Counsel are responsible
16 for filing the Administrator's declaration in Court.

17 **10. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE**

18 Based on its records, Defendant estimates that, as of the date of this Settlement
19 Agreement, (1) there are 155 Class Members and 22,000 Total Workweeks during the Class
20 Period and (2) there are 117 Aggrieved Employees who worked 5,779 Pay Periods during the
21 PAGA Period.

22 10.1. Increase in Workweeks. Defendant represents that there are approximately 22,000
23 Workweeks worked by Class Members during the Class Period. If the number of Workweeks
24 worked is greater than 10% above 22,000 Workweeks (*i.e.*, if there are more than 24,200 total
25 Workweeks worked by Class Members during the Class Period) then the Gross Settlement
26 Amount shall be increased by the number of Workweeks in excess of 24,200 Workweeks,
27 multiplied by the Workweek Value. The Workweek Value shall be calculated by dividing the
28 originally agreed upon Gross Settlement Amount (\$440,000) by 22,000, which amounts to a

1 Workweek Value of \$20.00. Thus, for example, should there be 25,000 Workweeks worked by
2 Class Members during the Class Period, then the Gross Settlement Amount shall be increased by
3 \$16,000 ([25,000 Workweeks – 24,200 Workweeks] x \$20.00 per Workweek).

4 **11. MOTION FOR FINAL APPROVAL**

5 11.1. Duties Upon Execution of Agreement. As soon as reasonably practicable, upon execution
6 of this Settlement Agreement, Class Counsel shall apply to the Court for the entry of a
7 preliminary order scheduling a hearing on the question of whether the proposed Class Settlement
8 should be approved as fair, reasonable, and adequate as to the Class Members, approving as to
9 form and content the proposed Class Notice attached hereto as Exhibit A, and directing the
10 mailing of the Class Notice to Class Members. Class Counsel shall also promptly submit this
11 Settlement Agreement to the Court for preliminary approval and determination by the Court as
12 to its fairness, adequacy, and reasonableness. While Defendant can reserve its right to object to
13 facts or assertions made in the moving papers, Defense Counsel shall file a notice of non-
14 opposition to the granting of the motion for preliminary approval or join in the motion. Prior to
15 the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of
16 the Settlement that includes a request for approval of the PAGA settlement under Labor Code
17 section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively
18 “Motion for Final Approval”). Plaintiff shall endeavor to provide drafts of these documents to
19 Defense Counsel prior to filing the Motion for Final Approval. Class Counsel and Defense
20 Counsel will expeditiously meet and confer, and in good faith, to resolve any disagreements
21 concerning the Motion for Final Approval. At the Final Approval Hearing, Plaintiff shall move
22 the Court for the entry of the final order certifying the Settlement Class for settlement purposes
23 only and approving the Class Settlement as being fair, reasonable, and adequate to the
24 Participating Class Members within the meaning of California Rules of Court, Rule 3.769,
25 subdivisions (c), (d) and (e), and for the entry of a final judgment of the Action consistent with
26 the terms of the Class Settlement and rule 3.769, subdivision (h), of the California Rules of Court.
27 Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as
28 may be required for the Court’s determination.

1 11.2. Response to Objections. Each Party retains the right to respond to any objection raised by
2 a Participating Class Member, including the right to file responsive documents in Court no later
3 than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the
4 Court.

5 11.3. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
6 Approval on any material change to the Settlement (including, but not limited to, the scope of
7 release to be granted by Class Members), the Parties will expeditiously work together in good
8 faith to address the Court's concerns by revising the Agreement as necessary to obtain Final
9 Approval. The Court's decision to award less than the amounts requested for the Class
10 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
11 Expenses Payment and/or Administrator Expenses Payment shall not constitute a material
12 modification to the Agreement within the meaning of this paragraph.

13 11.4. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the
14 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of
15 (i) enforcing this Settlement Agreement and/or Judgment, (ii) addressing settlement
16 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

17 11.5. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
18 conditions of this Settlement Agreement, specifically including the Class Counsel Fees Payment
19 and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties,
20 their respective counsel, and all Participating Class Members who did not object to the Settlement
21 as provided in this Settlement Agreement, waive all rights to appeal from the Judgment, including
22 all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment,
23 motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include
24 any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the
25 Judgment, the Parties' obligations to perform under this Settlement Agreement will be suspended
26 until such time as the appeal is finally resolved and the Judgment becomes final, except as to
27 matters that do not affect the amount of the Net Settlement Amount.

28 ///

11.6. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Settlement Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Settlement Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

12. NULLIFICATION OF THIS SETTLEMENT AGREEMENT

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

12.2. Defendant's Right to Void Settlement. If 10% or more members of the Settlement Class timely submit Requests for Exclusions, Defendant shall have the right (but not the obligation) to void this Settlement Agreement. Should Defendant elect to void the Settlement Agreement pursuant to this Section 12.2, Defendant must notify Plaintiff's counsel within 10 business days of receiving notice from the Settlement Administrator that 10% or more of the Settlement Class have submitted valid Requests for Exclusion. Untimely notice to void the Settlement Agreement

under this Section shall have no force or effect.

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

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

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

13. AMENDED JUDGMENT

If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

14. ADDITIONAL PROVISIONS

14.1. No Admission of Liability. Nothing in this Settlement Agreement shall be construed as or deemed to be an admission by any Party of any liability, culpability, negligence, or wrongdoing toward any other Party, or any other person, and the Parties specifically disclaim any liability, culpability, negligence, or wrongdoing toward each other or any other person. Each

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

17 14.2. Class Certification or Representative Manageability for Other Purposes. This Settlement
18 Agreement represents a compromise and settlement of highly disputed claims. The Parties agree
19 that class certification and representative treatment is for purposes of this Settlement Agreement
20 only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter
21 Judgment, Defendant reserves the right to contest certification of any class for any reasons, and
22 Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the
23 right to move for class certification on any grounds available and to contest Defendant's defenses.
24 The Settlement, this Settlement Agreement and Parties' willingness to settle the Action will have
25 no bearing on, and will not be admissible in connection with, any litigation (except for
26 proceedings to enforce or effectuate the Settlement and this Settlement Agreement).

27 14.3. Non-Evidentiary Use. Neither this Settlement Agreement nor any of its terms, nor any
28 statements or conduct in the negotiation or drafting of it, shall be offered or used as evidence by

1 Plaintiff, any Class Member (including any individual who requested to be excluded from the
2 Settlement Class), Defendant, or its, her, his, or their respective counsel, in the Action, except as
3 is reasonably necessary to effectuate the Settlement Agreement's purpose and terms. This
4 Settlement Agreement may, however, be used by Defendant and the Released Parties to prove or
5 defend against any claim released herein by any Class Member in any judicial, quasi-judicial,
6 administrative, or governmental proceeding.

7 14.4. Different Facts. The Parties acknowledge that, except for matters expressly represented
8 herein, the facts in relation to the dispute and all claims released by the terms of this Settlement
9 Agreement may turn out to be different from the facts now known by each party and/or its
10 counsel, or believed by such Party or counsel to be true, and each Party therefore expressly
11 assumes the risk of the existence of different or presently unknown facts, and agrees that this
12 Settlement Agreement shall be in all respects effective and binding despite such difference.

13 14.5. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and
14 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement
15 is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit
16 another person to disclose, disseminate or publicize, any of the terms of the Agreement directly
17 or indirectly, specifically or generally, to any person, corporation, association, government
18 agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom
19 will be instructed to keep this Settlement Agreement confidential; (2) counsel in a related matter;
20 (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a
21 court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
22 government agency. Each Party agrees to immediately notify each other Party of any judicial or
23 agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant
24 and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or
25 other communication, before the filing of the Motion for Preliminary Approval, with any third
26 party regarding this Settlement Agreement or the matters giving rise to this Settlement
27 Agreement except to respond only that "the matter was resolved," or words to that effect. This
28 paragraph does not restrict Class Counsel's communications with Class Members in accordance

1 with Class Counsel's ethical obligations owed to Class Members.

2 14.6. No Solicitation. The Parties separately agree that they and their respective counsel and
3 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal
4 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's
5 ability to communicate with Class Members in accordance with Class Counsel's ethical
6 obligations owed to Class Members.

7 14.7. Integrated Agreement. Upon execution by all Parties and their counsel, this Settlement
8 Agreement together with its attached exhibits shall constitute the entire agreement between the
9 Parties relating to the Settlement, superseding any and all oral representations, warranties,
10 covenants, or inducements made to or by any Party.

11 14.8. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
12 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate
13 action required or permitted to be taken by such Parties pursuant to this Settlement Agreement
14 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
15 terms of this Settlement Agreement including any amendments to this Settlement Agreement.

16 14.9. Cooperation. The Parties and their counsel will cooperate with each other and use their
17 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
18 Settlement Agreement, submitting supplemental evidence and supplementing points and
19 authorities as requested by the Court. In the event the Parties are unable to agree upon the form
20 or content of any document necessary to implement the Settlement, or on any modification of the
21 Agreement that may become necessary to implement the Settlement, the Parties will seek the
22 assistance of a mediator and/or the Court for resolution.

23 14.10. Duty to Support and Defend Class Settlement. The Parties agree to abide by all of the
24 terms of this Settlement Agreement in good faith and to support the Settlement fully and to use
25 their best efforts to defend this Settlement from any legal challenge, whether by appeal or
26 collateral attack.

27 14.11. No Prior Assignments. The Parties separately represent and warrant that they have not
28 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or

encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

14.12. Non-Retaliation. Defendant understands and acknowledges that it has a legal obligation to not retaliate against any Class Member who elects to participate in the Class Settlement or elects to submit a Request for Exclusion. Defendant will refer any inquiries regarding this Class Settlement to the Administrator or Class Counsel and will not discourage Class Members who are employees, directly or indirectly, from making claims, opting out, or objecting to the Class Settlement. None of the Parties, or their respective attorneys or agents, shall solicit or encourage any Class Members, directly or indirectly, to submit a Request for Exclusion.

14.13. No Tax Advice; Circular 230 Disclaimer Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

14.14. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties. If preliminary or final approval of this Settlement Agreement has been granted by the Court, then any such amendments or modifications to this Settlement Agreement shall be approved by the Court.

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

14.16. Agreement Binding on Successors. This Agreement will be binding upon and inure to the benefit of the Parties and Class Members (excluding only persons who timely submit Requests for Exclusions) and their respective present and former heirs, trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees, insurers, attorneys,

1 accountants, auditors, advisors, consultants, pension plans, welfare benefit plans, fiduciaries,
2 parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors,
3 successors, and assigns.

4 14.17. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
5 governed by and interpreted according to the internal laws of the state of California, without
6 regard to conflict of law principles.

7 14.18. Cooperation in Drafting; Construction. The Parties have cooperated in the drafting and
8 preparation of this Agreement through a series of lengthy, intensive, arms-length, non-collusive
9 negotiations between the Parties. This Agreement will not be construed against any Party on the
10 basis that the Party was the drafter or participated in the drafting.

11 14.19. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
12 during Action and in this Agreement relating to the confidentiality of information shall survive
13 the execution of this Agreement. Plaintiff and Defendant, and their respective counsel, also
14 recognize, accept, and agree that the Parties to this Settlement Agreement desire that the terms
15 of this Settlement Agreement, the fact of the Settlement embodied in this Settlement Agreement,
16 the disposition of the Action, the Action, and all matters relating to the litigation of the Action,
17 including discovery proceedings therein, and evidence obtained during the course of the Action,
18 shall not be discussed with or presented to the media or press.

19 14.20. Use of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code
20 §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant
21 in connection with the mediation, other settlement negotiations, or in connection with the
22 Settlement, may be used only with respect to this Settlement, and no other purpose, and may not
23 be used in any way that violates any existing contractual agreement, statute, or rule of court.

24 14.21. Headings. The descriptive heading of any section or paragraph of this Settlement
25 Agreement is inserted for convenience of reference only and does not constitute a part of this
26 Settlement Agreement.

27 14.22. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall
28 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a

weekend or federal legal, court, or bank holiday, such date or deadline shall be on the first business day thereafter.

14.23. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

14.24. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

14.25. Severability. In the event that one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendant's Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

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

14.27. Attorney Fees, Costs, and Expenses. Unless either Party materially breaches this Settlement Agreement, including any term regarding funding, and further efforts are necessary from Counsel to remedy said breach, including, without limitation, moving the Court to enforce the Agreement and except as otherwise specifically provided for herein, each party shall bear his

1 or its own attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising
2 out of the Action and shall not seek reimbursement thereof from any other party to this Settlement
3 Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in
4 amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall
5 be a part of the Net Settlement Amount.

6 14.28. Action to Enforce Agreement. In any suit or court action to enforce the terms of this
7 Agreement, the prevailing party shall be entitled to recover her or its attorney fees and costs.

8 14.29. Date of Agreement. The date of this Settlement Agreement shall be the date of the latest
9 signature.

10 **IT IS SO AGREED:**

11 
12 Nelson miranda (Oct 31, 2024 16:22 PDT)

13 Plaintiff, Nelson Miranda

By: _____
Title: _____
For Defendant, CA Glatt Mart, Inc.

14 Date: 10/31/2024

Date: _____

15 **AGREED AS TO FORM ONLY:**

16
17 Vedang J. Patel
18 David D. Bhojani
19 Vedang J. Patel
Counsel for Plaintiff

Philip J. Azzara
Zachary A. Princi
Counsel for Defendant

20 Date: November 1, 2024

Date: _____

1 or its own attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising
2 out of the Action and shall not seek reimbursement thereof from any other party to this Settlement
3 Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in
4 amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall
5 be a part of the Net Settlement Amount.

6 14.28. Action to Enforce Agreement. In any suit or court action to enforce the terms of this
7 Agreement, the prevailing party shall be entitled to recover her or its attorney fees and costs.

8 14.29. Date of Agreement. The date of this Settlement Agreement shall be the date of the latest
9 signature.

10 **IT IS SO AGREED:**

11
12 _____
Plaintiff, Nelson Miranda

By: aaron nourollah
aaron nourollah (Nov 11, 2024 18:05 PST)
Title: officer
For Defendant, CA Glatt Mart, Inc.

13
14 Date: _____ Date: 11/11/24

15
16 **AGREED AS TO FORM ONLY:**

17
18 _____
David D. Bibiyan
Vedang J. Patel
19 Counsel for Plaintiff

Philip J. Azzara
Zachary A. Princi
Counsel for Defendant

20 Date: _____ Date: _____
21
22
23
24
25
26
27
28

1 or its own attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising
2 out of the Action and shall not seek reimbursement thereof from any other party to this Settlement
3 Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in
4 amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall
5 be a part of the Net Settlement Amount.

6 14.28. Action to Enforce Agreement. In any suit or court action to enforce the terms of this
7 Agreement, the prevailing party shall be entitled to recover her or its attorney fees and costs.

8 14.29. Date of Agreement. The date of this Settlement Agreement shall be the date of the latest
9 signature.

10 **IT IS SO AGREED:**

11
12 _____ By: _____
13 Plaintiff, Nelson Miranda Title:
14 Date: _____ Date: _____
15 For Defendant, CA Glatt Mart, Inc.

16 **AGREED AS TO FORM ONLY:**

17
18 _____
19 David D. Bibiyan
Vedang J. Patel
Counsel for Plaintiff
20 Date: _____
21
22
23
24
25
26
27
28
Philip J. Azzara
Zachary A. Princi
Counsel for Defendant
Date: November 11, 2024