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Attorneys for Plaintiffs, WAYNE WILLIAMS, JOSUE OZUNA and ANTHONY COOPER on behalf of themselves and all others similarly situated and aggrieved,

(Additional counsel information on the next page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

WAYNE WILLIAMS, an individual and on behalf of all others similarly situated,

Plaintiff,

v.

FORTEC MEDICAL, INC., an Ohio corporation; STEPHEN TORRES, an individual; and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 22CV014116

[Assigned to the Hon. Michael Markman in Dept. 23]

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

ACTION FILED: July 11, 2022
TRIAL DATE: None set

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Attorneys for Defendant FORTEC MEDICAL, INC.

This Class Action and PAGA Settlement Agreement ("Agreement") is made by and between Plaintiffs Wayne Williams, Josue Ozuna and Anthony Cooper, ("Plaintiffs") and Defendant ForTec Medical, Inc. ("Defendant"). The Agreement refers to Plaintiffs and Defendant collectively as "Parties," or individually as "Party."

1. DEFINITIONS

1.1. "Action" means the Plaintiffs' lawsuit alleging wage and hour violations against Defendant, captioned *Williams, et al. v. ForTec Medical, Inc.,* Case No. 22CV014116 (the "Class Action"), initiated on July 11, 2022, and pending in Superior Court of the State of California, County of Alameda, and the action for PAGA claims and penalties against Defendant, captioned *Williams v. ForTec Medical, Inc.*, Case No. 22CV018111 (the "PAGA Action") initiated on September 16, 2022 and pending in Superior Court of the State of California, County of Alameda (together, "Action").

1.2. "Administrator" means Phoenix Settlement Administrators the neutral entity the Parties have agreed to appoint to administer the Settlement.

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

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

1.5. "Class" consists of all persons currently or formerly employed by Defendant, either directly or through any subsidiary, staffing agency, or professional employer organization, as non-exempt, hourly-paid employees during the Class Period, in the State of California.

1.6. "Class Counsel" means David D. Bibiyan, Jeffrey D. Klein, and Vedang J. Patel of Bibiyan Law Group, P.C.

1.7. "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment" mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

1.8. "Class Data" means Class Member identifying information in Defendant's custody, possession, or control, including the Class Member's (1) name; (2) last known mailing address(es); (3) last known telephone number(s); (4) last known Social Security Number(s); (5) the dates of employment (i.e., hire dates, and, if applicable, re-hire date(s) and/or separation date(s)); and (6) number of Class Period workweeks and PAGA Period pay periods applicable to each Class Member.

1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.10. "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION AND PAGA SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English and Spanish in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12. "Class Period" means the period from July 11, 2018 through November 16, 2023.

1.13. "Class Representatives" means Anthony Williams, Josue Ozuna and Anthony Cooper, the named Plaintiffs in the operative complaint in the Action seeking Court approval to serve as a Class Representatives.

1.14. "Class Representatives Incentive Award" means the payment to the Class Representatives for initiating the Action and providing services in support of the Action.

1.15. "Court" means the Superior Court of California, County of Alameda.

1.16. "Defendant" means named Defendant ForTec Medical, Inc.

1.17. "Defense Counsel" means Brandon Saxon and Laura Walker of Gordon Rees Scully Mansukhani, LLP.

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

1.19. "Final Approval" means the Court's order granting final approval of the Settlement.

1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.

1.21. "Final Judgment" means the Judgment entered by the Court based upon the Final Approval of the Settlement.

1.22. "Gross Settlement Amount" means $775,000.00 (Seven Hundred and Seventy Five Thousand Dollars and Zero Cents) which is the total amount Defendant agrees to pay under the Settlement, except as provided in Paragraph 8.1 below and any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representatives Incentive Award, and Administrator's Expenses.

1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked by the participating Class Members during the Class Period.

1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.

1.25. "Judgment" means the judgment entered by the Court based upon Final Approval of the Settlement.

1.26. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled under Labor Code section 2699, subd. (i).

1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA pursuant to the requirements of Labor Code section 2699, subd. (i).

1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representatives Incentive Award, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.29. "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.30. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. *et seq*.).

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

1.32. "PAGA Period" means the period from July 11,2021 through November 16, 2023.

1.33. "PAGA Notice" means Plaintiffs' July 27, 2020 letter to Defendant and the LWDA, providing notice pursuant to Labor Code section 2699.3 subd. (a).

1.34. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees, totaling $25,000.00; and the 75% to the LWDA, totaling $75,000.00, in settlement of PAGA claims.

1.35. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.36. "Plaintiffs" means Wayne Williams, Josue Ozuna and Anthony Cooper, the named Plaintiffs in the Action.

1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.

1.38. "Preliminary Approval Order" means the proposed Order granting Preliminary

Approval of the Class Action and PAGA Settlement.

1.39. "Released Class Claims" means the claims being released, as described in Paragraph 5.2 below.

1.40. "Released PAGA Claims" means the claims being released, as described in Paragraph 5.4 below.

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

1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.43. "Response Deadline" means forty-five (45) days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) mail Requests for Exclusion from the Settlement, or (b) mail his or her Objection to the Settlement. Class Members to whom Notice Packets are re-sent after having been returned undeliverable to the Administrator shall have an additional fifteen (15) calendar days added to the Response Deadline so that their Response Deadline shall be extended by fifteen (15) calendar days following the date the Administrator re-mails Notice Packets to them.

1.44. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

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

2. RECITALS

2.1. On July 11, 2022, Plaintiff Wayne William commenced this Action by filing a Complaint alleging causes of actions against Defendant for: (1) Failure to Pay Overtime Wages; (2) Failure to Pay Minimum Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide

Rest Periods; (5) Waiting Time Penalties; (6) Wage Statement Violations; (7) Failure to Indemnify; and (8) Unfair Competition. In his Complaint, Plaintiff prayed for judgment against Defendants as follows: an Order appointing Plaintiff as Class representative and appointing Plaintiff's counsel as class counsel; damages for all wages earned and owed, including minimum and overtime wages, under Labor Code sections 510, 1194, 1197 and 1199; liquidated damages pursuant to Labor Code sections 1194.2; damages for unpaid premium wages from missed meal and rest periods under, among other Labor Code sections, 512 and 226.7.

2.2. On September 26, 2022, counsel for Defendant filed an Answer. The Parties additionally stipulated to dismiss Stephen Torres as a defendant without prejudice. The court granted the dismissal of Stephen Torres on September 28, 2022.

2.3. Pursuant to Labor Code section 2699.3, Plaintiffs gave timely notice of their PAGA claims to Defendant and the LWDA.

2.4. On February 28, 2023, the Parties submitted a Joint Stipulation and Proposed Order allowing Plaintiff to file a First Amended Complaint ("FAC"). The Court granted the order and on March 6, 2023, Plaintiff filed a FAC that added Plaintiffs Anthony Cooper and Josue Ozuna. Additionally, the FAC added Plaintiff's PAGA claims, effectively consolidating Plaintiff's separately filed PAGA action with this action.

2.5. On June 6, 2023, Defendant filed its Answer to Plaintiff's First Amended Complaint.

2.6. Prior to Parties' November 16, 2023 mediation, Plaintiffs obtained, through informal discovery: (a) Defendant's time and payroll records for one hundred percent (100%) of the putative Class Members through mediation; (b) employee handbooks and employment policy documents; and (c) all documents pertaining to Plaintiffs available to Defendant.

2.7. Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.8. On November 16, 2023, the Parties participated in an all-day mediation presided over by Marc Feder, esq., a mediator experienced in wage and hour mediationswhich resulted in this Agreement to settle the Action.

2.9. The Court has not granted class certification.

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

3. MONETARY TERMS

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8.1 below, Defendant agrees to pay $775,000.00 and no more as the Gross Settlement Amount, unless increased pursuant to Paragraph 8.1 of this Agreement, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

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

3.2.1. To Plaintiffs: Class Representatives Incentive Award to Plaintiffs Wayne Williams, Josue Ozuna and Anthony Cooper in the amount of $7,500.00 each, for a total amount of $22,500.00, in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representatives are entitled to receive as a Participating Class Member. Defendant will not oppose Plaintiffs' request for a Class Representatives Incentive Award that does not exceed this amount. As part of the Final Approval motion, Plaintiffs will seek Court approval for any Class Representatives Incentive Awards no later than sixteen (16) court days before the Final Approval Hearing. If the Court approves a Class Representatives Incentive Award less than the amount requested, the Administrator will retain the difference in the Net Settlement

Amount, to be distributed to the Participating Class Members on a pro rata basis as individual Class Payments. The Administrator will pay the Class Representatives Incentive Award to the Class Representatives using IRS Form 1099. Plaintiffs assume full responsibility and liability for any and all employee taxes owed on the Class Representatives Incentive Award, and shall be solely responsible for employee-related reporting and payment of any state, local and/or federal income tax, if any, on the Class Representative Service Payment paid to them hereunder. Should it be determined by an authorized authority that the Class Representative Service Payment, or any portion thereof, should be treated as taxable income, Plaintiffs agree to assume all liability for taxes and any costs, fees, interest, assessments, penalties, damages or other losses due to such a determination. Should it be determined by an authorized authority that the Class Representative Service Payment, or any portion thereof, should be treated as Plaintiffs' taxable income, Plaintiffs agree to indemnify Defendants against any lien, claim or action asserted against the Class Representative Service Payment. Defendants make no representations as to the taxability of the Class Representative Service Payment or any portion thereof.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than thirty-five percent (35%) of the Gross Settlement Amount which,, unless escalated pursuant to Paragraph 8.1 of this Agreement, is currently estimated to be $271,250.00, and a Class Counsel Litigation Expenses Payment of not more than $30,000.00. Defendant will not oppose requests for these payments provided they do not exceed these amounts. As part of the Final Approval motion, Plaintiffs and/or Class Counsel will request approval of the Class Counsel Fees Payment and Class Litigation Expenses Payment. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the difference to the Net Settlement Amount, which shall be distributed to the Participating Class Members on a pro rata basis as Individual Class Payments. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion of any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assume full responsibility and liability for any and all taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments. There will be no additional charge of any kind to either the Settlement Class Members or request for additional consideration from Defendant for such work unless, Defendant materially breach this Agreement, including any term regarding funding, and further efforts are necessary from Class Counsel to remedy said breach, including, without limitation, moving the Court to enforce the Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed $5,995.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than $5,995.00 the Administrator will retain the remainder in the Net Settlement Amount, to be distributed on a pro rata basis to the Participating Class Members as Individual Class Payments.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. Twenty percent (20%) of each Participating Class Member's Individual Class Payment will be allocated to the settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. Eighty percent (80%) of each Participating Class Member's

Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any and all employee taxes owed on their Individual Class Payment, and shall be solely responsible for employee-related reporting and payment of any state, local and/or federal income tax, if any, on the Class Representative Service Payment paid to them hereunder. Should it be determined by an authorized authority that the Class Representative Service Payment, or any portion thereof, should be treated as taxable income, Plaintiffs agree to assume all liability for taxes and any costs, fees, interest, assessments, penalties, damages or other losses due to such a determination. Should it be determined by an authorized authority that the Class Representative Service Payment, or any portion thereof, should be treated as Plaintiffs' taxable income, Plaintiffs agree to indemnify Defendants against any lien, claim or action asserted against the Class Representative Service Payment. Defendants make no representations as to the taxability of the Class Representative Service Payment or any portion thereof.

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

3.2.5. <u>To the LWDA and Aggrieved Employees</u>: PAGA Penalties in the amount of $30,000.00 shall be paid from the Gross Settlement Amount, with seventy-five percent (75%) ($22,500.00) allocated to the LWDA PAGA Payment and twenty-five percent (25%) ($7,500.00) allocated to the Individual PAGA Payments.

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

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

4. SETTLEMENT FUNDING AND PAYMENTS

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are fifty-nine (59) Class Members who collectively worked a total of 6,224 Workweeks, and forty-nine (49) of Aggrieved Employees who worked a total of 1,674 PAGA Pay Periods.

4.2. Class Data. Not later than seven (7) days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than fourteen (14) days after the Effective Date,.

4.4. Payments from the Gross Settlement Amount. Within seven (7) days after Defendant fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel

Litigation Expenses Payment, and the Class Representatives Incentive Award. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representatives Incentive Award shall not precede disbursement of Individual Class Payments, and the Individual PAGA Payments.

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

4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are retuned undelivered without a USPS forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail the returned checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the cy pres recipient, Legal Aid at Work.

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

5. RELEASE OF CLAIMS

Effective upon entry of Judgment, the Order granting Final Approval of this Settlement, and the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1. Plaintiffs' Release. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, subsidiaries, affiliates and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint and Plaintiff's PAGA Notice. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1. Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiffs' Release only, Plaintiffs expressly waives and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

5.2. <u>Release by Participating Class Members:</u> For the duration of the Class Period, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, subsidiaries, affiliates and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint including: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) waiting time penalties; (6) wage statement violations; (7) failure to indemnify; and (8) unfair competition.; and (9) all claims asserted through California Business & Professions Code section 17200, et seq. arising out of the Labor Code violations referenced in the Operative Complaint.

5.3. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.4. <u>Release by Aggrieved Employees</u>: For the duration of the PAGA Period, Plaintiffs, acting as agents and proxies of the LWDA, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, subsidiaries, affiliates and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the PAGA Notice, including, claims for PAGA penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 in connection with alleged violations of Labor Code sections Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 226, 226.7, 227.3, 232, 232.5, 246 *et seq*., 432, 510, 512, 558, 1102.5, 1174, 1194, 1197, 1197.5, 1198.5, 2802, and 2810.5.

6. MOTION FOR PRELIMINARY APPROVAL

The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

6.1. Defendant' Declaration in Support of Preliminary Approval. Within seven (7) days of full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed declaration from Defendant and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator.

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

6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

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

7. SETTLEMENT ADMINISTRATION

7.1. Selection of Administrator. The Parties have jointly selected Phoenix Settlement Administrators ("Phoenix") to serve as the Administrator and verified that, as a condition of appointment, Phoenix agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

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

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

7.4. Notice to Class Members

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

7.4.2. Using best efforts to perform as soon as possible, and in no event later than fourteen (14) days after receiving the Class Data, the Administrator will send to all Class Members/Aggrieved Employees identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation, substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member/Aggrieved Employee, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member/Aggrieved Employee addresses using the National Change of Address database.

7.4.3. Not later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members/Aggrieved Employees whose Class Notice is returned by the USPS a second time.

7.4.4. The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional fifteen (15) days beyond the forty-five (45) days otherwise provided in the Class Notice for all Class Members/Aggrieved Employees whose notice is re-mailed. The Administrator will inform the Class Member/Aggrieved Employee of the extended deadline for all Class Members to whom Class Notice was re-mailed.

7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believes they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer, and in good faith, n an effort to agree on whether to include the omitted person(s) as Class Members/Aggrieved Employees. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members/Aggrieved Employee, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fifteen (15) days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

7.5. Requests for Exclusion (Opt-Outs).

7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by mail, a signed written Request for Exclusion not later than forty-five (45) days after the Administrator mails the Class Notice (plus an additional fiften (15) days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely postmarked by the Response Deadline.

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

7.5.3. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating

Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.4 of this Agreement and are eligible for an Individual PAGA Payment.

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

7.7. <u>Objections to Settlement</u>

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

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

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

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

7.8.1. Website, Email Address and Toll-Free Number. The Administrator will maintain and use an internet website to post information of interest to Class Members/ Aggrieved Employees, including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representatives Incentive Award, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member/Aggrieved Employee calls and emails.

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

7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must include provide the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member/Aggrieved Employee challenges over the calculation of Workweeks and/or Pay Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.

7.8.5. Administrator's Declaration. Before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members/Aggrieved Employees, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

7.8.6. Final Report by Settlement Administrator. Within ten (10) days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least seven (7) days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE

Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, (1) there are fifty-nine (59) Class Members and 6,224 Total Workweeks during the Class Period, and (2) there are forty-nine (49) Aggrieved Employees who worked 1,674 Pay Periods during the PAGA Period.

8.1. Increase in Workweeks. Defendants represent that there are no more than 6,500 Workweeks during the Class Period. In the event the number of Workweeks during the Class Period increases by more than five percent (5%), or an additional 325 Workweeks, then the GFV shall be increased proportionally by the Workweeks in excess of 6,500 multiplied by the Workweek Value. The Workweek Value shall be calculated by dividing the GFV by 6,500. The Parties agree that the Workweek Value amounts to and the settlement amounts to $119.23 per Workweek ($775,000 / 6,500 Workweeks). Thus, for example, should there be 6,900 Workweeks in the Class Period, then the GFV shall be increased by $47,692.00. (6,900 Workweeks - 6,500 Workweeks x $119.23/Workweek.)

9. MOTION FOR FINAL APPROVAL

Prior to the calendared Final Approval Hearing, Plaintiffs will file in Court, a Motion for Final Approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiffs shall endeavor to provide drafts of these documents to Defense Counsel prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

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

9.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representatives Incentive Award, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Administrator Expenses Payment and/or individual claims of Plaintiffs for alleged wrongful termination, shall not constitute a material modification to the Agreement within the meaning of this paragraph.

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

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

9.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration

Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representatives Incentive Award or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

10. AMENDED JUDGMENT

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

11. ADDITIONAL PROVISIONS

11.1. <u>No Admission of Liability, Class Certification or Representative Manageability for Other Purposes</u>. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason, the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action; and Plaintiffs reserve the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

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

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

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

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

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

11.7. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

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

11.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

11.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

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

11.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting

11.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement

11.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class

Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court.

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

11.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

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

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

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

IT IS SO AGREED:

Wayne Williams (Aug 17, 2024 12:51 PDT)

Plaintiff, Wayne Williams

josh ozuna (Aug 16, 2024 17:53 PDT)

Plaintiff, Josue Ozuna

Anthony Cooper (Aug 19, 2024 18:55 EDT)

Plaintiff, Anthony Cooper

By:

Its:

For Defendant, ForTec Medical Inc.

AGREED AS TO FORM ONLY:

Vedang J Patel

David D. Bibiyan
Jeffrey Klein
Vedang Patel
Counsel for Plaintiffs

Brandon Saxon
Laura Walker
Counsel for Defendant

IT IS SO AGREED:

Plaintiff, Wayne Williams

Plaintiff, Josue Ozuna

Plaintiff, Anthony Cooper

By: David Henison

Its: Chief Financial Officer

For Defendant, ForTec Medical Inc.

AGREED AS TO FORM ONLY:

David D. Bibiyan
Jeffrey Klein
Vedang Patel
Counsel for Plaintiffs

Brandon Saxon
Laura Walker
Counsel for Defendant