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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

SAN BERNARDINO JUSTICE CENTER

DIANA HILDALGO ROJAS, individually,
and on behalf of all others similarly
situated,

Plaintiff,

v.

GANO EXCEL (U.S.A.) INC., a
Washington corporation; and DOES 1
through 50, inclusive,

Defendants.

CASE NO.: CIVSB2312557

[Hon. Christian Towns, Dept. S-26]

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

Action Filed: June 1, 2023

Trial Date: None Set

This Class Action and PAGA Settlement and Release (“Settlement Agreement”) is entered into by and between Plaintiff Diana Hidalgo Rojas (“Plaintiff”), on behalf of herself and the Class, on the one hand, and Defendant, Gano Excel (U.S.A.) Inc. (“Defendant”), on the other hand. Plaintiff and Defendant are collectively referred to herein as “Parties” and individually referred to herein as “Party.”

In consideration of the mutual covenants, promises, and agreements set forth herein, the Parties agree that, pursuant to the terms and conditions set forth herein, which are subject to approval of the Court, this Action and the Released Claims shall be settled and compromised as between Plaintiff and the Class on the one hand and Defendant on the other hand.

DEFINITIONS

1. **“Action” means** *Diana Hidalgo Rojas v. Gano Excel (U.S.A.) Inc.*, Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2312557.

2. **“Class” means:** all non-exempt, hourly employees who worked for Defendant at any time in the state of California from January 21, 2021, through February 25, 2025.

3. **“Class Counsel” means** The Wheeler Law Firm, APC.

4. **“Class Counsel Award” means attorneys’ fees for Class Counsel’s litigation and resolution of this Action and Class Counsel’s expenses and costs incurred in connection with this Action.**

5. **“Class Information” means information regarding Class Members that Defendant will in good faith compile from its records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet or Microsoft Word Document and shall include: each Class Member’s full name; social security number; last known address; last known telephone number; and number of Compensable Work Weeks and Compensable PAGA Work Weeks.**

6. **“Class Member” means each person who is a member of the Class defined above and who is eligible to participate in this Settlement.**

7. **“Class Period” means the time period from January 21, 2021, through February 25, 2025.**

8. **“Class Representative Service Award” means the amount that the Court authorizes to**

be paid to Plaintiff in recognition of, *inter alia*, Plaintiff's efforts and risks in assisting with the prosecution of the Action and in return for executing a general release with Defendant.

9. **"Compensable Work Week" or "Compensable Work Weeks" means** a reasonable estimate of weeks worked by each Class Member as a non-exempt employee in California for Defendant individually and collectively by all Class Members during the Class Period based on Defendant's records and used as a value to calculate Individual Settlement Payments. The number of Compensable Work Weeks for each Class Member will be determined by adding all the calendar days within the inclusive dates of employment for the employee and dividing that number by seven. Any partial workweek will be expressed as a percentage of a full workweek. If it can be readily determined, workweeks where someone was employed but did not record any hours can be excluded from this calculation.

10. **"Compensable PAGA Work Week" or "Compensable PAGA Work Weeks" means a** reasonable estimate of weeks worked by each PAGA Member, as a nonexempt employee in California for Defendant, individually and collectively by all PAGA Members, during the period from of March 17, 2022, through February 25, 2025, based on Defendant's records and used as a value to calculate PAGA Payments. The number of Compensable PAGA Work Weeks for each PAGA Member, will be determined by adding all the calendar days within the inclusive dates of employment for the employee and dividing that number by seven. Any partial workweek will be expressed as a percentage of a full workweek. If it can be readily determined, workweeks where someone was employed but did not record any hours can be excluded from this calculation.

11. **"Court" means the Superior Court for the County of San Bernardino, State of California.**

12. **"Defendant" means** Gano Excel (U.S.A.) Inc.

13. **"Effective Date" means the date on which the Superior Court's Final Approval Order and Judgment becomes final and Defendant fully funds the settlement. The Superior Court's Final Approval Order and Judgment "becomes final" upon the latter of: (a) if there is no Objection to the Settlement, or if there is an Objection but it is withdrawn, then, the date that the Final Approval Order and Judgment is filed by the Court; (b) if there is an Objection to the Settlement that is not withdrawn,**

but no appeal is commenced thereafter, then, sixty-five (65) calendar days following the date that the Final Approval Order and Judgment is filed by the Court; or (c) if there is an Objection to the Settlement, that is not withdrawn, and any appeal, writ, or other appellate proceeding opposing the Settlement has been filed within sixty-five (65) calendar days following the date that the Final Approval Order and Judgment is filed by the Court, then, when any such appeal, writ, or other appellate proceeding opposing the validity of the Settlement has been resolved finally and conclusively with no right to pursue further remedies or relief.

14. **“Final Approval Order and Judgment” means an order and judgment that the Court will file which finally approves this Settlement and enters a judgment in favor of Plaintiff.**

15. **“Gross Settlement Amount” means the maximum amount which Defendant is obligated to pay under this Settlement Agreement, which is Sixty-Five Thousand Dollars (\$65,000.00), subject to increase under the circumstances as set forth in paragraph 58. This is an “all in” non-reversionary Settlement in which Defendant is required to pay the entire Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant under any circumstances. Payments of any appropriate and lawfully-required employer’s share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the Gross Settlement Amount by Defendant at the time the Gross Settlement Amount is funded.**

16. **“Individual Settlement Payment” means the amount payable from the Net Settlement Amount to each Settlement Class Member.**

17. **“LWDA” means the California Labor and Workforce Development Agency.**

18. **“Net Settlement Amount” means the Gross Settlement Amount, less the Class Counsel Award, Class Representative Service Award, payment to the LWDA and PAGA Members for PAGA penalties, and Settlement Administration Costs.**

19. **“Notice of Class and PAGA Settlement” means the notice, substantially in the form attached hereto as Exhibit 1, which the Settlement Administrator will mail to each Class and PAGA Member, and which explains, *inter alia*, the terms of this Settlement Agreement, the settlement process, and each Class Member’s estimated Individual Settlement Payment. Notice of Class Settlement will be provided to the Class in English and Spanish.**

20. **“Operative Complaint” means the Class Action** and PAGA Representative Complaint on file in this action.

21. **“Objection” means a letter or other written communication submitted by a Class Member to the Settlement Administrator that contains a clear statement by the Class Member that he or she is objecting to any of the terms of the Settlement.**

22. **“PAGA Member” or “PAGA Members” means** all non-exempt, hourly employees who worked for Defendant at any time in the state of California from March 17, 2022, through February 25, 2025.

23. **“Parties” means Plaintiff and Defendant, collectively, and “Party” means either** Plaintiff or Defendant, individually.

24. **“Payment Ratio” means the respective Compensable Work Weeks for each Settlement Class Member divided by the total Compensable Work Weeks for all Settlement Class Members.**

25. **“PAGA Payment Ratio” means the respective Compensable PAGA Work Weeks for each PAGA Member divided by the total Compensable PAGA Work Weeks for all PAGA Members.**

26. **“PAGA Period” means the time period** March 17, 2022, through February 25, 2025.

27. **“Plaintiff” refers to** Diana Hidalgo Rojas.

28. **“Preliminary Approval Date” means the date upon which the Court files an order** substantially in the form attached hereto as **Exhibit 2**, and which grants preliminary approval of the Settlement.

29. **“Request for Exclusion” means a letter or other written communication submitted by** a Class Member to the Settlement Administrator that contains a clear statement by the Class Member that he or she is electing to be excluded from the Settlement.

30. **“Released Claims by Plaintiff” is set forth in paragraph 47 below. Plaintiff releases** the **“Released Claims by Plaintiff” as of the** date Defendant fully funds this Settlement.

31. **“Released Claims by Settlement Class Members” means: As of the** date Defendant fully funds this Settlement, Settlement Class Members shall fully and finally release and discharge Released Parties, from January 21, 2021, through February 25, 2025, from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, or causes of

1 action contingent or accrued for, that are pleaded, or that could have been pleaded, based on the facts
2 and claims alleged in the Operative Complaint, including any claims for: (a) failure to provide required
3 meal periods, California Labor Code §§ 226.7, 510 and 512; (b) failure to provide required rest
4 periods, California Labor Code §§ 226.7 and 512; (c) failure to pay overtime wages, California Labor
5 Code §§ 510, 1194 and 1198; (d) failure to pay minimum wages, California Labor Code §§ 1194 and
6 1197; (e) failure to timely pay wages, California Labor Code §§ 204 and 210; (f) failure to timely pay
7 all wages during employment and to discharged and quitting employees, California Labor Code §§
8 201-204, 210; (g) failure to furnish accurate, itemized wage statements, California Labor Code §§ 226
9 and 226.3; (h) failure to maintain required records, California Labor Code §§ 226, 247.5, 1174; (i)
10 failure to reimburse necessary business expenses, California Labor Code §2802; (j)
11 failure to provide and maintain records relating to COVID-19 supplemental sick leave, California
12 Labor Code §§245, 245.5, 246, 248.1, 238.3, 248.2 and 248.6; and (k) unlawful business practices
13 under California, Business and Professions Code §17200, et seq.; predicated on any of the violations
14 of the California Labor Code and the applicable IWC Wage Order as alleged in the Operative
15 Complaint including but not limited to, claims for restitution and other equitable relief, liquidated
16 damages, or penalties; and any other benefit, wages, penalties, or other amounts claimed on account
17 of the allegations or the primary rights asserted in the Operative Complaint. This release shall apply
18 to any and all claims arising at any point during the Class Period. Upon entry of the Final Approval
19 Order and funding of the total Gross Settlement Amount, all Participating Class Members will forever
20 completely release and discharge the Released Parties from the Released Claims for the Release
21 Period. Plaintiff and Defendant intend that the Settlement described in this Settlement Agreement will
22 release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration,
23 demand, or other action of any kind, by each and all of the Participating Class Members to obtain a
24 recovery to any and all of the Released Claims. This release excludes the release of claims not
25 **otherwise permitted by law, i.e. Worker's Compensation and unemployment insurance benefits.**

26 32. **"Released Parties" collectively mean: (i) Defendant; (ii) Defendant's** respective past,
27 present and future heirs, executors, administrators, parents, subsidiaries and affiliates, successors and
28

1 assigns; and (iii) the past, present and future shareholders, managers, officers, partners, members,
2 agents, employees, attorneys, insurers, predecessors, successors and assigns of any of the foregoing.

3 33. **“Response Deadline” means forty-five (45) days** after the postmark date of the Notice
4 of Class Settlement that the Settlement Administrator shall mail to Class Members, and the last date
5 on which Class Members may: (a) submit a Request for Exclusion; (b) submit an Objection to the
6 Settlement; or (c) Work Week dispute.

7 34. **“Settled PAGA Claims”**, means penalties only under the Private Attorneys General
8 **Act (“PAGA”), based upon the Released Claims by** PAGA Members that serves the basis for
9 penalties only pursuant to Labor Code § 2699 *et seq.*, for : (a) failure to provide required meal
10 periods, California Labor Code §§ 226.7, 510 and 512; (b) failure to provide required rest periods,
11 California Labor Code §§ 226.7 and 512; (c) failure to pay overtime wages, California Labor Code
12 §§510, 1194, 1197 and 1198; (d) failure to pay minimum wages, California Labor Code §§ 1194
13 and 1197; (e) failure to timely pay all wages due during employment and to discharged and quitting
14 employees, California Labor Code §§ 201-204, 210; (f) failure to furnish accurate, itemized wage
15 statements, California Labor Code §§ 226 and 226.3; (g) failure to maintain required records,
16 California Labor Code §§ 226, 1174; (h) failure to comply with Labor Code § 246; (i) failure to
17 provide California COVID-19 Supplemental Paid Sick Leave, California Labor Code §§ 248.1,
18 248.2, 248.3 and 248.6; (j) failure to reimburse for necessary business expenses, California Labor
19 Code § 2802; (k) failure to provide suitable resting facilities, IWC Wage Order No. 1-2001, § 13; (l)
20 failure to provide suitable seating, IWC Wage Order No. 1-2001, § 14; and primary rights alleged in
21 **Plaintiff’s** Operative Complaint and **in Plaintiff’s PAGA Notice** dated March 17, 2023.

22 35. **“Settlement” means the disposition of the Action pursuant to this Agreement.**

23 36. **“Settlement Administration Costs” means the amount to be paid to the Settlement**
24 Administrator from the Gross Settlement Amount for administration of this Settlement.

25 37. **“Settlement Administrator” means Phoenix Settlement Administrators (“Phoenix”).**
26 The Settlement Administrator shall be responsible for, *inter alia*: (a) performing Spanish translations
27 of the Notice of Class Settlement; printing and mailing the Notice of Class Settlement to the Class in
28 English and Spanish; (b) receiving and reporting the Requests for Exclusion and Objections submitted

1 by Class Members; (c) providing declaration(s) as necessary in support of preliminary and/or final
2 approval of this Settlement; (d) processing and mailing payments to Plaintiff, Class Counsel, the
3 LWDA, and Settlement Class Members; and (e) any other tasks as the Parties mutually agree or the
4 Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the
5 Parties timely apprised of the performance of all Settlement Administrator responsibilities. The Parties
6 agree that they have no financial interest or other relationship with Phoenix that could create a conflict
7 of interest. Should a conflict of interest or other issue lead to the disqualification of the selected
8 Settlement Administrator, the Parties will meet and confer as to a suitable replacement.

9 38. **“Settlement Class” or “Settlement Class Members” means all Class Members who**
10 **have not opted out of the Class by submitting a valid and timely Request for Exclusion.**

11 RECITALS

12 39. Procedural History. On June 1, 2023, Plaintiff filed a PAGA Representative Action
13 Complaint against Defendant, Gano Excel (U.S.A.) Inc., in San Bernardino Superior Court, Case No.
14 CIVSB2312557. **Defendant has filed an answer to Plaintiff’s complaint.** Plaintiff filed an Amendment
15 to Complaint on January 21, 2025, adding Class allegations, **which is the “Operative Complaint.”**

16 40. Investigation and Discovery. The Parties have conducted significant investigation of
17 the facts and law during the prosecution of this Action and before this Settlement was reached. Such
18 discovery and investigation included, *inter alia*, the exchange of information and extensive documents
19 pertaining to Plaintiff and the Class, and numerous meetings and informal conferences wherein the
20 Parties exchanged information, class data, and theories of the case. Plaintiff has also investigated the
21 law as applied to the facts of Plaintiff’s claims and Defendant’s potential defenses thereto.

22 41. Mediation. The Parties participated in a private mediation session with the highly
23 experienced mediator, Hon. Amy Hogue (Ret.), on February 25, 2025. After a full day of mediation,
24 the Parties were able to reach a proposed settlement regarding the material terms for a proposed class
25 action and PAGA settlement that would fully resolve this matter.

26 42. Benefits of Settlement to Class Members. Plaintiff and Class Counsel recognize the
27 expense and length of continued proceedings necessary to litigate Plaintiff’s claims through trial and
28 any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of

1 further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel
2 are also aware of the burdens of proof necessary to establish liability for the claims asserted in the
3 Action, both generally and in response to Defendant's defenses thereto, and the difficulties in
4 establishing damages for the Class. Plaintiff and Class Counsel have also taken into account
5 Defendant's agreement to enter into a settlement that confers substantial relief upon the members of
6 the Class. Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement
7 set forth in this Settlement Agreement is a fair, adequate, and a reasonable settlement, and is in the
8 best interests of the Class.

9 43. Defendant's Reasons for Settlement. Defendant has concluded that any further defense
10 of this litigation would be protracted and expensive for all Parties. Substantial amounts of Defendant's
11 time, energy, and resources have been and, unless this Settlement is completed, will continue to be
12 devoted to the defense of the claims asserted by Plaintiff. Defendant has also taken into account the
13 risks of further litigation in reaching its decision to enter into this Settlement. Even though Defendant
14 continues to contend that it is not liable for any of the claims alleged by Plaintiff in this Action,
15 Defendant has agreed, nonetheless, to settle in the manner and upon the terms set forth in this
16 Settlement Agreement to put to rest the claims in this Action.

17 STIPULATION AND AGREEMENT

18 44. NOW THEREFORE, in consideration of the mutual covenants, promises, and
19 **agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:**

20 45. It is agreed by and among Plaintiff and Defendant that this Settlement shall bind the
21 Plaintiff, Settlement Class Members, and Defendant, subject to the terms and conditions hereof.

22 46. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
23 **the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an**
24 **"other party") acknowledges and agrees that (1) no provision of this Agreement, and no written**
25 **communication or disclosure between or among the Parties or their attorneys and other advisers, is or**
26 **was intended to be, nor shall any such communication or disclosure constitute or be construed or be**
27 **relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31**
28 **CFR Part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its**

own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other party has imposed any limitation that **protects the confidentiality of any such attorney's or adviser's tax strategies** (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

47. Released Claims by Plaintiff. As of the date Defendant fully funds the Settlement, Plaintiff, agrees to the Release of Claims by Settlement Class Members, which is set forth in paragraph 31 above. In addition to Release of Claims by Settlement Class Members and as a material inducement to Defendant to enter into this Settlement Agreement, Plaintiff does hereby, for herself and for her spouse, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, and assigns, forever and completely release and discharge the Released Parties 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 back wages, statutory penalties, civil penalties, liquidated damages, exemplary **damages, interest, attorneys' fees, and costs**) of any nature whatsoever, from the beginning of time through the execution of this Settlement Agreement, whether known or unknown, suspected or unsuspected, including but not limited to all claims arising out of, based upon, or relating to **Plaintiff's** employment with or work for Defendant or the remuneration for or termination of such employment.

Without limiting the generality of the foregoing, Plaintiff expressly releases all claims arising under the California Labor Code (including, but not limited to, sections 200, 201, 201.3, 202, 203, 204, 210, 216, 218.6, 221, 222, 225.5, 223.2, 224, 225, 225.5, 226, 226.2, 226.3, 226.7, 227.3, 238.3, 245, 245.5, 246, 247.5, 248.1, 248.2, 248.3, 248.6, 450, 510, 511, 512, 558, 1174, 1174.5, 118.12, 1194, 1197, 1197.1, 1197.2, 1198, 1199, 2698 et seq., and 2802); the Wage Orders of the California

1 **Industrial Welfare Commission; the California Private Attorneys General Act of 2004 (“PAGA”);**
2 California Business and Professions Code section 17200 et seq.; the California Civil Code, to include,
3 but not limited to, section 3336 and 3294; the California common law of contract; the Fair Labor
4 Standards Act, 29 U.S.C. § 201 et seq.; federal common law; and the Employee Retirement Income
5 Security Act, 29 U.S.C. § 1001, et seq. **Plaintiff’s Released Claims also include all claims for lost**
6 **wages and benefits, emotional distress, retaliation, punitive damages, and attorneys’ fees and costs**
7 **arising under federal, state, or local laws for discrimination, harassment, and wrongful termination**
8 **such as by way of example only, (as amended) 42 U.S.C. section 1981, Title VII of the Civil Rights**
9 **Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and**
10 **the California Fair Employment and Housing Act; and the law of contract and tort. This release**
11 **excludes the release of claims not permitted by law. As to the Plaintiff’s Released Claims only,**
12 **Plaintiff expressly waives all rights and benefits under the terms of section 1542 of the California**
13 **Civil Code. Section 1542 reads as follows:**

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

17 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full
18 and complete release and discharge of all parties, Plaintiff and Class Counsel expressly acknowledge
19 that this Settlement Agreement is intended to include in its effect, without limitation, all claims that
20 Plaintiff knew of, as well as all claims that she does not know or suspect to exist in her favor against
21 the Released Parties, or any of them, for the time period from the beginning of time to the execution
22 of this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment
23 of any such claims. **Plaintiff and Plaintiff’s Counsel do not currently intend to pursue any claims**
24 **against Defendant, including, but not limited to, any and all claims relating to or arising from**
25 **Plaintiff’s employment with Defendant, and that Plaintiff’s Counsel is not currently aware of any**
26 **facts or legal theories upon which any claims or causes of action could be brought against**
27 **Defendant, excepting those facts or legal theories alleged in the Operative Complaint in this**
28 **Action. This release does not include claims which cannot be released such as unemployment or**

Worker's Compensation benefits.

48. Class Certification. For settlement purposes only, Defendant will stipulate that the Settlement Class Members described herein who do not request exclusion from the Settlement Class may be conditionally certified as a settlement class. This stipulation to certification is in no way an admission that class action certification is proper and shall not be admissible in this or in any other action except for the sole purposes of enforcing this Agreement. Should the Court fail to issue Final Approval for any reason, the Parties' stipulation to class certification as part of the Settlement Agreement shall become null and void *ab initio* and shall have no bearing on but remains protected by California Evidence Code Section 1152 and shall not be admissible in connection with, the issue of whether or not certification would be appropriate in a non-settlement context. Plaintiff expressly reserves her rights and declares that she will continue to pursue class certification and a trial should the Court fail to grant Final Approval.

49. Approval of Settlement. Plaintiff will move the Court to grant preliminary and final approval of this class action Settlement. The Parties agree to work diligently and cooperatively to have this matter presented to the Court for preliminary and final approval.

50. Release of Claims by Settlement Class Members. Settlement Class Members release the "Released Claims by Settlement Class Members," as defined, as of the date Defendant fully funds the Settlement.

51. Release of Settled PAGA Claims. PAGA Members release the "Settled PAGA Claims," as defined, as of the date Defendant fully funds the Settlement.

52. Settlement Administration. Within fourteen (14) calendar days after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with the Class Information.

53. Notice to the Class. Upon receipt of the Class Information, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. Within ten (10) calendar days after receiving the Class Information, the Settlement Administrator shall mail copies of the Notice of Class Settlement to all Class Members via regular First Class U.S. Mail. **Because Class Members' private information is included in the Class Information, the Settlement Administrator shall maintain the Class**

Information in confidence, shall limit access to the information only to those employees of the Settlement Administrator with a need to use the Class Information as part of the administration of the Settlement, and shall use and disclose the Class Information only for purposes of this Settlement.

a. Undeliverable Notices. Any Notice of Class Settlement returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto within ten (10) calendar days. For any undeliverable Notice of Class Settlement returned for which no forwarding address is affixed, the Settlement Administrator will conduct its investigation for an updated address of the Class Member and re-mail the Notice of Class Action Settlement. If an updated address is found, the Settlement Administrator shall have seven (7) days to re-mail the Notice of Class Action Settlement from receipt of the undelivered envelope. The Settlement Administrator will provide a cover letter notifying the Class Member of the extended Response Deadline. Any Class Member who receives a re-mailed Notice of Class Settlement shall have forty-five (45) days after the postmark date of the re-mailed Notice of Class Settlement to: (a) submit a Request for Exclusion; or (b) submit an Objection to the Settlement.

b. Disputes Regarding Individual Settlement Payments. Class Members will have the opportunity, should they disagree with Defendant's records regarding the dates of employment stated in the Notice of Class Settlement, to provide documentation and/or an explanation to show contrary information by the Response Deadline. The dispute form must: (a) contain the full name, address, and telephone number of the Class Member, and the last four digits of the Class Member's social security number or full employee ID number; (b) contain the case name and case number; (c) a clear statement by the Class Member that he or she is disputing the number of Compensable Workweeks and the basis for the dispute; (d) any documentation demonstrating that the number of Compensable Workweeks listed in the Notice of Class Settlement is incorrect; (e) be signed by the Class Member; and (f) be postmarked by the Response Deadline. The date of the postmark on the return mailing envelope on the dispute form shall be the exclusive means used to determine whether it has been timely submitted. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. In addition to U.S. Mail, a Class Member may also submit a dispute form by facsimile or email to the Settlement Administrator within the

Response Deadline. The Settlement Administrator shall then determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Agreement. In the absence of circumstances indicating fraud, manipulation or destruction, Defendant's records shall be given a rebuttable presumption of accuracy.

c. Request for Exclusion. Class Members who wish to exclude themselves from the Settlement must submit to the Settlement Administrator a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (a) contain the full name, address, and telephone number of the **Class Member, and the last four digits of the Class Member's social security number or full** employee ID number; (b) contain the case name and case number; (c) a clear statement by the Class Member that he or she is electing to be excluded from the Settlement; (d) be signed by the Class Member; and (e) be postmarked by the Response Deadline if submitted by U.S. Mail. The date of the postmark on the return mailing envelope on the Request for Exclusion submitted by U.S. Mail shall be the exclusive means used to determine whether it has been timely submitted. In addition to U.S. Mail, a Class Member may also submit a Request for Exclusion by facsimile or email to the Settlement Administrator within the Response Deadline. A Request for Exclusion shall not be presumptively invalid if it does not contain the requirements of (a) through (d) if the Settlement Administrator can ascertain the identity of the Class Member who wants to exclude themselves from the Settlement. Any Class Member who requests to be excluded from the Settlement Class shall not be entitled to any recovery under the Settlement and shall not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon except as to any distribution based upon PAGA penalties. PAGA Members will receive their share of the PAGA Payment and the Settled PAGA Claims will be released even if the Class Member submits a timely Request for Exclusion. Class Members who fail to submit a valid and timely Request for Exclusion on or before the Response Deadline shall be bound by all terms of the Settlement and any Final Approval Order and Judgment entered in this Action.

d. Objections. Class Members who wish to object to the Settlement can either mail or send by facsimile or email to the Settlement Administrator a written Objection by the Response Deadline. The Objection should: (a) contain the full name, address, and telephone number of the Class Member, and the last four digits of the Class Member's **social security number; (b)**

1 contain the case name and case number; (c) the dates of employment of the Class Member; (d) be
 2 signed by the Class Member; (e) state the basis for the Objection, including any legal briefs, papers
 3 or memoranda in support of the Objection; and (f) be postmarked by the Response Deadline. The
 4 date of the postmark on the return mailing envelope on the Objection shall be the exclusive means
 5 used to determine whether the Objection has been timely submitted. Class Members who submit a
 6 timely Objection will have a right to appear at the final approval hearing in order to have their
 7 Objection heard by the Court. At no time shall any of the Parties or their counsel seek to solicit or
 8 otherwise encourage Class Members to submit Objections to the Settlement or appeal from the Final
 9 Approval Order and Judgment. Class Counsel shall not represent any Class Members with respect to
 10 any such Objections. The Settlement Administrator will provide the Parties with any Objection
 11 within five (5) calendar days of receipt of the Objection. Plaintiff will file any and all Objections
 12 with the Court in advance of the Final Approval Hearing. Oral or written Objections may also be
 13 made at the Final Approval hearing without a written objection being submitted, but only with the
 14 **Court's express** permission. If the Court rejects the objection, the individual will be bound by the
 15 terms of the Settlement.

16 e. If greater than five (5) percent of the Class Members opt out or object to this
 17 Settlement Agreement or a number of Class Members whose share of the Net Settlement Amount is
 18 5% or more, Defendant will have the right to rescind and terminate the Settlement without prejudice
 19 to its pre-settlement positions and defenses in the litigation. In such a case, the Parties and any funds
 20 to be awarded shall be returned to their respective statuses as of the date and time immediately prior
 21 to the execution of this Agreement.

22 f. Except for those Settlement Class Members who exclude themselves in
 23 compliance with the Request for Exclusion procedures set forth above, all Settlement Class Members
 24 will: (i) be deemed to be Participating Class Members for all purposes under this Settlement
 25 Agreement; (ii) will be bound by the terms and conditions of this Settlement Agreement, the
 26 Judgment, and the releases set forth herein; and (iii) except as otherwise provided herein, will be
 27 deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy
 28 of the Settlement.

54. Funding Gross Settlement Amount. After Final Approval by the Court, Defendant shall wire transfer the full Gross Settlement Amount along with Defendant's share of the payroll taxes to the Settlement within twenty (20) calendar days of the Effective Date.

55. Allocation of Settlement. Individual Settlement Payments will be paid from the Net Settlement Amount and shall be paid pursuant to the settlement formula set forth herein. Individual Settlement Payments shall be mailed by regular First Class U.S. Mail to Settlement Class Members' last known mailing address.

a. The Settlement Administrator shall calculate the total Compensable Work Weeks and Compensable PAGA Work Weeks for all Settlement Class Members based on the Class Information provided by Defendant. The respective Compensable Work Weeks for each Settlement Class Member will be divided by the total Compensable Work Weeks for all Settlement Class Members, resulting in the Payment Ratio for each Settlement Class Member; a similar calculation will apply to determining the Payment Ratio for Compensable PAGA Work Weeks. Each Settlement Class **Member's Payment Ratio will then be multiplied by the Net Settlement Amount to determine his or** her Individual Settlement Payment.

b. Individual Settlement Payments due to each Settlement Class Member shall be designated as follows:

1. Thirty-Three and 1/3 Percent (33.33%) of the Individual Settlement Payment shall represent payment for alleged unpaid wages. This payment shall be subject to the withholding of all applicable local, state, and federal taxes. Applicable payroll taxes and/or contributions will be deducted from the amount paid to Settlement Class Members. The Settlement Administrator will issue a W-2 Form to each Settlement Class Member in relation to this payment.

2. Thirty-Three and 1/3 Percent (33.33%) of the Individual Settlement Payment shall represent payment of all penalties. These payments will not be subject to withholding of local, state, and federal taxes. The Settlement Administrator will issue an IRS Form 1099 to each Settlement Class Member in relation to these payments.

3. Thirty-Three and 1/3 Percent (33.33%) of the Individual Settlement Payment shall represent payment of all interest. These payments will not be subject to withholding of

1 local, state, and federal taxes. The Settlement Administrator will issue an IRS Form 1099 to each
2 Settlement Class Member in relation to these payments.

3 (a). Class Members With Missing/Unverifiable Social Security
4 Numbers and Withholdings of Taxes and Applicable Penalties. In the event that an Individual
5 Settlement Payment exceeds the threshold amount that must be reported to the Internal Revenue
6 Service by means of a Form 1099, Class Counsel, and the Settlement Administrator, will take all
7 necessary and reasonable steps to obtain **W-9's from Class Members and to comply with applicable**
8 **IRS regulations on issuing 1099's without a social security number or tax entity identification number,**
9 and shall take all reasonable and necessary steps to avoid imposition of IRS penalties against the Gross
10 Settlement Amount, including, but not limited to, limiting payments below the reportable threshold
11 and/or withholding of taxes and any applicable penalties. The Settlement Administrator will contact
12 Class Members who are entitled to payments that exceed the taxable income threshold twice, with at
13 least 30 days between the two contacts.

14 c. Uncashed Settlement Checks. Individual Settlement Payment checks shall
15 remain negotiable for one hundred and eighty (180) days from the postmark date of issuance. If the
16 Settlement Check is not cashed, deposited, or otherwise negotiated within the 180-day deadline, the
17 check will be voided, and the funds associated with any such voided checks shall be distributed to the
18 **State of California Controller's Office, Unclaimed Property Division, in the name of the affected Class**
19 **Member.** The Release will be binding upon all Participating Class Members, including those who do
20 not cash their checks within the 180-day period. The Parties agree that this disposition results in no
21 **"unpaid cash residue," or "unclaimed or abandoned funds" as the entire Net Settlement Amount** will
22 be paid out to the Participating Class Members, whether or not they all cash their payment checks.

23 d. Certification By Settlement Administrator. The Parties have the right to
24 monitor and review administration of the Settlement. Any disputes not resolved by the Settlement
25 Administrator concerning the administration of the Settlement will be resolved by the Court, under
26 the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties
27 will confer in good faith to resolve the disputes without the necessity of involving the Court. Upon
28 completion of administration of the Settlement, the Settlement Administrator shall provide written

1 certification of such completion to counsel for the Parties, and which shall be filed with the Court as
2 necessary.

3 e. Settlement Awards Do Not Trigger Additional Benefits. All monies received
4 by Settlement Class Members shall be deemed to be income to such Settlement Class Members solely
5 in the year in which such awards actually are received by the Settlement Class Members. It is expressly
6 understood and agreed that the receipt of such Individual Settlement Payments will not entitle any
7 Settlement Class Member to additional compensation or benefits under any company compensation
8 or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle
9 any Settlement Class Member to any increased pension and/or retirement, or other deferred
10 compensation benefits. It is the intent of this Settlement that any Individual Settlement Payments
11 provided for in this Agreement are the sole payments to be made by Defendant to the Settlement Class
12 Members in connection with this Settlement, and that the Settlement Class Members are not entitled
13 to any new or additional compensation or benefits as a result of having received the Individual
14 Settlement Payments (notwithstanding any contrary language or agreement in any benefit or
15 compensation plan document that might have been in effect during the period covered by this
16 Settlement).

17 f. Class Representative Service Award. Defendant agrees not to oppose or object
18 to a Class Representative Service Award to Plaintiff of up to Eight Thousand Dollars (\$8,000.00),
19 subject to Court approval. The Settlement Administrator shall issue an IRS Form 1099 – MISC to
20 Plaintiff in connection with the Class Representative Service Award payment. Plaintiff shall be solely
21 and legally responsible to pay any and all applicable taxes on her Class Representative Service Award
22 and shall hold harmless Defendant and Class Counsel from any claim or liability for taxes, penalties,
23 or interest arising as a result of the Class Representative Service Award payment. The Class
24 **Representative Service Award shall be in addition to Plaintiff's Individual Settlement Payment. This**
25 Settlement is not contingent upon the Court awarding Plaintiff a Class Representative Service Award
26 in any amount, and any amount requested by Plaintiff for the Class Representative Service Award that
27 is not granted by the Court shall return to the Net Settlement Amount and be distributed to Settlement
28 Class Members as provided in this Amended Agreement.

1 g. Class Counsel Award. Defendant agrees not to oppose or object to any
2 **application or motion by Class Counsel for attorneys' fees not to exceed one-third** from the Gross
3 Settlement Amount, or Twenty-One Thousand, Six Hundred and Forty-Five Dollars and Zero Cents
4 (\$21,645.00). Defendant further agrees not to oppose any application or motion by Class Counsel for
5 **the reimbursement of any costs or expenses associated with Class Counsel's prosecution of this matter**
6 from the Gross Settlement Amount not to exceed Twelve Thousand Dollars (\$12,000). Class Counsel
7 shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to
8 this paragraph. The Settlement Administrator shall issue an IRS Form 1099 – MISC to Class Counsel
9 for the payments made pursuant to this paragraph. This Settlement is not contingent upon the Court
10 **awarding Class Counsel any particular amount in attorneys' fees and costs. Any amount requested by**
11 Class Counsel for the Class Counsel Award and costs that is not granted by the Court shall return to
12 the Net Settlement Amount and be distributed to Settlement Class Members as provided in this
13 Agreement.

14 h. Settlement Administration Costs. The Settlement Administrator shall be paid
15 for the costs of administration of the Settlement from the Gross Settlement Amount. The costs of
16 notice and administration for the disbursement of the Gross Settlement Amount shall not exceed Seven
17 Thousand and Five Thousand Dollars (\$7,500.00). Prior to the filing of a motion for final approval of
18 this Settlement, the Settlement Administrator shall provide the Parties with a statement detailing the
19 costs of administration. Any amount requested by the Settlement Administrator for administration
20 costs that is not granted by the Court shall return to the Net Settlement Amount and be distributed to
21 Settlement Class members as provided in this Amended Agreement. Defendant will pay any fees
22 incurred by the Settlement Administrator if the settlement is not approved.

23 i. PAGA Payment. Five Thousand dollars (\$5,000) from the Gross Settlement
24 Amount will be allocated to penalties under the Private Attorneys General Act of 2004. Seventy-five
25 percent (75%) of that amount, or \$3,750, will be paid to the LWDA and twenty-five (25%) of that
26 amount, or \$1,250, will be paid to the PAGA Members based upon Compensable PAGA Work Weeks
27 as determined by the PAGA Payment Ratio as set forth in Paragraph 25. This PAGA Payment is
28 made pursuant to California Labor Code § 2699(i).

1 56. Tax Liability: Class Counsel and Defendant make no representation as to the tax
2 treatment or legal effect of payments called for hereunder, and Plaintiff and the Settlement Class
3 Members are not relying on any statement or representation by Class Counsel or Defendant in this
4 regard. Plaintiff and Participating Class Members understand and agree that they will be solely
5 responsible for the payment of any taxes and penalties assessed on their respective payments described
6 herein. The amount of federal income tax withholding will be based upon a flat withholding rate for
7 supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or
8 supplemented. Income tax withholding will also be made pursuant to applicable state and/or local
9 withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed at times and in
10 **the manner required by the Internal Revenue Code of 1986 (the “Code”) and consistent with this**
11 Settlement Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax
12 law, is changed after the date of this Settlement Agreement, the processes set forth in this Section may
13 be modified in a manner to bring Defendant into compliance with any such changes.

14 57. Distribution of Settlement Payments. Individual Settlement Payments to Settlement
15 Class Members, the Class Representative Service Awards, the Class Counsel Award, Settlement
16 Administration Costs, Defendant’s share of employer payroll taxes and PAGA Payment, shall all be
17 distributed by the Settlement Administrator within ten (10) calendar days of receipt of the full Gross
18 Settlement Amount from Defendant. Prior to distribution of Individual Settlement Payments to the
19 Settlement Class Members and PAGA Members, the Settlement Administrator shall update the Class
20 and PAGA Members addresses using the National Change of Address Database.

21 58. Work Week Differential. It is currently estimated that there were 40 Class Members
22 who collectively worked 1,900 workweeks. If it is determined by Plaintiff’s counsel and confirmed
23 by the Settlement Administrator that more than (5%) additional workweeks exist through final
24 approval, the Gross Settlement Amount will be increased on a pro rata basis according to the number
25 of additional workweeks in excess of five percent (5%) more than 1,900.

26 59. Final Settlement Approval Hearing and Entry of Final Judgment. Upon expiration of
27 the Response Deadline, a final approval hearing shall be conducted to determine, *inter alia*, final
28 approval of the Settlement and amounts properly payable for: (a) Individual Settlement Payments; (b)

the Class Counsel Award; (c) the Class Representative Service Awards; (d) PAGA Payment; and (e) the Settlement Administration Costs.

60. Nullification of Settlement Agreement. In the event: (a) the Court does not enter the Order for preliminary approval of the Settlement; (b) the Court does not finally approve the Settlement; (c) the Court does not enter a Final Approval Order and Judgment as provided herein; (d) the Settlement does not become final for any other reason; or (e) the Court fails or refuses to approve any material condition of this Settlement Agreement which effects a fundamental change of the Settlement Agreement, this entire Settlement Agreement shall be null and void and unenforceable as to all Parties herein at the option of any Party but remains protected by California Evidence Code Section 1152, and any order or judgment entered by the Court in furtherance of this Settlement shall be treated as void from the beginning. In such cases, the Parties and any funds to be awarded under this Settlement shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement had not been executed, except that any fees already incurred by the Settlement Administrator shall be paid by all Parties. Further, if the Settlement Agreement is voided or fails for any reason, Plaintiff and Defendant will have no further obligations under the Settlement Agreement, . **In the event an appeal is filed from the Court's Final Approval Order and Judgment, or any other appellate review is sought, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review, and any fees incurred by the Settlement Administrator prior to it being notified of the filing of an appeal from the Court's Final Approval Order and Judgment, or any other appellate review, shall be paid to the Settlement Administrator by the party or person that filed the appeal, within thirty (30) calendar days of said notification.**

61. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Settlement Class Members pursuant to this Agreement shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of Plaintiff or Settlement Class Members.

62. No Admission by Defendant. Defendant denies any and all claims alleged in this Action and denies all wrongdoing whatsoever. This Settlement Agreement is not a concession or

admission and shall not be used against Defendant as an admission or indication with respect to any claim of any fault, concession, or omission by Defendant. Nonetheless, Defendant desires to settle and compromise the matters at issue in the Action to avoid further substantial expense and the inconvenience and distraction of protracted and burdensome litigation. Defendant also has taken into account the uncertainty and risks inherent in litigation, and without conceding any infirmity in the defenses that it has asserted or could assert against Plaintiff and/or any Settlement Class Member, has determined that it is desirable and beneficial that the claims of Plaintiff and the Settlement Class be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

63. Exhibits and Headings. The terms of this Settlement Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

64. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, holding the Action in abeyance pending the final approval hearing to be conducted by the Court.

65. Dispute Resolution. Except as otherwise set forth herein, all disputes concerning the interpretation, calculation or payment of Settlement claims, or other disputes regarding compliance with this Agreement shall be resolved as follows:

a. If Plaintiff or Class Counsel, on behalf of Plaintiff or any Settlement Class Member, or Defendant's Counsel, on behalf of Defendant, at any time believe that the other Party has breached or acted contrary to the Agreement, that Party shall notify the other Party in writing of the alleged violation.

b. Upon receiving notice of the alleged violation or dispute, the responding Party shall have ten (10) calendar days to correct the alleged violation and/or respond to the initiating Party with the reasons why the Party disputes all or part of the allegation.

1 c. **If the response does not address the alleged violation to the initiating Party's**
2 satisfaction, the Parties shall negotiate in good faith for up to ten (10) calendar days to resolve their
3 differences.

4 d. If Class Counsel and Defendant's Counsel are unable to resolve their
5 differences after twenty (20) calendar days, either Party shall first contact the mediator (Hon. Amy
6 Hogue, (Ret.)) to try to resolve the dispute. If that proves unsuccessful, the party may file an
7 appropriate motion for enforcement with the Court. The briefing of such motion should be in letter
8 brief form and shall not exceed five (5) single-spaced pages (excluding exhibits).

9 e. **Reasonable attorneys' fees and costs for work done in resolving a dispute under**
10 this Section may be recovered by any Party that prevails under the standards set forth within the
11 meaning of applicable law.

12 66. Notice. Unless otherwise specifically provided herein, all notices, demands or other
13 communications given hereunder shall be in writing and shall be deemed to have been duly given as
14 of the third business day after (i) emailing and (ii) mailing by United States registered or certified
15 mail, return receipt requested, addressed:

16 To the Settlement Class:

17 THE WHEELER LAW FIRM, APC
18 Scott Ernest Wheeler
19 Justin A. Wheeler
20 250 West First Street, Suite 216
21 Claremont, California 91711
22 Telephone: (909) 621-4988
23 Facsimile: (909) 621-4622
24 Email: sew@scottwheelerlawoffice.com
25 jaw@scottwheelerlawoffice.com

26 To Defendant:

27 MURCHISON & CUMMING LLP
28 Kenneth H. Moreno
29 Laurie E. Yoon
30 2175 N. California Blvd., Suite 900
31 Walnut Creek, California 94596
32 Telephone: (415) 524-4303
33 Facsimile: (415) 391-2058
34 Email: kmoreno@murchisonlaw.com
35 lyoon@murchisonlaw.com

1 67. Amendment or Modification. This Agreement may be amended or modified only by a
2 written instrument signed by counsel for all Parties and approved by the Court.

3 68. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the
4 entire Agreement among these Parties, and no oral or written representations, warranties, or
5 inducements have been made to any Party concerning this Agreement or its Exhibits other than the
6 representations, warranties, and covenants contained and memorialized in the Agreement and its
7 Exhibits.

8 69. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
9 represent they are expressly authorized by the Parties whom they represent to negotiate this
10 Agreement and to take all appropriate actions required or permitted to be taken by such Parties
11 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to
12 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other
13 and use their best efforts to affect the implementation of the Settlement. In the event the Parties are
14 unable to reach agreement on the form or content of any document needed to implement the
15 Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of
16 this Settlement, the Parties may seek the assistance of the Court or the mediator to resolve such
17 disagreement. The persons signing this Agreement on behalf of Defendant represent and warrant that
18 they are authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and warrants
19 that she is authorized to sign this Agreement and that he has not assigned any claim, or part of a claim,
20 covered by this Settlement to a third-party.

21 70. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
22 to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

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

27 72. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
28

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

12 73. California Law Governs. All terms of this Settlement Agreement and the Exhibits
13 hereto shall be governed by and interpreted according to the laws of the State of California.

14 74. This Settlement is Fair, Adequate and Reasonable. The Parties believe this Settlement
15 is a fair, adequate, and reasonable settlement of this Action and have arrived at this Settlement after
16 extensive arms-length negotiations, taking into account all relevant factors, present and potential.

17 75. Jurisdiction of the Court. Pursuant to California Code of Civil Procedure section 664.6,
18 the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement
19 of the terms of this Settlement Agreement and all orders and judgments entered in connection
20 therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes
21 of interpreting, implementing, and enforcing the settlement embodied in this Agreement and all orders
22 and judgments entered in connection therewith. All terms of this Settlement Agreement are subject to
23 approval by the Court.

24 76. Construction. The Parties hereto agree that the terms and conditions of this Settlement
25 **Agreement are the result of lengthy, intensive arms'length negotiations among the Parties and that**
26 this Settlement Agreement shall not be construed in favor of or against any Party based on the extent
27 to which any Party or their counsel participated in the drafting of this Settlement Agreement. Plaintiff
28 and Defendant expressly waive the common-law and statutory rule of construction that ambiguities

should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Settlement Agreement shall be in all cases construed as a whole, according to its fair meaning.

77. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

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

79. Signatures of All Class Members Unnecessary to be Binding. It is agreed that, because the members of the Settlement Class are numerous, it is impossible or impractical to have each Settlement Class Member execute this Settlement Agreement. The Notice will advise all Settlement Class Members of the binding nature of the release provided herein and such Release shall have the same force and effect as if this Settlement Agreement were executed by each Settlement Class Member.

80. Voluntary Agreement. The Parties acknowledge that they have entered into this Settlement Agreement voluntarily, on the basis of their own judgment and without coercion, duress, or undue influence of any Party, and not in reliance on any promises, representations, or statements made by the other Parties other than those contained in this Settlement Agreement. Each of the Parties hereto expressly waves any right they might ever have to claim that this Settlement Agreement was in any way induced by fraud.

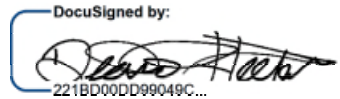
81. Opportunity to Consult with Counsel. Prior to execution of this Settlement Agreement, each Party has read this entire Settlement Agreement and has been given the opportunity to consult with independent counsel of their choosing and to have such independent counsel advise as to the meaning of this Settlement Agreement and its legal effect.

82. Counterparts. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed

an original, and, when taken together with other signed counterparts, shall constitute one fully-signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

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

Dated: 6/27/2025

By: 
Diana Hidalgo Rojas

GANO EXCEL (U.S.A.) INC.

Dated: 07/16/2025

By: Ramy Massoud
Title: Ramy Massoud

APPROVED AS TO FORM:

Dated: June 27, 2025

THE WHEELER LAW FIRM, APC

By: 
Scott Ernest Wheeler
Justin A. Wheeler

Attorneys for Plaintiff and the Putative Class

Dated: July 16, 2025

MURCHISON & CUMMING LLP

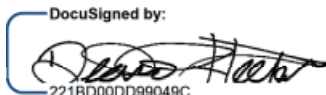
By: 
Kenneth H. Moreno
Laurie E. Yoon

Attorneys for Defendant, GANO EXCEL (U.S.A.) INC.

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Dated: 6/27/2025

By: 
Diana Hidalgo Rojas

GANO EXCEL (U.S.A.) INC.

Dated: 07/16/2025

By: Ramy Massoud
Title: Ramy Massoud

APPROVED AS TO FORM:

Dated: June 27, 2025

THE WHEELER LAW FIRM, APC

By: 
Scott Ernest Wheeler
Justin A. Wheeler

Attorneys for Plaintiff and the Putative Class

Dated: July 16, 2025

MURCHISON & CUMMING LLP

By: 
Kenneth H. Moreno
Laurie E. Yoon

Attorneys for Defendant, GANO EXCEL (U.S.A.) INC.