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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

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

Plaintiff,

v.

NRJY, INC., a Delaware Corporation; and
DOES 1 TO 50,

Case No.: 22STCV12837

**SETTLEMENT AGREEMENT AND
RELEASE OF CLASS ACTION AND
PRIVATE ATTORNEY GENERAL ACT OF
2004 CLAIMS**

Defendants.

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

2 This Settlement Agreement and Release of Class Action (“Settlement Agreement”) is made and
3 entered into by: **(1)** Plaintiff Gabriel Blas (“Plaintiff”), individually and in his representative capacity
4 on behalf of the Settlement Class, as defined below, and as a private attorney general on behalf of the
5 State of California; and **(2)** Defendant NRJY, Inc. (“Defendant”). Plaintiff and Defendant are
6 collectively referred to herein as the “Parties.” This Settlement Agreement is subject to the approval of
7 the Court, pursuant to California Rules of Court, rule 3.769, subdivisions (c), (d), and (e), and is made
8 for the sole purpose of attempting to consummate settlement of the action on a class-wide basis subject
9 to the following terms and conditions. As detailed below, if the Court does not enter an order granting
10 final approval of this Settlement Agreement or the conditions precedent are not met for any reason, this
11 Settlement Agreement is void and of no force or effect whatsoever.

12 **1. DEFINITIONS**

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

17 **1.1. ACTION**

18 “Action” shall mean the following civil action: *Gabriel Blas v. NRJY, Inc.*, case number
19 22STCV12837, currently pending before the Superior Court of the State of California for the County
20 of Los Angeles.

21 **1.2. ADMINISTRATIVE EXPENSES**

22 “Administrative Expenses” shall include all costs and expenses associated with and paid to the
23 third-party settlement administrator, which are estimated not to exceed TEN THOUSAND DOLLARS
24 AND ZERO CENTS (\$10,000.00.)
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1 **1.3. APPLICABLE WAGE ORDER**

2 “Applicable Wage Order” shall mean the California Industrial Welfare Commission (“IWC”)
3 Wage Order applicable to the facts of this case, including IWC Wage Order 4-2001 and others that
4 may be applicable. (Cal. Code of Regs., tit. 8, § 11090.)

5 **1.4. CLAIMS**

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

7 **1.5. CLASS ATTORNEY FEES AND EXPENSES**

8 “Class Attorney Fees and Expenses” shall mean the portion of the Gross Settlement Amount
9 attributable to attorney fees and litigation expenses. The Parties agree that the fee-portion of the Class
10 Attorney Fees and Expenses shall be up to one-third of the Gross Settlement Amount (i.e., \$58,333.33),
11 as approved by the Court, and the award of costs and expenses shall be up to an additional \$15,000.00.
12 If the Escalator Provision described below is triggered so as to increase the Gross Settlement Amount,
13 the Parties agree that the fee portion of the Class Attorney Fees and Expenses will increase
14 proportionally such that the total amount of attorneys’ fees remains one-third of the Gross Settlement
15 Amount *after* the upward adjustment required by the Escalator Provision is implemented.

16 **1.6. CLASS COUNSEL**

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

19 **1.7. CLASS MEMBER**

20 “Class Member” shall mean any person who is a prospective member of the Settlement Class,
21 or, if such person is incompetent or deceased, the person’s legal guardian, executor, heir, or successor-
22 in-interest, from April 15, 2018, through the earlier of April 9, 2023 or the date of preliminary approval
23 of the settlement.

24 **1.8. CLASS NOTICE AND SHARE FORM**

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

3 **1.9. CLASS PARTICIPANTS**

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

6 **1.10. CLASS PERIOD**

7 “Class Period” shall mean the period from April 15, 2018, through the earlier of: April 9, 2023
8 or the date of preliminary approval of the settlement.

9 **1.11. CLASS REPRESENTATIVE**

10 “Class Representative” shall mean Plaintiff Gabriel Blas.

11 **1.12. SETTLEMENT**

12 “Settlement” shall mean the settlement embodied in this Settlement Agreement, which is
13 subject to Court approval.

14 **1.13. COMPLAINT**

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

16 **1.14. COURT**

17 “Court” shall mean the Superior Court of the State of California for the County of Los Angeles.

18 **1.15. DEFENDANT**

19 “Defendant” shall mean Defendant NRJY, Inc.

20 **1.16. DEFENSE COUNSEL**

21 “Defense Counsel” shall mean Jackson Lewis P.C.

22 **1.17. EFFECTIVE DATE**

23 “Effective Date” shall be the date when all of the following events have occurred: **(a)** this
24 Settlement Agreement has been executed by all Parties and by Class Counsel and Defense Counsel;
25 **(b)** the Court has given preliminary approval to the Settlement; **(c)** the Notice of Class Action
26 Settlement has been given to the Settlement Class providing them with an opportunity to request
27 exclusion from the Settlement; **(d)** the Court has held a Final Approval and Fairness Hearing and
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1 entered a final order and judgment certifying the Settlement Class and approving this Settlement
2 Agreement; (e) 65 calendar days have passed since the Court has entered a Final Approval Order and
3 Judgment certifying the Class, dismissing the Action with prejudice, and approving the Stipulation of
4 Settlement; and (f) the later of the following events: (i) the expiration of the period for filing any appeal,
5 writ, or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ, or
6 other appellate proceeding having been filed; (ii) the dismissal of any appeal, writ, or other appellate
7 proceeding opposing the Settlement with no right to pursue further remedies or relief; or (iii) any
8 appeal, writ, or the issuance of such other final appellate order upholding the Court's final order with
9 no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the
10 Settlement shall not become effective until the Court's order approving the Settlement is completely
11 final and there is no further recourse by an appellant or objector who seeks to contest the Settlement.
12 If no objections are filed, the Effective Date shall be after steps (a) through (e) are completed (i.e., the
13 date that the court has entered a final order and judgment certifying the Settlement Class and approving
14 this Settlement Agreement).

15 **1.18. EMPLOYEE'S TAXES AND REQUIRED WITHHOLDING**

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

22 **1.19. EMPLOYER'S TAXES**

23 "Employer's Taxes" shall mean and refer to Defendant's share of payroll taxes (e.g.,
24 Unemployment Insurance, Employment Training Tax, Social Security, and Medicare taxes) that is
25 owed on the portion of any Class Participant's Individual Settlement Amount that constitutes wages.
26 The Employer's Taxes shall be separately paid by Defendant and shall not be paid from the Gross
27 Settlement Amount or Net Settlement Amount.
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1 **1.20. FINAL APPROVAL AND FAIRNESS HEARING**

2 “Final Approval and Fairness Hearing” shall mean the final hearing held to ascertain the
3 fairness, reasonableness, and adequacy of the Settlement, at which time the Court will enter its order
4 granting final approval of the Settlement Agreement.

5 **1.21. GROSS SETTLEMENT AMOUNT**

6 “Gross Settlement Amount” is the agreed upon non-reversionary settlement amount totaling
7 ONE HUNDRED AND SEVENTY-FIVE THOUSAND AND ZERO CENTS (\$175,000.00) to be
8 paid by Defendant in full satisfaction of all class and representative action claims arising from the facts
9 alleged in the Action and LWDA Notice, which includes all Individual Settlement Payments to
10 Participating Class Members, Settlement Administration Costs, the PAGA Settlement Amount,
11 Plaintiff’s Incentive Award, Attorneys’ Fees and Litigation Costs. This Gross Settlement Amount has
12 been agreed to by Plaintiff and Defendant based on an “all in” Gross Settlement Amount. In no event
13 will Defendant be liable for more than the Gross Settlement Amount for the Released Claims, with the
14 exception of Defendant’s share of payroll taxes, which shall be funded by Defendant separately. Not
15 later than thirty (30) calendar days after the Effective Date, Defendant shall deposit the Gross
16 Settlement Amount into a non-interest-bearing Qualified Settlement Fund created by the Settlement
17 Administrator. The Settlement Administrator shall handle such monies pursuant to the terms of the

18 **1.22. HEARING ON PRELIMINARY APPROVAL**

19 “Hearing on Preliminary Approval” shall mean the hearing held on the motion for preliminary
20 approval of the Settlement.

21 **1.23. INCENTIVE AWARD**

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

24 **1.24. INDIVIDUAL SETTLEMENT AMOUNT**

25 “Individual Settlement Amount” shall mean the amount which is ultimately distributed to each
26 Class Participant, less any Employee’s Taxes and Required Withholdings. The Individual Settlement
27 Amount does not include any portion of the PAGA Payment.
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1 **1.25. NET SETTLEMENT AMOUNT**

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

7 **1.26. REQUEST FOR EXCLUSION**

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

11 **1.27. OPT-OUTS**

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

14 **1.28. PAGA PAYMENT**

15 “PAGA Payment” means the penalties pursuant to PAGA that the Parties have agreed is a
16 reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is TEN
17 THOUSAND DOLLARS AND NO CENTS (\$10,000.00.) The PAGA Payment is to be approved by
18 the Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-five percent
19 (75%) (i.e., \$7,500.00) to the LWDA and twenty-five percent (25%) (i.e., \$2,500.00) to the PAGA
20 Settlement Class. Class Counsel shall give timely notice of this Settlement Agreement to the LWDA
21 pursuant to Labor Code section 2699, subdivision (l)(2).

22 **1.29. PAGA PERIOD**

23 “PAGA Period” shall mean the period from April 15, 2021, through the earlier of: April 9, 2023
24 or the date of court approval of the settlement.

25 **1.30. PAGA RELEASED CLAIMS**

26 “PAGA Released Claims” means all claims, demands, rights, liabilities and causes of action
27 under California Labor Code Private Attorneys General Act of 2004 (Labor Code section 2698 *et seq.*)
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1 alleged in the letter to the Labor & Workforce Development Agency dated February 25, 2022 (i.e, the
2 PAGA Letter), based on the factual allegations in the operative Complaint, that arose during the PAGA
3 Period including but not limited to the following claims for civil penalties: (a) failure to pay all overtime
4 wages owed; (b) failure to pay all minimum wages owed; (c) failure to provide meal periods, or
5 premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or
6 premium pay for non-compliant rest periods; (e) failure to timely pay all wages due upon separation of
7 employment; (f) failure to issue accurate, itemized wage statements based on the foregoing Labor Code
8 violations, Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1197, 1197.1; 1198, 2800, and
9 2802, and sections 11 and 12 of IWC Wage Order No. 1. The Parties agree that there is no statutory
10 right for any PAGA Employee to opt out or otherwise exclude himself or herself from the PAGA Payment
11 and the associated release of claims and rights under PAGA.

12 **1.31. PAGA SETTLEMENT CLASS**

13 “PAGA Settlement Class” shall mean all individuals who are or were employed by Defendants
14 as non-exempt employees in California during the PAGA Period. Defendant represents that the PAGA
15 Settlement Class consists of approximately 375 employees that worked a total of approximately 4,215
16 pay periods during the PAGA Period.

17 **1.32. PARTIES**

18 “Parties” shall mean Plaintiff and Defendant.

19 **1.33. PLAINTIFF**

20 “Plaintiff” shall mean Plaintiff Gabriel Blas.

21 **1.34. PRELIMINARY APPROVAL DATE**

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

24 **1.35. QUALIFIED SETTLEMENT FUND ACCOUNT**

25 “Qualified Settlement Fund Account” means a non-interest-bearing transaction account at a
26 FDIC-insured institution established under this Settlement Agreement from which all monies payable
27 under this Settlement Agreement will be paid, as set forth herein.
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1 **1.36. RELEASED CLAIMS**

2 “Released Claims” shall mean those claims arising out of or related to the allegations set forth
3 in the Complaint and/or PAGA notice to the LWDA, which arose during the Class Period, including
4 claims for: **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code sections
5 1194 and 1194.2, and the Applicable Wage Order; **(2)** failure to pay proper overtime wages in violation
6 of Labor Code sections 510, 1197, and 1198, and the Applicable Wage Order; **(3)** failure to provide
7 compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7
8 and the Applicable Wage Order; **(4)** failure to provide compliant meal periods and pay missed meal
9 period premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage Order;
10 **(5)** failure to maintain accurate employment records in violation of Labor Code section 1174;
11 **(6)** failure to pay timely wages during employment in violation of Labor Code sections 204, 210;
12 **(7)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202,
13 and 203; **(8)** failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804;
14 **(9)** failure to provide complete and accurate wage statements in violation of Labor Code sections 226
15 and 226.3; **(10)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing
16 in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); **(11)** all
17 claims, demands, rights, liabilities and causes of action under California Labor Code Private Attorneys
18 General Act of 2004 (Labor Code section 2698 *et seq.*) as described in Section 1.30 of this Agreement;
19 and **(12)** all claims for liquidated damages, penalties, interest, fees, costs all other claims and
20 allegations made or which could have been made in this Action from April 15, 2018 through the date
21 of preliminary approval of the wage-and-hour class action. No other claims are released other than
22 those claims specifically plead in the Complaint or otherwise specifically identified herein. This
23 Settlement Agreement will not release any person, party, or entity from claims, if any, by Class
24 Members for workers compensation, unemployment, or disability benefits of any nature. Nor does it
25 release any claims, actions, or causes of action which may be possessed by Class Members under state
26 or federal discrimination statutes, including, without limitation, the California Fair Employment and
27 Housing Act (Gov. Code, §§ 12900–12996); the Unruh Civil Rights Act (Civ. Code, § 51); the
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1 California Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000, et seq.); the
2 Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the Employee Retirement Income
3 Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their implementing regulations and
4 interpretive guidelines.

5 **1.37. RELEASED PARTIES**

6 “Released Parties” shall mean Defendant and all of Defendant’s parent corporations, affiliates,
7 subsidiaries, divisions, predecessors, insurers, reinsurers, successors, and assigns, and their current and
8 former employees, attorneys, owners, officers, directors, and agents thereof, both individually and in
9 their business capacities, and their employee benefit plans and programs and the trustees,
10 administrators, fiduciaries, and insurers of such plans and programs, both individually and in their
11 business capacities.

12 **1.38. RELEASING PARTIES**

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

18 **1.39. RESPONSE DEADLINE**

19 “Response Deadline” shall mean the deadline by which Class Members must postmark to the
20 Settlement Administrator valid Requests for Exclusion, Notices of Objection, and/or Workweek
21 Disputes. Response Deadline will be forty-five (45) calendar days from the initial mailing of the Notice
22 Packet by the Settlement Administrator, unless the 45th day falls on a Sunday or Federal holiday, in
23 which case the Response Deadline will be extended to the next day on which the U.S. Postal Service
24 is open. The Response Deadline will be extended fifteen (15) calendar days for any Class Member who
25 is re-mailed a Notice Packet by the Settlement Administrator in accordance with the Notice Procedure,
26 unless the 15th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be
27 extended to the next day on which the U.S. Postal Service is open. The Response Deadline may also
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1 be extended by express agreement between Class Counsel and Defendant. Under no circumstances,
2 however, shall the Settlement Administrator have the authority to extend the deadline for Class
3 Members to submit a Request for Exclusion, Notice of Objection, or Workweek Dispute.

4 **1.40. SETTLEMENT ADMINISTRATOR**

5 “Settlement Administrator” shall mean ILYM Group, Inc., which the Parties have agreed will
6 be responsible for administration of the Settlement and related matters.

7 **1.41. SETTLEMENT CLASS**

8 “Settlement Class” shall mean all individuals who are or were employed by Defendant as non-
9 exempt employees in California during the Class Period. Defendant represents that the Settlement Class
10 consists of approximately 375 Class Members that worked a total of approximately 7,372 workweeks
11 during the Class Period.

12 **1.42. WORKWEEKS**

13 Workweeks” means the number of weeks worked by a Class Member during the Class Period
14 according to Defendant’s payroll records, with any partial weeks excluded from the calculations.
15 Workweeks will be calculated by the Settlement Administrator for each Class Member, using each
16 Class Member’s start and end dates of employment, excluding leaves of absences, to determine the
17 number of days the Class Member was employed by Defendant within the Class Period or PAGA
18 Period, and dividing the total days by seven (7). Defendant’s Workweek data will be presumed to be
19 correct, unless a particular Class Member proves otherwise to the Settlement Administrator by credible,
20 written evidence. All Workweek disputes will be resolved and decided by the Settlement Administrator
21 and the Settlement Administrator’s decision on all Workweeks Disputes will be final and non-
22 appealable.

23 **1.43. WORKWEEK(S) DISPUTE(S)**

24 “Workweek(s) Dispute(s)” means the submission by a Class Member to the Settlement
25 Administrator to dispute the number of Workweeks credited to the Class Member.
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1 **2. FACTUAL AND PROCEDURAL BACKGROUND**

2 **2.1. PLAINTIFF’S CLAIMS**

3 Plaintiff, individually and in his representative capacity on behalf of the Settlement Class, and
4 as a private attorney general on behalf of the State of California, has alleged the following violations:
5 **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and
6 1194.2, and the Applicable Wage Order; **(2)** failure to pay proper overtime wages in violation of Labor
7 Code sections 510, 1197, and 1198, and the Applicable Wage Order; **(3)** failure to provide compliant
8 rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the
9 Applicable Wage Order; **(4)** failure to provide compliant meal periods and pay missed meal period
10 premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage Order;
11 **(5)** failure to maintain accurate employment records in violation of Labor Code section 1174;
12 **(6)** failure to pay timely wages during employment in violation of Labor Code sections 204, 210;
13 **(7)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202,
14 and 203; **(8)** failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804;
15 **(9)** failure to provide complete and accurate wage statements in violation of Labor Code sections 226
16 and 226.3; **(10)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing
17 in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); and
18 **(11)** statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698–2699.6).

19 **2.2. DISCOVERY, INVESTIGATION, RESEARCH, AND MEDIATION**

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

3 Class Counsel and the Class Representative have vigorously prosecuted this case, and
4 Defendant has vigorously contested it. The Parties have engaged in sufficient investigation and
5 discovery to assess the relative merits of the claims of the Class Representative and of the defenses to
6 them. After such discovery, investigation, and prosecution, the Parties attended a full-day mediation
7 with an experienced employment law mediator, Steve Pearl, which culminated in a settlement in
8 principle, the terms of which are elaborated in this Settlement Agreement.

9 **2.3. ALLEGATIONS OF THE CLASS REPRESENTATIVE AND BENEFITS OF**
10 **SETTLEMENT**

11 The document and data exchange in this matter, as well as discussions between counsel, have
12 been adequate to give the Class Representative and Class Counsel a sound understanding of the merits
13 of their positions and to evaluate the value of the claims of the Settlement Class. The informal discovery
14 conducted in this Action and the information exchanged by the Parties through pre-mediation
15 discussions are sufficient to reliably assess the merits of the Parties' respective positions and to
16 compromise the issues on a fair and equitable basis.

17 The Class Representative and Class Counsel believe that the claims, causes of action,
18 allegations, and contentions asserted in the Action have merit. However, the Class Representative and
19 Class Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings
20 necessary to prosecute the Action against Defendant through trial and through appeals. Class Counsel
21 has taken into account the uncertain outcome of the litigation, the risk of continued litigation in complex
22 actions such as this, as well as the difficulties and delays inherent in such litigation, and the potential
23 difficulty of obtaining certification of the Settlement Class as well as trying the claims of the class.
24 Class Counsel is mindful of the potential problems of proof under, and possible defenses to, the claims
25 alleged in the Action.

26 The Class Representative and Class Counsel believe that the settlement set forth in this
27 Settlement Agreement confers substantial benefits upon Plaintiff and the Settlement Class and that an
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1 independent review of this Settlement Agreement by the Court in the approval process will confirm
2 this conclusion. Based on their own independent investigation and evaluation, Class Counsel has
3 determined that the settlement set forth in this Settlement Agreement is in the best interests of Plaintiff
4 and the Class Members.

5 **2.4. DEFENDANT'S DENIALS OF WRONGDOING AND LIABILITY**

6 Defendant generally denies all claims alleged in the Action and further denies class treatment
7 is appropriate for any purpose other than this Settlement. Defendant contends it complied with
8 California and other applicable law. It is Defendant's position that, if litigation continued, class
9 certification would be denied on all claims. Defendant concluded further litigation of the Action would
10 be protracted and expensive. Defendant further determined it is desirable that the Action be fully and
11 finally settled in the manner and upon the terms and conditions in this Settlement Agreement.

12 **2.5. INTENT OF THE SETTLEMENT**

13 The Settlement set forth herein intends to achieve the following: **(1)** entry of an order approving
14 the Settlement; **(2)** entry of judgment of the Action; **(3)** discharge of the Released Parties from liability,
15 with prejudice, for any and all of the Released Claims; and **(4)** discharge of Defendant from liability,
16 with prejudice, for any and all claims arising out of the Action.

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

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

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

7 **4. APPOINTMENT OF CLASS COUNSEL**

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

11 **5. CONSIDERATION**

12 **5.1. SETTLEMENT AMOUNT**

13 The Parties agree to settle this Action for the Gross Settlement Amount of ONE HUNDRED
14 AND SEVENTY-FIVE THOUSAND AND ZERO CENTS (\$175,000.00.) There shall be no reversion
15 to Defendant. Defendant shall pay the Gross Settlement Amount in full. The Gross Settlement Amount
16 and other actions and forbearances taken by Defendant shall constitute adequate consideration for the
17 Settlement and will be made in full and final settlement of: the Released Claims, the Class Attorney
18 Fees and Expenses, Administrative Expenses, the Incentive Award, the PAGA Payment (and any
19 payments to individual PAGA Class Members resulting from the PAGA Payment), and any other
20 obligation of Defendant under this Settlement Agreement (other than the Employer's Taxes on the
21 portion of the Net Settlement Amount allocated to the payment of wages).

22 After the Court issues an order preliminarily approving this Settlement, the Settlement
23 Administrator will distribute the Class Notice to the Class Members, which shall describe the terms of
24 the Settlement and procedures to Request for Exclusion, object, or participate in the Settlement as well
25 as the Share Form, which shall identify the Class Member, the number of workweeks worked by each
26 Class Member ("Workweeks"), as well as the estimated amount of the Individual Settlement Amount
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1 the Class Member can expect to receive once the Settlement becomes effective on the Effective Date.
2 Class Members shall be given the opportunity to challenge their Workweeks information.

3 **5.2. INCENTIVE AWARD FOR PLAINTIFF**

4 Plaintiff may petition the Court to approve an Incentive Award in an amount up to TEN
5 THOUSAND DOLLARS (\$10,000.00) for Plaintiff to acknowledge his efforts on behalf of the
6 Settlement Class in this Action, including assisting in the investigation and consulting with Class
7 Counsel and providing crucial documents to Class Counsel. Defendant shall not oppose any request by
8 Plaintiff for an Incentive Award in such an amount. Any Incentive Award approved by the Court shall
9 be paid to Plaintiff from the Gross Settlement Amount and shall be in addition to any distribution to
10 which he may otherwise be entitled as a Class Participant. Any Incentive Award approved by the Court
11 shall not be considered wages, and the Settlement Administrator shall issue to Plaintiff an IRS Form
12 1099 reflecting such payment. Plaintiff shall be responsible for the payment of all taxes with respect to
13 any Incentive Award approved by the Court and shall hold Defendant harmless from all liability with
14 regard thereto. Defendant will not be obligated to pay any incentive payment above this amount. No
15 part of the Gross Settlement Amount will be used to pay any incentive payment above this amount.
16 Even in the event that the Court reduces or does not approve the requested Incentive Payment to
17 Plaintiff, Plaintiff shall not have the right to revoke this Settlement, and it will remain binding. Plaintiff
18 is responsible for any and all taxes associated with this Incentive Payment.

19 **5.3. PAYMENT TO CLASS PARTICIPANTS**

20 Each Class Participant shall be eligible to receive payment of the Individual Settlement
21 Amount, which is a share of the Net Settlement Amount based on the pro rata number of Workweeks.
22 Each Class Participant, including Plaintiff, shall be responsible for the payment of the Employee's
23 Taxes and Required Withholding with respect to his or her Individual Settlement Amount and shall
24 hold Defendant harmless from any and all liability with regard thereto.

25 **5.4. PAYMENT TO PAGA SETTLEMENT CLASS**

26 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA
27 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have
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1 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which
2 is TEN THOUSAND DOLLARS AND NO CENTS (\$10,000.00.) The PAGA Payment must be
3 approved by the Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-
4 five percent (75%) (i.e., \$7,500.00) to the LWDA and twenty-five percent (25%) (i.e., \$2,500.00) to
5 the PAGA Settlement Class. The portion of the PAGA Payment allocated to the PAGA Settlement
6 Class shall be distributed to the PAGA Settlement Class based on the pro rata number of pay periods
7 worked by each particular PAGA Settlement Class member during the PAGA Period as a proportion
8 of all pay periods worked by all members of the PAGA Settlement Class. The entire PAGA Settlement
9 Amount will be paid out of the Gross Settlement Amount. The Court's adjustment, if any, of the amount
10 allocated to the PAGA claim in the Action, will not invalidate this Agreement.

11 **5.5. TAX TREATMENT AND PAYMENT**

12 For the purpose of calculating Employee's Taxes and Required Withholding for the Individual
13 Settlement Amounts for Class Participants (including any payments to the Class Representative but
14 exclusive of his Incentive Award), the Parties agree that 20% of each Individual Settlement Amount
15 shall constitute payment in the form of wages (and each Class Participant will be issued an IRS Form
16 W-2 for such payment to him or her), and 80% of each Individual Settlement Amount shall constitute
17 penalties and interest (and each Class Participant will be issued an IRS Form 1099 for such payment
18 to him or her). The individual PAGA Payments to PAGA Settlement Class shall be deemed one
19 hundred percent (100%) penalties. Prior to final distribution, the Settlement Administrator shall
20 calculate the total Employee's Taxes and Required Withholding due as a result of the wage portion of
21 Class Participants' anticipated Individual Settlement Amounts and such actual amount will be deducted
22 from the Net Settlement Amount. Additionally, prior to the funding of the Gross Settlement Amount
23 and final distribution, the Settlement Administrator shall calculate the total Employer's Taxes due on
24 the wage portion of the Class Participants' Individual Settlement Amounts and issue instructions to
25 Defendant to separately fund these tax obligations/withholdings. The Parties understand that Plaintiff
26 and the Class Participants who receive any payment pursuant to this Settlement Agreement shall be
27 solely responsible for all other individual tax obligations.
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1 With respect to the PAGA Payment and any payments made to individual members of the
2 PAGA Settlement Class, all such payments shall be treated as payments owing for penalties and interest
3 thereon and shall not be considered wages. The Settlement Administrator shall issue to members of the
4 PAGA Settlement Class an IRS Form 1099 reflecting such payment. Members of the PAGA Settlement
5 Class shall be solely responsible for the payment of all taxes with respect to any PAGA payments made
6 to them.

7 Plaintiff, PAGA Settlement Class, and Class Members shall be exclusively liable for any and
8 all of their respective tax liability, if any. Plaintiff, PAGA Employees, and Class Members should
9 consult with their tax advisors concerning the tax consequences of the payments they receive under the
10 Settlement Agreement. Each Class Member will be responsible for paying all applicable state, local,
11 and federal income taxes on all amounts they receive pursuant to this Settlement Agreement. Plaintiff,
12 PAGA Settlement Class, and Participating Class Members shall cooperate with Defendant and provide
13 documentation as requested to demonstrate such payment should any taxing authority challenge the tax
14 treatment of any such payment made under the Settlement.

15 Each Party to this Settlement Agreement acknowledges and agrees that:

16 a. He, she, or it: (a) has relied exclusively upon his, her, or its own,
17 independent legal and tax advisers for advice (including tax advice) in connection with this Settlement
18 Agreement; (b) has not entered into this Settlement Agreement based upon the recommendation of any
19 other Party or any attorney or advisor to any other Party; and (c) is not entitled to rely upon any
20 communication or disclosure by any attorney or adviser to any other Party to avoid any tax penalty that
21 may be imposed on him or her; and

22 No attorney or adviser to any other Party has imposed any limitation that protects the
23 confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation
24 is legally binding) upon disclosure by him or her of the tax treatment or tax structure of any transaction,
25 including any transaction contemplated by this Settlement Agreement.

26 Tax Liability. Defendant makes no representation as to the tax treatment or legal effect of the
27 payments called for hereunder, and Plaintiff, Participating Class Members, and Class Members who
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1 timely exclude themselves from the Settlement but receive a portion of the LWDA Payment are not
2 relying on any statement, representation, or calculation by Defendant or by the Settlement
3 Administrator in this regard. Plaintiff, Participating Class Members, and Class Members who timely
4 exclude themselves from the Settlement but receive a portion of the LWDA Payment understand and
5 agree that they will be solely responsible for the payment of any taxes and penalties assessed on the
6 payments described herein and will defend, indemnify, and hold Defendant free and harmless from and
7 against any claims resulting from treatment of such payments as non-taxable damages.

8 **5.6. NO EFFECT ON EMPLOYEE BENEFIT PLANS**

9 Neither the Settlement nor any amounts paid under the Settlement will modify any previously
10 credited hours, days, or weeks of service under any employee benefit plan, policy or bonus program
11 sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits
12 under, or any other monetary entitlement under Defendant's sponsored benefit plans, policies, or bonus
13 programs. The payments made under the terms of this Settlement Agreement shall not be applied
14 retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of
15 compensation for the purposes of any of Defendant's benefit plan, policy, or bonus program. Defendant
16 retains the right to modify the language of its benefits plans, policies, and bonus programs to reflect
17 this intent and to make clear that any amounts paid pursuant to this Settlement Agreement are not for
18 "weeks worked," "weeks paid," "weeks of service," or any similar measuring term as defined by
19 applicable plans, policies, and bonus programs for purpose of eligibility, vesting, benefit accrual, or
20 any other purpose, and that additional contributions or benefits are not required by this Settlement
21 Agreement. Defendant does not consider the Settlement payments "compensation" for purposes of
22 determining eligibility for, or benefit accrual within, any benefit plans, policies, or bonus programs, or
23 any other plan sponsored by Defendant.

24 **5.7. CLASS ATTORNEY FEES AND EXPENSES**

25 As part of the motion for final approval of the Settlement, Class Counsel may apply for an
26 award of Class Attorney Fees and Expenses with the fee portion not to exceed one-third of the Gross
27 Settlement Amount (i.e., \$58,333.33) and the award of costs and expenses up to an additional FIFTEEN
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1 THOUSAND DOLLARS AND NO CENTS (\$15,000.00.) Defendant agrees to not object to any such
2 fee, cost, or expense application in those amounts.

3 As a condition of this Settlement, Class Counsel has agreed to pursue fees only in the manner
4 reflected by this subsection. Any Class Attorney Fees and Expenses awarded by the Court shall be paid
5 from the Gross Settlement Amount prior to arriving at the Net Settlement Amount and shall not
6 constitute payment to any Class Members. If Class Counsel voluntarily reduces the request for Class
7 Attorney Fees and Expenses or the Court's award of Class Attorney Fees and Expenses is less than set
8 forth above, the Net Settlement Amount shall be recalculated to reflect the actual Class Attorney Fees
9 and Expenses awarded. Defendant will not be obligated to pay any Class Attorney Fees and Expenses
10 above this amount. No part of the Gross Settlement Amount will be used to pay any incentive payment
11 above these amounts. In the event that the Court reduces or does not approve the requested Class
12 Counsel Attorney's Fees, Class Counsel shall not have the right to revoke this Settlement Agreement,
13 and it will remain binding.

14 The Class Attorney Fees and Expenses approved by the Court shall reflect: **(a)** all work
15 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
16 represent the Settlement Class through the date of this Settlement Agreement; **(b)** all work to be
17 performed and costs to be incurred in connection with approval by the Court of the Settlement; **(c)** all
18 work to be performed and costs and expenses, if any, incurred in connection with administering the
19 Settlement through the Effective Date and dismissal of the Action with prejudice; and **(d)** may be based
20 on the "catalyst theory" and/or the "common fund doctrine."

21 **6. SETTLEMENT ADMINISTRATION**

22 **6.1. COSTS AND EXPENSES**

23 All costs and expenses due to the Settlement Administrator in connection with its administration
24 of the Settlement, including, but not limited to, providing the Class Notice, locating Class Members,
25 processing Request for Exclusion and objections, distributing the portion of the PAGA Payment
26 payable to the LWDA, distributing the portion of the PAGA Payment payable to the members of the
27 PAGA Settlement Class, and calculating, administering and distributing Individual Settlement
28

1 Amounts to the Class Participants and related tax forms, shall be paid from the Gross Settlement
2 Amount, and is not to exceed TEN THOUSAND DOLLARS AND NO CENTS (\$10,000.00.)

3 **6.2. PAYMENT BY DEFENDANT**

4 Defendant shall deposit the Gross Settlement Amount in a lump sum payment plus the
5 employer-side payroll taxes to the Settlement Administrator within thirty (30) days of the Effective
6 Date. In no event shall Defendant be obligated to pay or deposit with the Settlement Administrator
7 more than ONE HUNDRED AND SEVENTY-FIVE THOUSAND DOLLARS AND NO CENTS
8 (\$175,000.00) plus the Employer's Taxes, except where the Escalator Provision is triggered.

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

10 **7.1. THE SETTLEMENT ADMINISTRATOR**

11 The Settlement Administrator will be responsible for: mailing the Class Notice and Share Form
12 (**Exhibit 1**) to Class Members; posting notice of entry of final order and judgment certifying the
13 Settlement and approving this Settlement Agreement; handling inquiries from Class Members
14 concerning the Class Notice; determining Individual Settlement Amounts; determining individual
15 payments to members of the PAGA Settlement Class; maintaining the settlement funds in Qualified
16 Settlement Fund Account; preparing, administering, and distributing Individual Settlement Amounts
17 to Class Participants; preparing, administering, and distributing individual payments to members of
18 the PAGA Settlement Class; distributing the portion of the PAGA Payment payable to the LWDA;
19 issuing a final report and performing such other duties as the Parties may direct. Additionally, the
20 Settlement Administrator will handle all tax document preparation and reporting, including state and
21 federal tax forms, if any.

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

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

8 Administrative Expenses will not exceed TEN THOUSAND DOLLARS AND NO CENTS
9 (\$10,000.00.) Prior to the calculation and distribution of the Individual Settlement Amounts, the
10 Settlement Administrator shall calculate the total Administrative Expenses through the conclusion of
11 their services and such actual amount will be deducted from the Gross Settlement Amount prior to the
12 final calculation of the Individual Settlement Amounts.

13 **7.2. NOTICE TO CLASS MEMBERS**

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

20 Within twenty-eight (28) days following the Preliminary Approval Date, the Settlement
21 Administrator shall determine the number of workweeks worked by each Class Member, populate the
22 data for each Class Member accordingly, and send each Class Member the Class Notice via first-class,
23 United States mail.

24 The Class Notice will inform Class Members of their estimated share of the settlement and the
25 number of workweeks they worked during the Class Period. If prior to the Response Deadline any
26 Class Notice mailed to a Class Member is returned as having been undelivered by the United States
27 Postal Service, the Settlement Administrator shall perform a skip trace search and seek an address
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1 correction for such Class Members, and a second Class Notice will be sent to any new or different
2 address obtained. Such Class Members shall have an additional fourteen (14) days from the date of the
3 mailing of the second Class Notice in which to Request for Exclusion, object, or dispute the information
4 provided in the Share Form if the Response Deadline would have otherwise passed prior to fourteen
5 (14) days from the date of the mailing of the second Class Notice.

6 It will be presumed that, if an envelope containing the Class Notice has not been returned within
7 thirty (30) days of the mailing, the Class Member received the Class Notice. At least twenty-one (21)
8 days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class
9 Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard
10 to the mailing of the Class Notice and its attempts to locate Class Members. The declaration shall
11 specify the number of Class Members to whom the Class Notice was sent and the number of Class
12 Members to whom the Class Notice was not delivered, as well as information relating to the number
13 of Opt-Outs and objectors. Class Counsel shall file this declaration with the Court.

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

17 **7.3. REQUEST FOR EXCLUSION PROCEDURE**

18 Class Members who do not timely Request for Exclusion of the Settlement will be deemed to
19 participate in the Settlement and shall become Class Participants without having to submit a claim form
20 or take any other action. To Request for Exclusion of the Settlement, the Class Member must return a
21 written request for exclusion by the Response Deadline. Any Request for Exclusion request that is not
22 postmarked by the Response Deadline will be invalid.

23 If the Settlement Administrator determines that a Request for Exclusion returned by a Class
24 Member before the Response Deadline is deficient, then the Settlement Administrator shall mail a
25 deficiency letter to that Class Member identifying the problem. If a Class Member submits both a
26 dispute and a Request for Exclusion, the Settlement Administrator shall make reasonable attempts to
27 clarify as if the Request for Exclusion were deficient. If the Class Member fails to cure the deficiency,
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1 the Request for Exclusion shall be disregarded and the claim will be paid, and the Class Member will
2 become bound by the judgment.

3 A Request for Exclusion of the Settlement shall *not* serve to exclude the PAGA Settlement
4 Class Member from participation in the PAGA Settlement Class. Opt-Outs shall still be entitled to their
5 share of the PAGA Payment. Class Members who are also members of the PAGA Settlement Class
6 shall have no right or ability to opt out of the portion of this Settlement Agreement releasing PAGA
7 claims.

8 **7.4. OBJECTION PROCEDURE**

9 The Class Notice shall inform the Class Members of their right to object to the Settlement if
10 they do not Request for Exclusion. Any Class Participants who wish to object to the Settlement may
11 submit a written objection to the Settlement Administrator no later than the Response Deadline. Only
12 Class Participants may object to the Settlement. The objection should include the case name and
13 number and must set forth, in clear and concise terms, a statement of the reasons why the objector
14 believes that the Court should find that the proposed Settlement is not in the best interest of the
15 Settlement Class and the reasons why the Settlement should not be approved, including the legal and
16 factual arguments supporting the objection. If an objector also wishes to appear at the Final Approval
17 and Fairness Hearing, in person or through an attorney, they may do so. The Settlement Administrator
18 will promptly serve copies of any objection or notice of intention to appear on Class Counsel and
19 Defense Counsel. Class Members wishing to make an objection may appear at the Final Approval and
20 Fairness Hearing, either in person or through a lawyer retained at their own expense.

21 **7.5. WORKWEEKS DISPUTES**

22 A Class Member may dispute the accuracy of the Workweeks credited to him or her in
23 conformity with the instructions in the Class Notice (“Workweeks Dispute”). Any such Workweeks
24 Dispute must be in writing and must: (a) contain the Class Member’s full name, address, telephone
25 number, last four digits of his or her Social Security number, and signature; (b) contain the case name
26 and number of the Action; (c) contain a clear statement explaining that he or she disputes the number
27 of Workweeks credited to him or her and what he or she contends is the correct number that should be
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1 credited to him or her; (d) any documentation that he or she has to support the dispute; and (e) be mailed
2 to the Settlement Administrator, postmarked on or before the Response Deadline. The Settlement
3 Administrator shall provide copies of all Workweek Disputes to Class Counsel and Defendant's
4 Counsel within three (3) business days of receipt, and shall immediately attempt to resolve all such
5 disputes with the assistance of Defendant's Counsel and Class Counsel. In the event of a dispute,
6 Defendant's records regarding the number of Workweeks of the Class Member shall be presumed to
7 be correct and the Class Member will bear the burden of proof (*i.e.* a Class Member who fails to provide
8 written proof will have his or her challenge denied). The Settlement Administrator shall investigate the
9 challenge, requesting information from Defendant as necessary and make the final determination of
10 whether any additional amount is owed. All Workweek Disputes will be resolved and decided by the
11 Settlement Administrator and the Settlement Administrator's decision on all Workweeks Disputes will
12 be final and non-appealable. Further, if a dispute arises or is not resolved until after the Settlement
13 Amount has been distributed, the initial calculation shall stand (as Defendant shall be under no
14 obligation to pay any amounts in excess of the Gross Settlement Amount under this Settlement
15 Agreement.)

16 **7.6. NOTICE OF FINAL JUDGMENT**

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

22 **8. SETTLEMENT FUNDING AND DISTRIBUTION**

23 **8.1. ALLOCATION OF THE GROSS SETTLEMENT AMOUNT**

24 The claims of all Class Members are settled for the Gross Settlement Amount of ONE
25 HUNDRED AND SEVENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$175,000.00),
26 which will be allocated as follows:

- 27 1. The Administrative Expenses, not to exceed \$10,000.00;

2. Class Counsel's attorney fees not to exceed \$58,333.33;
3. Class Counsel's litigation costs and expenses not to exceed \$15,000.00;
4. The Incentive Award, not to exceed \$10,000.00; and
5. PAGA Payment to LWDA of \$7,500.00.

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

8.2. CALCULATION OF THE INDIVIDUAL SETTLEMENT AMOUNTS FOR CLASS PARTICIPANTS

Individual Settlement Amounts to be paid to Class Participants shall be paid from the Net Settlement Amount. The portion of the Net Settlement Amount shall be distributed pro rata on a basis based on the proportional number of weeks worked by each Class Member during the Class Period.

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

1 **8.3. CALCULATION OF THE PAYMENTS FOR INDIVIDUAL MEMBERS OF**
2 **THE PAGA SETTLEMENT CLASS**

3 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA
4 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have
5 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which
6 is TEN THOUSAND DOLLARS AND NO CENTS (\$10,000.00.) The PAGA Payment is to be
7 approved by the Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-
8 five percent (75%) (i.e., \$7,500.00) to the LWDA and twenty-five percent (25%) (i.e., \$2,500.00) to
9 the PAGA Settlement Class.

10 The portion of the PAGA Payment allocated to the PAGA Settlement Class shall be distributed
11 to the PAGA Settlement Class based on the pro rata number of pay periods worked by each PAGA
12 Settlement Class member during the PAGA Period as a proportion of all pay periods worked by all
13 PAGA Settlement Class members during the PAGA Period. Each member of the PAGA Settlement
14 Class, including Plaintiff, shall be responsible for the payment of the Employee's Taxes and Required
15 Withholding with respect to their share of the PAGA Payment and shall hold Defendant harmless from
16 any and all liability with regard thereto.

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

26 The members of the PAGA Settlement Class shall be solely responsible for any and all tax
27 obligation associated with their respective shares of the PAGA Payment.
28

1 **8.4. TIME FOR PAYMENT OF ATTORNEY FEES AND EXPENSES**

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

4 **8.5. TIME FOR PAYMENT OF INCENTIVE AWARD**

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

7 **8.6. TIME FOR PAYMENT OF PAGA PAYMENT TO THE LWDA**

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

10 **8.7. TIME FOR PAYMENT OF TAXES AND REQUIRED WITHHOLDING AND**
11 **INDIVIDUAL SETTLEMENT AMOUNTS**

12 The Settlement Administrator shall make every effort to pay the Employee's Taxes and
13 Required Withholding associated with each Class Participant's Individual Settlement Amount and mail
14 the Individual Settlement Amount to each Class Participant, by first-class United States mail, to the
15 last-known address no later than fourteen (14) days after the Effective Date. If the Settlement
16 Administrator is not able to do so within the time period set forth above, it shall so inform Class Counsel
17 and Defense Counsel and provide an approximate date by which the Employee's Taxes and Required
18 Withholding shall be paid and the Individual Settlement Amounts will be mailed. Under no
19 circumstances shall the Settlement Administrator distribute checks to Class Participants until all
20 Individual Settlement Amounts have been considered, calculated, and accounted for, and all of the
21 remaining monetary obligations have been calculated and accounted for.

22 Within two hundred ten (210) days of mailing the Individual Settlement Amounts to Class
23 Participants, the Settlement Administrator shall file with the Court and provide to Class Counsel a
24 declaration of payment. If any Class Participant is deceased, payment shall be made payable to the
25 estate of that Class Member and delivered to the executor or administrator of that estate, unless the
26 Settlement Administrator has received an affidavit or declaration pursuant to California Probate Code
27 section 13101, in which case payment shall be made to the affiant(s) or declarant(s).
28

1 **8.8. NON-CASHED SETTLEMENT CHECKS**

2 Any funds associated with checks that have not been cashed within one hundred eighty (180)
3 days, will become void and the Individual Settlement Amount associated with the uncashed check will
4 be remitted pursuant to Code of Civil Procedure section 384 to the California State Controller for
5 deposit in the Unclaimed Property Fund in the name of the individual whose check was uncashed. The
6 Parties agree that this disposition results in no “unpaid residue” within the meaning of California Civil
7 Procedure Code section 384, as the entire Net Settlement Amount will be paid out to Class Participants,
8 whether or not they all cash their Individual Settlement Amount checks. Therefore, Defendant shall not
9 be required to pay any interest on said amount. For the purposes of determining whether Defendant has
10 met their financial obligation to pay the Individual Settlement Payment, Defendant will be deemed to
11 have fulfilled its obligation upon the mailing of the check to the Class Member, regardless of whether
12 such Class Member subsequently negotiates the check.

13 **9. NULLIFICATION OF THIS SETTLEMENT AGREEMENT**

14 **9.1. NON-APPROVAL OF THIS SETTLEMENT AGREEMENT**

15 The Settlement and conditional class certification shall be considered null and void, and neither
16 the Settlement, conditional class certification, nor any of the related negotiations or proceedings, shall
17 be of any force or effect, and all Parties to the Settlement shall stand in the same position, without
18 prejudice, as if the Settlement had been neither entered into nor filed with the Court, if any of the
19 following occur: **(a)** the Court should for any reason fail to approve this Settlement Agreement in the
20 form agreed to by the Parties; **(b)** the Court should for any reason fail to enter a judgment with prejudice
21 of the Action, or **(c)** the approval of the Settlement and judgment is reversed, modified, or declared or
22 rendered void. Notwithstanding the foregoing, the Parties may attempt in good faith to cure any
23 perceived defects in this Settlement Agreement to facilitate approval. As stated above, the court’s
24 reduction of the Incentive Award or Class Counsel Fees and Costs will not be a basis for nullification
25 of the Settlement Agreement.

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

2 If 5% or more members of the Settlement Class timely submit Request for Exclusion,
3 Defendant(s) shall have the right (but not the obligation) to void this Settlement Agreement. If the
4 number of workweeks is greater than 10% above that represented by Defendant(s), as described above,
5 then the portion of the Gross Settlement Amount attributable to non-PAGA claims (i.e., the Gross
6 Settlement Amount less the PAGA penalties) shall be increased proportionally for each additional
7 workweek above the 10% buffer. If the number of pay periods worked by the Aggrieved Employees
8 is greater than 10% above that estimated by Defendant(s), then the portion Gross Settlement Amount
9 attributable to PAGA claims (i.e., the PAGA penalties) shall be increased proportionately for each
10 additional pay period worked above the 10% buffer. If this provision is triggered so as to increase the
11 Gross Settlement Amount, the Parties agree that the portion of the Gross Settlement Amount allocated
12 to attorneys' fees will increase proportionally such that the total amount of attorneys' fees remains one-
13 third of the Gross Settlement Amount after the upward adjustment required by this provision is
14 implemented.

15 **9.3. INVALIDATION**

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

19 **9.4. STAY ON APPEAL**

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

24 **10. MOTIONS FOR COURT APPROVAL**

25 **10.1. PRELIMINARY APPROVAL**

26 As soon as practicable after execution of this Settlement Agreement, Class Counsel will submit
27 this Settlement Agreement to the Court along with a Motion for Preliminary Approval of the
28

1 Settlement. Each party shall cooperate to present the Settlement to the Court for preliminary approval
2 in a timely fashion.

3 **10.2. FINAL APPROVAL**

4 The Final Approval and Fairness Hearing shall be held before the Court. At the Final Approval
5 and Fairness Hearing, Plaintiff shall move the Court for the entry of the final order certifying the
6 Settlement Class for settlement purposes only and approving the Settlement as being fair, reasonable,
7 and adequate to the Class Participants within the meaning of California Rules of Court, Rule 3.769,
8 subdivisions (c), (d) and (e), and for the entry of a final judgment of the Action consistent with the
9 terms of the Settlement and rule 3.769, subdivision (h), of the California Rules of Court. Class Counsel
10 and Defense Counsel shall submit to the Court such pleadings and/or evidence as may be required for
11 the Court's determination.

12 **11. RELEASES AND WAIVERS**

13 **11.1. RELEASE OF CLAIMS BY THE SETTLEMENT CLASS**

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

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

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

4 **11.2. RELEASE OF CLAIMS BY PLAINTIFF**

5 Plaintiff, on behalf of himself and his dependents, heirs and assigns, beneficiaries, devisees,
6 legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives,
7 and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect,
8 or any other type or in any other capacity, shall and does hereby forever release, discharge and agree
9 to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities,
10 obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights,
11 demands, costs, losses, debts and expenses (including attorney fees and costs), known or unknown, at
12 law or in equity, which he may now have or may have after the signing of this Settlement Agreement,
13 arising out of or in any way connected with his employment with Defendant including, the Released
14 Claims, claims that were asserted or could have been asserted in the Complaint, and any and all
15 transactions, occurrences, or matters between the Parties occurring prior to the date this Settlement
16 Agreement is fully executed. Without limiting the generality of the foregoing, this release shall include,
17 but not be limited to, any and all claims under: **(a)** the Americans with Disabilities Act; **(b)** Title VII
18 of the Civil Rights Act of 1964; **(c)** the Civil Rights Act of 1991; **(d)** 42 U.S.C. § 1981; **(e)** the Age
19 Discrimination in Employment Act; **(f)** the Fair Labor Standards Act; **(g)** the Equal Pay Act; **(h)** the
20 Employee Retirement Income Security Act, as amended; **(i)** the Consolidated Omnibus Budget
21 Reconciliation Act; **(j)** the Rehabilitation Act of 1973; **(k)** the Family and Medical Leave Act; **(l)** the
22 Civil Rights Act of 1966; **(m)** the California Fair Employment and Housing Act; **(n)** the California
23 Constitution; **(o)** the California Labor Code; **(p)** the California Government Code; **(q)** the California
24 Civil Code; and **(r)** any and all other federal, state, and local statutes, ordinances, regulations, rules,
25 and other laws, and any and all claims based on constitutional, statutory, common law, or regulatory
26 grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of
27 contract or implied contract, fraud, misrepresentation, promissory estoppel, or intentional infliction of
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1 emotional distress, negligent infliction of emotional distress, or damages under any other federal, state,
2 or local statutes, ordinances, regulations, rules, or laws. This release is for any and all relief, no matter
3 how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses,
4 compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain
5 and suffering, and attorney fees and costs, and Plaintiff hereby forever releases, discharges and agrees
6 to hold harmless Defendant and the Released Parties from any and all claims for attorney fees and costs
7 arising out of the matters released in this Settlement Agreement.

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

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

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

24 11.2(a). Non-Disparagement. Plaintiff agrees that he shall not disparage, denigrate, or make
25 any inaccurate, untruthful or incorrect statement(s) about (whether verbally, in writing, electronically,
26 through social media, or through any other means of communication) regarding the Released Parties,
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as defined above, or otherwise cause harm or potential harm to the reputation of the Released Parties, or interfere with either Released Parties' actual or prospective economic advantage.

11.3. CIRCULAR 230 DISCLAIMER

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

12. DUTIES OF THE PARTIES

12.1. MUTUAL FULL COOPERATION

The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Settlement Agreement. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by court order or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable

1 after execution of this Settlement Agreement, Class Counsel, with the cooperation of Defendant and
2 Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final approval of
3 this Settlement Agreement.

4 **12.2. DUTY TO SUPPORT AND DEFEND THE SETTLEMENT**

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

8 **12.3. DUTIES PRIOR TO COURT APPROVAL**

9 Class Counsel shall promptly submit this Settlement Agreement to the Court for preliminary
10 approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly
11 upon execution of this Settlement Agreement, Class Counsel shall apply to the Court for the entry of a
12 preliminary order scheduling a hearing on the question of whether the proposed Settlement should be
13 approved as fair, reasonable, and adequate as to the Class Members, approving as to form and content
14 the proposed Class Notice and Share Form attached hereto as **Exhibit 1**, and directing the mailing of
15 the Class Notice to Class Members. While Defendant can reserve its right to object to facts or assertions
16 made in the moving papers, Defense Counsel shall file a notice of non-opposition to the granting of the
17 motion for preliminary approval or join in the motion.

18 **13. MISCELLANEOUS PROVISIONS**

19 **13.1. VOIDING THIS SETTLEMENT AGREEMENT**

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

4 **13.2. DIFFERENT FACTS**

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

11 **13.3. NO PRIOR ASSIGNMENTS**

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

16 **13.4. NON-ADMISSION**

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

9 **13.5. NON-EVIDENTIARY USE**

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

17 **13.6. MEDIA OR PRESS**

18 Plaintiff and Defendant, and their respective counsel, recognize, accept, and agree that the
19 Parties to this Settlement Agreement desire that the terms of this Settlement Agreement, the fact of the
20 Settlement embodied in this Settlement Agreement, the disposition of the Action, the Action, and all
21 matters relating to the litigation of the Action, including discovery proceedings therein, and evidence
22 obtained during the course of the Action, shall not be discussed with or presented to the media or press.

23 **13.7. NON-RETALIATION**

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

4 **13.8. CONSTRUCTION**

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

11 **13.9. GOVERNING LAW**

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

15 **13.10. NOTICES**

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

21 **13.11. CAPTIONS AND INTERPRETATIONS**

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

25 **13.12. MODIFICATION**

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

4 **13.13. INTEGRATION CLAUSE**

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

10 **13.14. SUCCESSORS AND ASSIGNS**

11 This Settlement Agreement shall be binding on and inure to the benefit of the Parties and Class
12 Members (excluding only persons who timely submit a Request for Exclusion) and their respective
13 present and former heirs, trustees, executors, administrators, representatives, officers, directors,
14 shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors, consultants,
15 pension plans, welfare benefit plans, fiduciaries, parent companies, subsidiaries, affiliates, related
16 companies, joint ventures, predecessors, successors, and assigns.

17 **13.15. CORPORATE SIGNATORIES**

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

22 **13.16. EXECUTION IN COUNTERPARTS**

23 This Settlement Agreement shall become effective upon its execution by all of the undersigned.
24 The Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall
25 have the same force and effect as if all Settling Parties had signed the same instrument.
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Except as otherwise specifically provided for herein, each party shall bear her or its own attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other party to this Settlement Agreement.

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

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

CLASS REPRESENTATIVE:

Gabriel Blas
Plaintiff and Class Representative

1 **DEFENDANT:**

2
3 Dated: 02/23/2023

NRJY, Inc.



4
5
6 By: Yannick Namia

7 Title: CEO

8
9 **APPROVED AS TO FORM BY COUNSEL**

10 **CLASS COUNSEL:**

11 Dated: February 24, 2023

Melmed Law Group P.C.



14 Megan E. Ross
Attorneys for Plaintiff

16 **DEFENDANT'S COUNSEL:**

17
18 Dated: February 23, 2023

Jackson Lewis P.C.



20 Sevada Hakopian
Chad D. Bernard
Attorneys for Defendant

2023-02-24 - NRJY - Settlement Agreement FINAL signed by D

Final Audit Report

2023-02-25

Created:	2023-02-25
By:	Hannah Becker (hb@melmedlaw.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAABX5iK78z3_Q5iLWT2eFIKnbbhOkuyQi8

"2023-02-24 - NRJY - Settlement Agreement FINAL signed by D" History

-  Document created by Hannah Becker (hb@melmedlaw.com)
2023-02-25 - 0:49:42 AM GMT
-  Document emailed to blasgabriel0112@gmail.com for signature
2023-02-25 - 0:50:10 AM GMT
-  Email viewed by blasgabriel0112@gmail.com
2023-02-25 - 1:07:38 AM GMT
-  Signer blasgabriel0112@gmail.com entered name at signing as Gabriel Blas
2023-02-25 - 1:50:18 AM GMT
-  Document e-signed by Gabriel Blas (blasgabriel0112@gmail.com)
Signature Date: 2023-02-25 - 1:50:20 AM GMT - Time Source: server
-  Agreement completed.
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