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

ERIC GORDON, an individual, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

HIGH POINT SALES & MARKETING LLC, a
Business of Unknown Formation; and DOES 1
TO 50,

Defendants.

Case No.: CIVSB2304131

**Joint Stipulation of Class Action Settlement
and Release**

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Marketing LLC

JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE

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

DEFINITIONS

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

16 3. The “Action” shall mean the following civil action: *Eric Gordon v. High Point Sales*
17 & *Marketing LLC*, case number CIVSB2304131, currently pending before the Superior Court of the
18 State of California for the County of San Bernardino.

19 4. “Administrative Expenses” shall include all costs and expenses associated with and
20 paid to the third-party settlement administrator, which are estimated not to exceed Seven Thousand
21 Five Hundred Dollars (\$7,500).

22 5. “Applicable Wage Order” shall mean the California Industrial Welfare Commission
23 (“IWC”) Wage Order applicable to the facts of this case, including IWC Wage Order 4-2001 and
24 others that may be applicable. (Cal. Code of Regs., tit. 8, § 11040.)

25 6. “Claims” shall mean the claims Plaintiff has asserted in the Action for (1) failure to
26 pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and
27
28

the Applicable Wage Order; (2) failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable Wage Order; (3) failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the Applicable Wage Order; (4) failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage Order; (5) failure to maintain accurate employment records in violation of Labor Code section 1174; (6) failure to pay timely wages during employment in violation of Labor Code sections 204, 210; (7) failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; (8) failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804; (9) failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; (10) deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); and (11) statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698–2699.6).

7. “Class Attorney Fees and Expenses” shall mean the portion of the Gross Settlement Amount attributable to attorney fees and litigation expenses. The Parties agree that the fee-portion of the Class Attorney Fees and Expenses shall be up to one-third of the Gross Settlement Amount (i.e., \$47,333.33), as approved by the Court, and the award of costs and expenses shall be up to an additional Ten Thousand Dollars (\$10,000.00). If the Escalator Provision described below is triggered so as to increase the Gross Settlement Amount, the Parties agree that the fee portion of the Class Attorney Fees and Expenses will increase proportionally such that the total amount of attorneys' fees remains one-third of the Gross Settlement Amount *after* the upward adjustment required by the Escalator Provision is implemented.

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

9. “Class Member” shall mean any person who is a prospective member of the Settlement Class, or, if such person is incompetent or deceased, the person's legal guardian, executor, heir, or successor-in-interest.

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

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

6 12. “Class Period” shall mean the period from February 2, 2019, through the earlier of:
7 August 18, 2023 or the date of preliminary approval of the settlement.

8 13. “Class Representative” shall mean Plaintiff Eric Gordon.

9 14. “Class Settlement” shall mean the settlement embodied in this Settlement Agreement,
10 which is subject to Court approval.

11 15. “Complaint” shall mean the operative Complaint in the Action filed on February 2,
12 2023.

13 16. “Court” shall mean the Superior Court of the State of California for the County of San
14 Bernardino.

15 17. “Defendant” shall mean Defendant High Point Sales & Marketing LLC.

16 18. “Defense Counsel” shall mean the attorneys representing Defendant.

17 19. “Effective Date” shall be the date when all of the following events have occurred:
18 **(a)** this Settlement Agreement has been executed by all Parties and by Class Counsel and Defense
19 Counsel; **(b)** the Court has granted preliminary approval of the Class Settlement; **(c)** notice has been
20 given to the Settlement Class providing them with an opportunity to request exclusion from the Class
21 Settlement; **(d)** the Court has held a Final Approval and Fairness Hearing and entered a final order
22 and judgment certifying the Settlement Class and approving this Settlement Agreement; and **(e)** the
23 later of the following events: **(i)** the expiration of the period for filing any appeal, writ, or other
24 appellate proceeding opposing the Class Settlement has elapsed without any appeal, writ, or other
25 appellate proceeding having been filed; **(ii)** the dismissal of any appeal, writ, or other appellate
26 proceeding opposing the Class Settlement with no right to pursue further remedies or relief; or
27 **(iii)** any appeal, writ, or the issuance of such other final appellate order upholding the Court’s final
28 order with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties

1 that the Class Settlement shall not become effective until the Court's order approving the Class
2 Settlement is completely final and there is no further recourse by an appellant or objector who seeks
3 to contest the Class Settlement. If no objections are filed, the Effective Date shall be after steps (a)
4 through (d) are completed (i.e., the date that the court has entered a final order and judgment
5 certifying the Settlement Class and approving this Settlement Agreement).

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

13 21. "Employer's Taxes" shall mean and refer to Defendant's share of payroll taxes (e.g.,
14 Unemployment Insurance, Employment Training Tax, Social Security, and Medicare taxes) that is
15 owed on the portion of any Class Participant's Individual Settlement Amount that constitutes wages.
16 The Employer's Taxes shall be separately paid by Defendant and shall not be paid from the Gross
17 Settlement Amount or Net Settlement Amount.

18 22. "Final Approval and Fairness Hearing" shall mean the final approval hearing held for
19 the court to ascertain the fairness, reasonableness, and adequacy of the Class Settlement.

20 23. "Gross Settlement Amount" is the agreed upon non-reversionary settlement amount
21 totaling One Hundred Forty-Two Thousand Dollars (\$142,000.00) to be paid by Defendant in full
22 settlement of the Released Claims asserted in this case, inclusive of the Administrative Expenses, the
23 Employee's Taxes and Required Withholdings, the Class Attorney Fees and Expenses, Plaintiff's
24 Incentive Award, and the PAGA Payment. Defendant shall separately pay its share of the Employer's
25 Taxes in addition to the Gross Settlement Amount on the portion of each Individual Settlement
26 Amount allocated as wages.

27 24. "Hearing on Preliminary Approval" shall mean the hearing held on the motion for
28 preliminary approval of the Class Settlement.

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

3 26. “Individual Settlement Amount” shall mean the amount which is ultimately distributed
4 to each Class Participant, less any Employee’s Taxes and Required Withholdings. The Individual
5 Settlement Amount does not include any portion of the PAGA Payment.

6 27. “Net Settlement Amount” shall mean the Gross Settlement Amount minus:
7 Administrative Expenses; Class Attorney Fees and Expenses; the PAGA Payment; and Plaintiff’s
8 Incentive Award.

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

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

15 30. “PAGA Payment” means the penalties pursuant to PAGA that the Parties have agreed
16 is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is Ten
17 Thousand (\$10,000.00). The PAGA Payment is to be approved by the Court pursuant to Labor Code
18 section 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$7,500.00) to the
19 Labor and Workforce Development Agency (“LWDA”) and twenty-five percent (25%) (i.e.,
20 \$2,500.00) to the PAGA Settlement Class. Class Counsel shall give timely notice of this Settlement
21 Agreement to the LWDA pursuant to Labor Code section 2699, subdivision (l)(2).

22 31. “PAGA Period” shall mean the period from February 2, 2022, through the earlier of:
23 August 18, 2023 or the Effective Date.

24 32. “PAGA Settlement Class” shall mean all individuals who are or were employed by
25 Defendant as non-exempt employees in California during the PAGA Period. Defendant represents
26 that the PAGA Settlement Class consists of approximately 49 employees that worked a total of
27 approximately 835 pay periods during the PAGA Period.

28 33. “Parties” shall mean Plaintiff and Defendant.

1 34. “Plaintiff” shall mean Plaintiff Eric Gordon.

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

4 36. “Released Claims” shall mean those claims arising out of or related to the allegations
5 set forth in Plaintiff’s Complaint and/or PAGA Notice to the LWDA, which arose during the Class
6 Period, including claims for: **(1)** failure to pay minimum wage for all hours worked in violation of
7 Labor Code sections 1194 and 1194.2, and the Applicable Wage Order; **(2)** failure to pay proper
8 overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable Wage
9 Order; **(3)** failure to provide compliant rest periods and pay missed rest break premiums in violation
10 of Labor Code section 226.7 and the Applicable Wage Order; **(4)** failure to provide compliant meal
11 periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512,
12 and the Applicable Wage Order; **(5)** failure to maintain accurate employment records in violation of
13 Labor Code section 1174; **(6)** failure to pay timely wages during employment in violation of Labor
14 Code sections 204, 210; **(7)** failure to pay all wages due and owing at separation in violation of Labor
15 Code sections 201, 202, and 203; **(8)** failure to reimburse business expenses in violation of Labor
16 Code sections 2802 and 2804; **(9)** failure to provide complete and accurate wage statements in
17 violation of Labor Code sections 226 and 226.3; **(10)** deceptive, fraudulent, or otherwise unlawful
18 business practices based on the foregoing in violation of California’s Unfair Competition Law (Bus.
19 & Prof. Code, §§ 17200–17210); **(11)** statutory penalties based on the foregoing pursuant to PAGA
20 (Lab. Code, §§ 2698–2699.6); and **(12)** all claims for liquidated damages, penalties, interest, fees,
21 costs based on the foregoing.

22 37. No other claims are released other than those claims specifically included in Plaintiff’s
23 PAGA Notice, pled in Plaintiff’s Complaint, or otherwise specifically identified herein. This
24 Settlement Agreement will not release any person, party, or entity from claims, if any, by Class
25 Members for workers compensation, unemployment, or disability benefits of any nature. Nor does it
26 release any claims, actions, or causes of action which may be possessed by Class Members under
27 state or federal discrimination statutes, including, without limitation, the California Fair Employment
28 and Housing Act (Gov. Code, §§ 12900–12996); the Unruh Civil Rights Act (Civ. Code, § 51); the

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 38. “Released Parties” shall mean Defendant and all of Defendant’s parents, subsidiaries,
 6 divisions, affiliates, shareholders, members, agents, predecessors, successors, assigns, officers,
 7 directors, partners, joint venturers, coventurers, licensors, licensees, principals, members, managers,
 8 managing agents, agents, attorneys, accountants, insurers, reinsurers, shareholders, investment
 9 bankers, trusts, trustees, representatives, administrators, fiduciaries, heirs, subrogees, and clients.

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

16 40. “Response Deadline” shall mean the date sixty (60) days following the date on which
 17 the Settlement Administrator first mails the Class Notice to Class Members and the last day on which
 18 Class Members may submit a request for exclusion and/or objection to the Class Settlement.

19 41. “Settlement Administrator” shall mean CPT Group or Simpluris, Inc., one of which
 20 the Parties have agreed will be responsible for administration of the Class Settlement and related
 21 matters.

22 42. “Settlement Class” shall mean all individuals who are or were employed by Defendant
 23 as non-exempt employees in California during the Class Period. Defendant represents that the
 24 Settlement Class consists of approximately 73 Class Members that worked a total of approximately
 25 3,358 workweeks during the Class Period.

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

FACTUAL AND PROCEDURAL BACKGROUND

PLAINTIFF’S CLAIMS

44. Class Counsel sent a PAGA Notice to Defendant on February 2, 2023 alleging violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 256, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1198, 1199, 2775, 2802, 2084, and “California Industrial Welfare Commission Wage Orders Wage Order 4-2001 and others that may be applicable” (“PAGA Notice”).

45. On February 2, 2023, Plaintiff filed a putative class and PAGA action in the San Bernardino County Superior Court alleging the following claims individually, in his representative capacity on behalf of the Settlement Class, and as a private attorney general on behalf of the State of California: **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the Applicable Wage Order; **(2)** failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable Wage Order; **(3)** failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the Applicable Wage Order; **(4)** failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage Order; **(5)** failure to maintain accurate employment records in violation of Labor Code section 1174; **(6)** failure to pay timely wages during employment in violation of Labor Code sections 204, 210; **(7)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; **(8)** failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804; **(9)** failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; **(10)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); and **(11)** statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698–2699.6).

DISCOVERY, INVESTIGATION, RESEARCH, AND MEDIATION

46. Class Counsel has conducted significant informal discovery during the prosecution of the Action. This discovery, investigation, and prosecution has included, among other things,

1 (a) telephonic conferences with Plaintiff; (b) inspection and analysis of hundreds of pages of
2 documents and other information produced by Plaintiff and Defendant; (c) analysis of employment
3 data from Class Members; (d) an analysis of the legal positions taken by Defendant; (d) investigation
4 into the viability of class treatment of the claims asserted in the Action; (e) analysis of potential class-
5 wide damages, including information sufficient to understand Defendant's potential defenses to
6 Plaintiff's claims; (f) research of the applicable law with respect to the claims asserted in the
7 Complaint and the potential defenses thereto; and (g) assembling and analyzing of data for
8 calculating damages.

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

15 **ALLEGATIONS OF THE CLASS REPRESENTATIVE AND BENEFITS OF CLASS** 16 **SETTLEMENT**

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

23 49. The Class Representative and Class Counsel believe that the claims, causes of action,
24 allegations, and contentions asserted in the Action have merit. However, the Class Representative and
25 Class Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings
26 necessary to prosecute the Action against Defendant through trial and through appeals. Class Counsel
27 has taken into account the uncertain outcome of the litigation, the risk of continued litigation in
28 complex actions such as this, as well as the difficulties and delays inherent in such litigation, and the

1 potential difficulty of obtaining certification of the Settlement Class as well as trying the claims of
2 the class. Class Counsel is mindful of the potential problems of proof under, and possible defenses to,
3 the claims alleged in the Action.

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

10 **DEFENDANT'S DENIALS OF WRONGDOING AND LIABILITY**

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

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

26 **INTENT OF THE CLASS SETTLEMENT**

27 53. The Class Settlement set forth herein intends to achieve the following: **(1)** entry of an
28 order approving the Class Settlement; **(2)** entry of judgment of the Action; **(3)** discharge of the

Released Parties from liability for any and all of the Released Claims; and **(4)** discharge of Defendant from liability for any and all claims arising out of the Action.

CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS

54. For the purposes of this Settlement Agreement and the Class Settlement of this Action only, the Parties agree to conditional class certification of the Settlement Class for settlement purposes only. The certification of the Settlement Class shall not constitute, in this or any other proceeding, an admission of any kind by Defendant, including without limitation, that certification of a class for trial purposes is or would be warranted, appropriate or proper; or that Plaintiff could establish any of the requisite elements for class treatment of any of the claims in the Action.

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

APPOINTMENT OF CLASS COUNSEL

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

CONSIDERATION

SETTLEMENT AMOUNT

57. The Parties agree to settle this Action for the Gross Settlement Amount of One Hundred Forty-Two Thousand Dollars (\$142,000.00). There shall be no reversion to Defendant. Defendant shall pay the Gross Settlement Amount in full. The Gross Settlement Amount and other actions and forbearances taken by Defendant shall constitute adequate consideration for the Class Settlement and will be made in full and final settlement of: the Released Claims, the Class Attorney

1 Fees and Expenses, Administrative Expenses, the Incentive Award, the PAGA Payment (and any
2 payments to individual PAGA Class Members resulting from the PAGA Payment), and any other
3 obligation of Defendant under this Settlement Agreement (other than the Employer's Taxes on the
4 portion of the Net Settlement Amount allocated to the payment of wages).

5 58. After the Court issues an order preliminarily approving this Class Settlement, the
6 Settlement Administrator will distribute the Class Notice to the Class Members, which shall describe
7 the terms of the Class Settlement and procedures to Opt Out, object, or participate in the Class
8 Settlement as well as the Share Form, which shall identify the Class Member, the number of
9 workweeks worked by each Class Member ("Workweeks"), as well as the estimated amount of the
10 Individual Settlement Amount the Class Member can expect to receive once the Class Settlement
11 becomes effective on the Effective Date. Class Members shall be given the opportunity to challenge
12 their Workweeks information.

13 **INCENTIVE AWARD FOR PLAINTIFF**

14 59. Plaintiff may petition the Court to approve an Incentive Award in an amount up to Ten
15 Thousand Dollars (\$10,000.00) for himself as the Class Representative to acknowledge his efforts on
16 behalf of the Settlement Class in this Action, including assisting in the investigation and consulting
17 with Class Counsel and providing crucial documents to Class Counsel. Defendant shall not oppose
18 any request by Plaintiff for an Incentive Award in such an amount. Any Incentive Award approved
19 by the Court shall be paid to Plaintiff from the Gross Settlement Amount and shall be in addition to
20 any distribution to which he may otherwise be entitled as a Class Participant. Any Incentive Award
21 approved by the Court shall not be considered wages, and the Settlement Administrator shall issue to
22 Plaintiff an IRS Form 1099 reflecting such payment. Plaintiff shall be responsible for the payment of
23 all taxes with respect to any Incentive Award approved by the Court and shall hold Defendant
24 harmless from all liability with regard thereto.

25 **PAYMENT TO CLASS PARTICIPANTS**

26 60. Each Class Participant shall be eligible to receive payment of the Individual
27 Settlement Amount, which is a share of the Net Settlement Amount based on the pro rata number of
28 weeks worked by the Class Members during the Class Period as a proportion of all weeks worked by

1 all Class Members. Each Class Participant, including Plaintiff, shall be responsible for the payment of
2 the Employee's Taxes and Required Withholding with respect to his or her Individual Settlement
3 Amount and shall hold Defendant harmless from any and all liability with regard thereto.

4 **PAYMENT TO PAGA SETTLEMENT CLASS**

5 61. Each member of the PAGA Settlement Class shall be entitled to receive a portion of
6 the PAGA Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the
7 Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the
8 Action, which is Ten Thousand Dollars (\$10,000.00). The PAGA Payment must be approved by the
9 Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-five percent
10 (75%) (i.e., \$7,500.00) to the LWDA and twenty-five percent (25%) (i.e., \$2,500.00) to the PAGA
11 Settlement Class. The portion of the PAGA Payment allocated to the PAGA Settlement Class shall be
12 distributed to the PAGA Settlement Class based on the pro rata number of pay periods worked by
13 each particular PAGA Settlement Class member during the PAGA Period as a proportion of all pay
14 periods worked by all members of the PAGA Settlement Class.

15 **TAX TREATMENT AND PAYMENT**

16 62. For the purpose of calculating Employee's Taxes and Required Withholding for the
17 Individual Settlement Amounts for Class Participants (including any payments to the Class
18 Representative but exclusive of his Incentive Award), the Parties agree that 10% of each Individual
19 Settlement Amount shall constitute payment in the form of wages (and each Class Participant will be
20 issued an IRS Form W-2 for such payment to him or her), and 90% of each Individual Settlement
21 Amount shall constitute penalties and interest (and each Class Participant will be issued an IRS Form
22 1099 for such payment to him or her). Prior to final distribution, the Settlement Administrator shall
23 calculate the total Employee's Taxes and Required Withholding due as a result of the wage portion of
24 Class Participants' anticipated Individual Settlement Amounts and such actual amount will be
25 deducted from the Net Settlement Amount. Additionally, prior to the funding of the Gross Settlement
26 Amount and final distribution, the Settlement Administrator shall calculate the total Employer's
27 Taxes due on the wage portion of the Class Participants' Individual Settlement Amounts and issue
28 instructions to Defendant to separately fund these tax obligations/withholdings. The Parties

1 understand that Plaintiff and the Class Participants who receive any payment pursuant to this
2 Settlement Agreement shall be solely responsible for all other individual tax obligations.

3 63. With respect to the PAGA Payment and any payments made to individual members of
4 the PAGA Settlement Class, all such payments shall be treated as payments owing for penalties and
5 interest thereon and shall not be considered wages. The Settlement Administrator shall issue to
6 members of the PAGA Settlement Class an IRS Form 1099 reflecting such payment. Members of the
7 PAGA Settlement Class shall be solely responsible for the payment of all taxes with respect to any
8 PAGA payments made to them.

9 **NO EFFECT ON EMPLOYEE BENEFIT PLANS**

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

26 **CLASS ATTORNEY FEES AND EXPENSES**

27 65. As part of the motion for final approval of the Class Settlement, Class Counsel may
28 apply for an award of Class Attorney Fees and Expenses with the fee portion not to exceed one-third

1 of the Gross Settlement Amount (i.e., \$47,333.33) and the award of costs and expenses up to an
2 additional Ten Thousand Dollars (\$10,000.00). Defendant agrees to not object to any such fee, cost,
3 or expense application in those amounts.

4 66. As a condition of this Class Settlement, Class Counsel has agreed to pursue fees only
5 in the manner reflected by this subsection. Any Class Attorney Fees and Expenses awarded by the
6 Court shall be paid from the Gross Settlement Amount prior to arriving at the Net Settlement Amount
7 and shall not constitute payment to any Class Members. If Class Counsel voluntarily reduces the
8 request for Class Attorney Fees and Expenses or the Court's award of Class Attorney Fees and
9 Expenses is less than set forth above, the Net Settlement Amount shall be recalculated to reflect the
10 actual Class Attorney Fees and Expenses awarded.

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

18 **SETTLEMENT ADMINISTRATION**

19 **COSTS AND EXPENSES**

20 68. All costs and expenses due to the Settlement Administrator in connection with its
21 administration of the Class Settlement, including, but not limited to, providing the Class Notice,
22 locating Class Members, processing Opt Out requests and objections, distributing the portion of the
23 PAGA Payment payable to the LWDA, distributing the portion of the PAGA Payment payable to the
24 members of the PAGA Settlement Class, and calculating, administering and distributing Individual
25 Settlement Amounts to the Class Participants and related tax forms, shall be paid from the Gross
26 Settlement Amount, and is not expected to exceed \$7,500.

1 **PAYMENT BY DEFENDANT**

2 69. Defendant shall deposit the Gross Settlement Amount in a lump sum payment plus the
3 employer-side payroll taxes to the Settlement Administrator within fourteen (14) days of the
4 Effective Date. In no event shall Defendant be obligated to pay or deposit with the Settlement
5 Administrator more than One Hundred Forty-Two Thousand Dollars (\$142,000.00) plus the
6 Employer's Taxes, except where the Escalator Provision is triggered.

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

8 **THE SETTLEMENT ADMINISTRATOR**

9 70. The Settlement Administrator's responsibilities will include: mailing the Class Notice
10 and Share Form (**Exhibit 1** and **Exhibit 2**, respectively) to Class Members; posting notice of entry of
11 final order and judgment certifying the Class Settlement and approving this Settlement Agreement;
12 handling inquiries from Class Members concerning the Class Notice; processing any Share Forms
13 signed and returned by Class Members; determining Individual Settlement Amounts; determining
14 individual payments to members of the PAGA Settlement Class; maintaining the settlement funds in
15 an appropriate interest-bearing account; preparing, administering, and distributing Individual
16 Settlement Amounts to Class Participants; preparing, administering, and distributing individual
17 payments to members of the PAGA Settlement Class; distributing the portion of the PAGA Payment
18 payable to the LWDA; issuing a final report and performing such other duties as the Parties may
19 direct. Additionally, the Settlement Administrator will handle all tax document preparation and
20 reporting, including state and federal tax forms, if any.

21 71. On a weekly basis, the Settlement Administrator will provide reports to Class Counsel
22 and Defense Counsel with summary information updating them as to the status of mailing of the
23 Class Notices, as well as the number of validated and timely objections and Opt Out requests
24 received by the Settlement Administrator. The Settlement Administrator will serve on Class Counsel
25 and Defense Counsel via e-mail date-stamped copies of the original Opt Out requests and objections
26 no later than five (5) days after their receipt. The Settlement Administrator will provide Class
27 Counsel with proof of mailing of the Class Notice through a declaration, without listing individual
28

1 Class Member names, which the Settlement Administrator will file with the Court at the time Class
2 Counsel files its motion for final approval of the class action settlement.

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

8 73. Administrative Expenses are not anticipated to exceed Seven Thousand Five Hundred
9 Dollars (\$7,500.00). Prior to the calculation and distribution of the Individual Settlement Amounts,
10 the Settlement Administrator shall calculate the total Administrative Expenses through the conclusion
11 of their services and such actual amount will be deducted from the Gross Settlement Amount prior to
12 the final calculation of the Individual Settlement Amounts.

13 **NOTICE TO CLASS MEMBERS**

14 74. Notice shall be provided to Class Members in the following manner: Within twenty
15 (20) days after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator
16 with an updated list of Class Members and members of the PAGA Settlement Class containing
17 names, social security numbers, dates of employment, and last-known addresses (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 75. Within thirty (30) 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-
23 class, United States mail. The Class Notice shall also contain an easily understood statement alerting
24 the Class Members that, unless they elect to Opt Out of the Class Settlement, the Class Member is
25 releasing and waiving all Released Claims against the Released Parties.

26 76. The Class Notice will inform Class Members of their estimated share of the settlement
27 and the number of workweeks they worked during the Class Period. Class Members may dispute
28 their workweeks if they believe they worked more weeks in the Class Period than Defendant's

1 records show by submitting information to the Settlement Administrator no later than sixty (60) days
2 after being mailed the Class Notice and Share Form by the Settlement Administrator, which is the
3 defined Response Deadline. The Settlement Administrator will jointly work with Plaintiff and
4 Defendant to resolve the dispute in good faith. If Plaintiff and Defendant cannot agree over the
5 workweeks to be credited, the Settlement Administrator shall make the final decision based on the
6 information presented by the Class Member and Defendant.

7 **OPT OUT PROCEDURE**

8 77. Class Members who do not timely Opt Out of the Class Settlement will be deemed to
9 participate in the Class Settlement and shall become Class Participants without having to submit a
10 claim form or take any other action. To Opt Out of the Class Settlement, the Class Member must
11 return a signed and completed copy of the *Request for Exclusion Form* attached hereto as **Exhibit 3**
12 to the Settlement Administrator by the Response Deadline.

13 78. Any Opt Out request that is not postmarked by the Response Deadline will be invalid.
14 If prior to the Response Deadline any Class Notice mailed to a Class Member is returned as having
15 been undelivered by the United States Postal Service, the Settlement Administrator shall perform a
16 skip trace search and seek an address correction for such Class Members, and a second Class Notice
17 will be sent to any new or different address obtained. Such Class Members shall have an additional
18 fourteen (14) days from the date of the mailing of the second Class Notice in which to Opt Out,
19 object, or dispute the information provided in the Share Form if the Response Deadline would have
20 otherwise passed prior to fourteen (14) days from the date of the mailing of the second Class Notice.

21 79. It will be presumed that, if an envelope containing the Class Notice has not been
22 returned within thirty (30) days of the mailing, the Class Member received the Class Notice. At least
23 twenty-one (21) days prior to the Final Approval and Fairness Hearing, the Settlement Administrator
24 shall provide Class Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of
25 Mailing with regard to the mailing of the Class Notice and its attempts to locate Class Members. The
26 declaration shall specify the number of Class Members to whom the Class Notice was sent and the
27 number of Class Members to whom the Class Notice was not delivered, as well as information
28

1 relating to the number of Opt-Outs and objectors. Class Counsel shall file this declaration with the
2 Court.

3 80. If the Settlement Administrator determines that an Opt Out request returned by a Class
4 Member before the Response Deadline is deficient, then the Settlement Administrator shall mail a
5 deficiency letter to that Class Member identifying the problem. If a Class Member submits both a
6 dispute and an Opt Out request, the Settlement Administrator shall make reasonable attempts to
7 clarify as if the Opt Out request were deficient. If the Class Member fails to cure the deficiency, the
8 Opt Out request shall be disregarded and the claim will be paid, and the Class Member will become
9 bound by the judgment.

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

12 82. A request to Opt Out of the Class Settlement shall **not** serve to exclude the Class
13 Member from participation in the PAGA Settlement Class. Opt-Outs shall still be entitled to their
14 share of the PAGA Payment. Class Members who are also members of the PAGA Settlement Class
15 shall have no right or ability to opt out of the portion of this Settlement Agreement releasing PAGA
16 claims.

17 **OBJECTION PROCEDURE**

18 83. The Class Notice shall inform the Class Members of their right to object to the Class
19 Settlement if they do not Opt Out. Any Class Participants who wish to object to the Class Settlement
20 may submit a written objection to the Settlement Administrator no later than the Response Deadline.
21 Only Class Participants may object to the Settlement. The objection should include the case name and
22 number and must set forth, in clear and concise terms, a statement of the reasons why the objector
23 believes that the Court should find that the proposed Class Settlement is not in the best interest of the
24 Settlement Class and the reasons why the Class Settlement should not be approved, including the
25 legal and factual arguments supporting the objection. If an objector also wishes to appear at the Final
26 Approval and Fairness Hearing, in person or through an attorney, they may do so. The Settlement
27 Administrator will promptly serve copies of any objection or notice of intention to appear on Class
28

Counsel and Defense Counsel. Class Members wishing to make an objection may appear at the Final Approval and Fairness Hearing, either in person or through a lawyer retained at their own expense.

NOTICE OF FINAL JUDGMENT

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

CLASS SETTLEMENT FUNDING AND DISTRIBUTION

ALLOCATION OF THE GROSS SETTLEMENT AMOUNT

85. The claims of all Class Members are settled for the Gross Settlement Amount of \$142,000.00, which will be allocated as follows:

1. The Administrative Expenses, estimated not to exceed \$7,500.00;
2. Class Counsel's attorney fees not to exceed \$47,333.33;
3. Class Counsel's litigation costs and expenses not to exceed \$10,000.00;
4. The Incentive Award, not to exceed \$10,000.00; and
5. PAGA Payment to LWDA of \$7,500.00.

86. 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.

CALCULATION OF THE INDIVIDUAL SETTLEMENT AMOUNTS FOR CLASS PARTICIPANTS

87. 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 "checks cashed" basis based on the proportional number of weeks worked by each Class Member during the Class Period. To determine each Class Participant's estimated "Individual Settlement

Amount,” the Settlement Administrator will use the following formula: The Net Settlement Amount will be divided by the aggregate total number of Workweeks worked by the Class Participants, resulting in the “Workweek Value.” Each of the Class Participants’ “Individual Settlement Amounts” will be calculated by multiplying each individual Class Participant’s total number of Workweeks by the Workweek Value.

88. The Individual Settlement Amounts will be reduced by any required deductions for each Class Participant as specifically set forth herein, including employee-side tax withholdings or deductions. The entire Net Settlement Amount will be disbursed to all Class Participants who do not submit timely and valid Opt Outs. If there are any valid and timely Opt Outs, the Settlement Administrator shall proportionally increase the Individual Settlement Payment for each Class Participant according to the number of Workweeks worked so that the amount actually distributed to the Class Participants equals 100% of the Set Settlement Amount.

89. Defendant will provide the Settlement Administrator with information reasonably necessary to perform the calculation of number of workweeks for each Class Member. 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.

CALCULATION OF THE PAYMENTS FOR INDIVIDUAL MEMBERS OF THE PAGA SETTLEMENT CLASS

90. Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the

1 Action, which is Ten Thousand Dollars (\$10,000.00). The PAGA Payment is to be approved by the
2 Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-five percent
3 (75%) (i.e., \$7,500.00) to the LWDA and twenty-five percent (25%) (i.e., \$2,500.00) to the PAGA
4 Settlement Class.

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

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

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

23 **TIME FOR PAYMENT OF ATTORNEY FEES AND EXPENSES**

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

26 **TIME FOR PAYMENT OF INCENTIVE AWARD**

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

1 **TIME FOR PAYMENT OF PAGA PAYMENT TO THE LWDA**

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

4 **TIME FOR PAYMENT OF TAXES AND REQUIRED WITHHOLDING AND INDIVIDUAL**
5 **SETTLEMENT AMOUNTS**

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

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

23 **NON-CASHED SETTLEMENT CHECKS**

24 99. Any funds associated with checks that have not been cashed within one hundred
25 eighty (180) days, will become void and the Individual Settlement Amount associated with the
26 uncashed check will be remitted pursuant to Code of Civil Procedure section 384 to the California
27 State Controller for deposit in the Unclaimed Property Fund in the name of the individual whose
28 check was uncashed. The Parties agree that this disposition results in no "unpaid residue" within the

1 meaning of California Civil Procedure Code section 384, as the entire Net Settlement Amount will be
2 paid out to Class Participants, whether or not they all cash their Individual Settlement Amount
3 checks. Therefore, Defendant shall not be required to pay any interest on said amount. For the
4 purposes of determining whether Defendant has met their financial obligation to pay the Individual
5 Settlement Payment, Defendant will be deemed to have fulfilled its obligation upon the mailing of the
6 check to the Class Member, regardless of whether such Class Member subsequently negotiates the
7 check.

8 **DISPUTES REGARDING CLASS MEMBER WORKWEEKS DATA OR PAYMENT OF**
9 **INDIVIDUAL SETTLEMENT SHARES**

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

NULLIFICATION OF THIS SETTLEMENT AGREEMENT

NON-APPROVAL OF THIS SETTLEMENT AGREEMENT

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

PARTIES' RIGHTS TO VOID CLASS SETTLEMENT; ESCALATOR PROVISION

102. If 10% or more members of the Settlement Class timely submit Opt Out requests, Defendant shall have the right (but not the obligation) to void the settlement described in the Parties' Memorandum of Understanding, which was fully executed on May 18, 2023. If the number of workweeks worked by the Class Members is greater than 10% above that estimated by Defendant (or 3,358 workweeks), then the portion of the GSA attributable to non-PAGA claims (i.e., the GSA less the PAGA penalties) shall be increased proportionately for each additional workweek above the 10% buffer (i.e., a 12% increase in workweeks = a 2% proportionate increase in the GSA). If the number of pay periods worked by the Aggrieved Employees is greater than 5% above that estimated by Defendant (or 835 pay periods), then the portion GSA attributable to PAGA claims (i.e., the PAGA penalties) shall be increased proportionately for each additional pay period worked above the 5% buffer (i.e., i.e., a 6% increase in pay periods = a 1% proportionate increase in the GSA attributable to PAGA claims).

INVALIDATION

103. Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

STAY ON APPEAL

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

MOTIONS FOR COURT APPROVAL**PRELIMINARY APPROVAL**

105. As soon as practicable after execution of this Settlement Agreement, Class Counsel will submit this Settlement Agreement to the Court along with a Motion for Preliminary Approval of the Class Settlement. Class counsel will be responsible for drafting the Motion for Preliminary Approval and all documents necessary to obtain preliminary approval, and will allow defense counsel a reasonable opportunity to comment and have input on the Motion for Preliminary Approval, especially as to information that Defendant considers confidential, proprietary, or trade secret.

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

FINAL APPROVAL

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

RELEASES AND WAIVERS

RELEASE OF CLAIMS BY THE SETTLEMENT CLASS

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

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

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

RELEASE OF CLAIMS BY PLAINTIFF

110. In addition to the claims being released by the Class Members, Plaintiff, on behalf of himself and his dependents, heirs and assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives, and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity, shall and does hereby forever release, discharge and agree to hold harmless the Released Parties, to the fullest extent permitted by the law, of and from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including attorney fees and costs), whether known or unknown, asserted or not asserted, at law or in equity, which he may now have or may have after the signing of this Settlement Agreement, including but not limited to all

claims which relate to, arise out of, or are in any way connected with his employment with Defendant including the Released Claims, claims that were asserted or could have been asserted in the Complaint, and any and all transactions, occurrences, or matters between the Parties occurring prior to or on the date this Settlement Agreement is fully executed. Without limiting the generality of the foregoing, this release shall include, but not be limited to, any and all claims under: **(a)** the Americans with Disabilities Act; **(b)** Title VII of the Civil Rights Act of 1964; **(c)** the Civil Rights Act of 1991; **(d)** 42 U.S.C. § 1981; **(e)** the Age Discrimination in Employment Act; **(f)** the Fair Labor Standards Act; **(g)** the Equal Pay Act; **(h)** the Employee Retirement Income Security Act, as amended; **(i)** the Consolidated Omnibus Budget Reconciliation Act; **(j)** the Rehabilitation Act of 1973; **(k)** the Family and Medical Leave Act; **(l)** the Civil Rights Act of 1966; **(m)** the California Fair Employment and Housing Act; **(n)** the California Constitution; **(o)** the California Labor Code; **(p)** the California Government Code; **(q)** the California Civil Code; and **(r)** any and all other federal, state, and local statutes, ordinances, regulations, rules, and other laws, and any and all claims based on constitutional, statutory, common law, or regulatory grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of contract or implied contract, fraud, misrepresentation, promissory estoppel, or intentional infliction of emotional distress, negligent infliction of emotional distress, or damages under any other federal, state, or local statutes, ordinances, regulations, rules, or laws. This release is for any and all relief, no matter how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain and suffering, and attorney fees and costs, and Plaintiff hereby forever releases, discharges and agrees to hold harmless Defendant and the Released Parties from any and all claims for attorney fees and costs arising out of the matters released in this Settlement Agreement.

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

“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,

1 if known by him or her, would have materially affected his or her settlement with the
2 debtor or released party.”

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

12 **CIRCULAR 230 DISCLAIMER**

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

3 **DUTIES OF THE PARTIES**

4 **MUTUAL FULL COOPERATION**

5 114. The Parties agree to cooperate fully with one another to accomplish and implement the
6 terms of this Settlement Agreement. Such cooperation shall include, but not be limited to, execution
7 of such other documents and the taking of such other actions as may reasonably be necessary to fulfill
8 the terms of this Settlement Agreement. The Parties shall use their best efforts, including all efforts
9 contemplated by this Settlement Agreement and any other efforts that may become necessary by
10 court order or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As
11 soon as practicable after execution of this Settlement Agreement, Class Counsel, with the cooperation
12 of Defendant and Defense Counsel, shall take all necessary and reasonable steps to secure the Court's
13 final approval of this Settlement Agreement.

14 **DUTY TO SUPPORT AND DEFEND THE CLASS SETTLEMENT**

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

18 **DUTIES PRIOR TO COURT APPROVAL**

19 116. Class Counsel shall promptly submit this Settlement Agreement to the Court for
20 preliminary approval and determination by the Court as to its fairness, adequacy, and reasonableness.
21 Promptly upon execution of this Settlement Agreement, Class Counsel shall apply to the Court for
22 the entry of a preliminary order scheduling a hearing on the question of whether the proposed Class
23 Settlement should be approved as fair, reasonable, and adequate as to the Class Members, approving
24 as to form and content the proposed Class Notice and Share Form attached hereto as **Exhibit 1** and
25 **Exhibit 2**, respectively, and directing the mailing of the Class Notice to Class Members. While
26 Defendant can reserve its right to object to facts or assertions made in the moving papers, Defense
27 Counsel will not oppose the motion for preliminary approval to the extent it comports with the
28 Memorandum of Understanding and this Joint Stipulation of Class Action Settlement and Release.

MISCELLANEOUS PROVISIONS

DIFFERENT FACTS

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

NO PRIOR ASSIGNMENTS

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

NON-ADMISSION

119. Nothing in this Settlement Agreement shall be construed as or deemed to be an admission by any Party of any liability, culpability, negligence, or wrongdoing toward any other Party, or any other person, and the Parties specifically disclaim any liability, culpability, negligence, or wrongdoing toward each other or any other person. Each of the Parties has entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and contingencies. Nothing herein shall constitute any admission by Defendant of wrongdoing or liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute any admission by Defendant regarding the merits of the Claims in this Action, including but not limited to claims for unpaid wages or violations under California or federal law. Nothing herein shall constitute an admission by Defendant that the Action was properly brought as a class or representative action other than for settlement purposes. To the contrary, Defendant has denied and continues to deny each and every material factual allegation and all Claims. To this end, the Class Settlement of the Action, the negotiation and execution of this Settlement Agreement, and all acts performed or documents executed pursuant to or in furtherance of this Settlement Agreement

1 or the Class Settlement are not, shall not be deemed to be, and may not be used as, an admission or
2 evidence of any wrongdoing or liability on the part of Defendant or of the truth of any of the factual
3 allegations in the Complaint in the Action; and are not, shall not be deemed to be, and may not be
4 used as, an admission or evidence of any fault or omission on the part of Defendant in any civil,
5 criminal, or administrative proceeding in any court, administrative agency, or other tribunal.

6 **NON-EVIDENTIARY USE**

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

14 **MEDIA OR PRESS**

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

21 **NON-RETALIATION**

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

CONSTRUCTION

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

GOVERNING LAW

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

NOTICES

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

CAPTIONS AND INTERPRETATIONS

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

MODIFICATION

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

1 INTEGRATION CLAUSE

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

7 SUCCESSORS AND ASSIGNS

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

14 CORPORATE SIGNATORIES

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

19 EXECUTION IN COUNTERPARTS

20 131. This Settlement Agreement shall become effective upon its execution by all of the
21 undersigned. The Parties may execute this Settlement Agreement in counterparts, and execution of
22 counterparts shall have the same force and effect as if all settling parties had signed the same
23 instrument.

24 ATTORNEY FEES, COSTS, AND EXPENSES

25 132. Except as otherwise specifically provided for herein, each party shall bear her or its
26 own attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising out of the
27 Action and shall not seek reimbursement thereof from any other party to this Settlement Agreement.
28

ACTION TO ENFORCE AGREEMENT

133. 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.

EXECUTION

134. 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.

APPROVAL AND EXECUTION BY PARTIES

Class Representative:

Dated: 8/17/2023

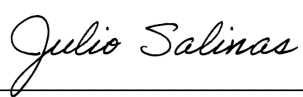
DocuSigned by:

 90248163B6834CC...
 Eric Gordon
 Plaintiff and Class Representative

Defendant:

Dated: 9/19/2023

High Point Sales & Marketing LLC


 By: Julio Salinas
 Title: President

APPROVED AS TO FORM BY COUNSEL

Class Counsel:

Dated: August 16, 2023

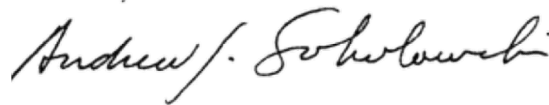
Melmed Law Group P.C.


 Megan E. Ross
 Attorneys for Plaintiff

1 Defendant's Counsel:

O'Hagan Meyer LLP

2 Dated: 8/30/2023

3 

4 Andrew J. Sokolowski

5 Attorneys for Defendant