

Aidin D. Ghavimi (SBN 305808)
aidin@starpointlaw.com
Zachary D. Greenberg (SBN 331501)
zach@starpointlaw.com
STARPOINT, LC
15233 Ventura Boulevard, Suite PH16
Sherman Oaks, CA 91403
T: (310) 424-9971
F: (424) 255-4035
service@starpointlaw.com

Attorneys for Plaintiff,
BRIAN GONZALEZ, individually and on behalf of all others similarly situated.

[Additional Counsel listed on the following page]

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

BRIAN GONZALEZ, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

vs.

EXCELLENCE SHIPPING, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO. CIVSB2330774
[Unlimited Civil Jurisdiction]

*Assigned for All Purposes to the Hon. Kory
Mathewson, Dept. R12*

**JOINT STIPULATION REGARDING CLASS
ACTION AND PAGA REPRESENTATIVE
ACTION SETTLEMENT AGREEMENT**

Complaint Filed: November 22, 2023
FAC Filed: January 23, 2024

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Yulan Long (SBN 343970)
AttorneyLong@JoyJonie.com
556 N. Diamond Bar Blvd., Ste. 108
Diamond Bar, CA 91765
T: (571) 375-9865

Attorneys for Defendant,
EXCELLENCE SHIPPING, INC.

1 This Joint Stipulation Regarding Class Action and PAGA Representative Action Settlement
2 Agreement (“Agreement”) is made by and between Plaintiff Brian Gonzalez (“Plaintiff”) on one hand
3 and Defendant Excellence Shipping, Inc. (“Defendant”) on the other. The Agreement refers to
4 Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

5 **1. DEFINITIONS**

6 1.1. “Action” means Plaintiff’s lawsuit alleging wage and hour violations against Defendant
7 captioned Brian Gonzalez v. Excellence Shipping, Inc., Case No. CIVSB2330774, initiated on
8 November 22, 2023, and pending in Superior Court of the State of California, County of San
9 Bernardino.

10 1.2. “Administrator” means Phoenix Class Action Administration Solutions (“Phoenix”),
11 the neutral entity the Parties have selected to administer the Settlement.

12 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid
13 from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with
14 the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary
15 Approval of the Settlement.

16 1.4. “Aggrieved Employee” means all non-exempt, hourly-paid employees working for
17 Defendant during the PAGA Period in California.

18 1.5. “Class” means all current and former non-exempt, hourly-paid employees who worked
19 in California for Defendant at any time during the Class Period.

20 1.6. “Class Counsel” means Aidin D. Ghavimi and Zachary D. Greenberg of Starpoint Law
21 Corporation.

22 1.7. “Class Counsel Fees Payment” means attorneys’ fees actually incurred and to be
23 incurred by Class Counsel to prosecute the Action and approved by the Court.

24 1.8. “Class Counsel Litigation Expenses Payment” means out-of-pocket costs actually
25 incurred and to be incurred by Class Counsel to prosecute the Action and approved by the Court.

26 1.9. “Class Data” means a complete list of all Class Members that Defendant will compile
27 in good faith from its records and provide to the Settlement Administrator and Class Counsel after
28 Preliminary Approval of this Settlement. The Class List will include each Class Member’s: (a) full

1 name; (b) most recent mailing address and telephone number; (c) Social Security number; *and* (d)
2 dates of employment.

3 1.10. “Class Member” means a member of the Class.

4 1.11. “Class Member Address Search” means the Administrator’s investigation and search
5 for current Class Member mailing addresses using all reasonably available sources, methods and
6 means including, but not limited to, the National Change of Address database, skip traces, and direct
7 contact by the Administrator with Class Members.

8 1.12. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION AND
9 REPRESENTATIVE ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT
10 APPROVAL, to be mailed to Class Members in English and Spanish in the form, without material
11 variation, attached as Exhibit A and incorporated by reference into this Agreement.

12 1.13. “Class Period” means the period from November 22, 2019 through June 12, 2025.

13 1.14. “Class Representative” means the named Plaintiff in the operative complaint in the
14 Action seeking Court approval to serve as a Class Representative.

15 1.15. “Class Representative Service Payment” means the payment to the Class
16 Representative for initiating the Action and providing services in support of the Action.

17 1.16. “Defense Counsel” means Yulan Long, Esq.

18 1.17. “Effective Date” means the date after which the Settlement is approved and the Court’s
19 Judgment becomes final and no longer subject to timely post-judgment motion or appeal
20 (“Judgment”). The Court’s Judgment “becomes final” upon the latter of: (i) if no appeal is filed, the
21 expiration date of the time for the filing or noticing of any appeal from, or other challenge to, the
22 Court’s Judgment (this time period shall not be less than 60 calendar days after the Court’s Judgment
23 is entered); (ii) the date affirmance of an appeal of the Judgment becomes final under the California
24 Code of Civil Procedure and California Rules of Court; *or* (iii) the date of final dismissal of any appeal
25 from the Judgment or the final dismissal of any proceeding on review of any court of appeal decision
26 relating to the Judgment.

27 1.18. “Final Approval” means the Court’s order granting final approval of the Settlement.

28 1.19. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval

1 of the Settlement.

2 1.20. "Gross Settlement Amount" means One Hundred and Seventy-Five Thousand Dollars
3 and Zero Cents (\$175,000.00) which is the total amount Defendant agrees to pay under the Settlement,
4 except as provided in Paragraph 8.1 below and any and all employer payroll taxes owed on the Wage
5 Portions of the Individual Class Payments. The Gross Settlement Amount will be used to pay
6 Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel
7 Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment,
8 and Administration Expenses Payment. The Gross Settlement Amount has been agreed to by Plaintiff
9 and Defendant based on the agreed-upon settlement value of all claims. In no event will Defendant
10 be liable for more than the Gross Settlement Amount except as otherwise explicitly set forth herein.

11 1.21. "Individual Class Payment" means the Participating Class Member's pro rata share of
12 the Net Settlement Amount calculated according to the number of Workweeks worked during the
13 Class Period.

14 1.22. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25%
15 of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA
16 Period.

17 1.23. "Judgment" means the judgment entered by the Court based upon Final Approval.

18 1.24. "LWDA" means the California Labor and Workforce Development Agency.

19 1.25. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA
20 under Labor Code section 2699, subd. (i).

21 1.26. "Net Settlement Amount" means the Gross Settlement Amount, less the following
22 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
23 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
24 Litigation Expenses Payment, and Administration Expenses Payment. The Net Settlement Amount is
25 to be paid to Participating Class Members as Individual Class Payments. No portion of the Net
26 Settlement Fund will revert to or be retained by Defendant.

27 1.27. "Non-Participating Class Member" means any Class Member who opts out of the
28 Settlement by sending the Administrator a valid and timely Request for Exclusion pursuant to

Paragraph 7.5.1.

1.28. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

1.29. "PAGA Period" means the period from November 3, 2022, through June 12, 2025.

1.30. "PAGA Penalties" means the total amount of \$15,000.00 representing PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$3,750.00) and the 75% to the LWDA (\$11,250.00) in settlement of PAGA claims.

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

1.32. "Plaintiff" means Brian Gonzalez, the named Plaintiff in the Action.

1.33. "Preliminary Approval Order" means the proposed Order granting Preliminary Approval and Approval of PAGA Settlement.

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

1.35. "Released PAGA Claims" means the claims being released as described in Paragraph 5.3 below.

1.36. "Released Parties" means: Plaintiff, and Defendant, mutually, and each of their past, present, and future respective parents, subsidiaries, dba's, affiliates, related entities, insurers and reinsurers, and company-sponsored employee benefit plans of any nature, and each of their successors, assigns and predecessors in interest, including without limitation all of their respective current and former owners, officers, directors, shareholders, members, managers, partners, joint venturers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, professional employer organizations, attorneys, administrators, fiduciaries, trustees, and agents.

1.37. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member pursuant to Paragraph 7.5.1.

1.38. "Response Deadline" means forty-five (45) days after the Administrator mails Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax or mail Requests for Exclusion from the Settlement; or (b) fax or mail his or her Objection to

1 the Settlement. Class Members to whom Notice Packets are resent after having been returned
2 undeliverable to the Administrator shall have an additional 15 days beyond the Response Deadline
3 has expired.

4 1.39. "Settlement" means the disposition of the Action effected by this Agreement and the
5 Judgment.

6 1.40. "Workweek" means any week during which a Class Member was employed by and
7 worked for the Defendant in a non-exempt, hourly position during the Class Period in California, based
8 on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

9 2. RECITALS

10 2.1. On September 11, 2023, Plaintiff sent Defendant a letter of representation and request
11 for personnel file.

12 2.2. On June 22, 2024, Defendant produced time and pay records for all putative class
13 members.

14 2.3. On November 3, 2023, Plaintiff filed a notice with the LWDA under Labor Code §
15 2699.3, and served on Defendant stating an intention to seek civil penalties against Defendant ("PAGA
16 Notice").

17 2.4. On November 22, 2023, Plaintiff commenced this Action by filing a Complaint
18 alleging causes of actions against Defendant for: (1) failure to pay minimum wages; (2) failure to pay
19 overtime wages; (3) failure to timely pay wages during employment; (4) failure to timely pay wages
20 upon termination; (5) failure to pay meal period premiums; (6) failure to pay rest period premiums;
21 (7) failure to provide accurate wage statements; (8) failure to indemnify for business expenses; *and*
22 (9) unfair competition (the "Class Complaint").

23 2.5. On January 23, 2024, Plaintiff filed a First Amended Complaint adding a cause of
24 action under PAGA.

25 2.6. Thereafter, the Parties agreed to early efforts at informal resolution. The Parties
26 tentatively settled this matter on or around December 9, 2024.

27 2.7. Prior to settling this matter, the Parties informally exchanged documents that included:
28 (1) time and pay records for all thirty-one (31) non-exempt employees employed by Defendant through

1 the Class Period (November 22, 2019 through the present); (2) hire dates and termination dates (when
2 applicable) of non-exempt employees directly hired by Defendant during the Class Period; (3) contact
3 information for all non-exempt employees directly hired by Defendant during the Class Period; and
4 (4) Defendant's Employee Handbook in effect during the Class Period (*i.e.*, from November 22, 2019
5 through the present).

6 2.8. On or around February 3, 2025, and to ensure fairness of the instant settlement, Plaintiff
7 retained an expert to conduct an expert analysis on the time and pay records produced for all Class
8 Members during the relevant Class Period.

9 2.9. Plaintiff's expert analysis confirms the fairness of the instant settlement.

10 2.10. Plaintiff contends his investigation satisfies the criteria for court approval set forth in
11 *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal. App. 4th 1794, 1801 and *Kullar v. Foot Locker Retail,*
12 *Inc.* (2008) 168 Cal. App. 4th 116, 129-130 ("*Dunk/Kullar*").

13 2.11. The Court has not granted class certification.

14 3. MONETARY TERMS

15 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below,
16 Defendant promises to transmit funds to the Administrator representing the Gross Settlement Amount,
17 unless escalated pursuant to Paragraph 8.1 of this Agreement, and to separately transmit funds to the
18 Administrator representing any and all employer payroll taxes owed on the Wage Portions of the
19 Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any
20 payroll taxes) prior to the deadline stated in Paragraph 4.2 of this Agreement. The Administrator will
21 disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members
22 or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement
23 Amount will revert to Defendant.

24 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct
25 the following payments from the Gross Settlement Amount in the amounts specified by the Court in
26 the Final Approval:

27 3.2.1. To Plaintiff: Class Representative Service Payment to each Class Representative or
28 named Plaintiff of not more than \$7,500.00, in addition to any Individual Class

1 Payment and any Individual PAGA Payment the Class Representative or named
2 Plaintiff is entitled to receive as a Participating Class Member. Defendant will not
3 oppose Plaintiff's request for a Class Representative Service Payment that does not
4 exceed this amount. As part of the motion for Class Counsel Fees Payment and Class
5 Litigation Expenses Payment, Plaintiff will seek Court approval for any Class
6 Representative Service Payment no later than 16 court days prior to the Final Approval
7 Hearing. If the Court approves a Class Representative Service Payment less than the
8 amount requested, the Administrator will retain the remainder in the Net Settlement
9 Amount. The Administrator will obtain IRS forms W-9 from Plaintiff in advance of
10 payment, and pay the Class Representative Service Payment using IRS Form 1099.
11 Plaintiff assumes full responsibility and liability for employee taxes owed on the Class
12 Representative Service Payment.

13 3.2.2. To Class Counsel: Class Counsel will seek a Class Counsel Fees Payment of not more
14 than 33% of the Gross Settlement Amount, which unless escalated pursuant to
15 Paragraph 8.1 of his Agreement, is currently estimated to be \$57,750.00 and a Class
16 Counsel Litigation Expenses Payment of not more than \$11,000.00. Defendant will
17 not oppose requests for these respective payments provided that do not exceed these
18 respective amounts. Plaintiff will file a motion for Class Counsel Fees Payment and
19 Class Litigation Expenses Payment prior to the Final Approval Hearing. If the Court
20 approves a Class Counsel Fees Payment or a Class Counsel Litigation Expenses
21 Payment less than the amounts requested, the Administrator will allocate the remainder
22 to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel
23 or any other Plaintiff's Counsel arising from any claim to any portion any Class
24 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The
25 Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses
26 Payment using one or more IRS 1099 Forms. Class Counsel assume full responsibility
27 and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel
28 Litigation Expenses Payment and hold Released Parties harmless, and indemnify

Released Parties, from any dispute or controversy regarding any division or sharing of any of these Payments. Should the Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

3.2.3. To the Administrator: An Administration Expenses Payment not to exceed \$5,000.00, except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$5,000.00, the remainder will be included in the Net Settlement Amount for distribution to the Class.

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

3.2.4.1. Tax Allocation of Individual Class Payments. Twenty percent (20%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. Eighty percent (80%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

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

1 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
2 \$15,000.00 to be paid from the Gross Settlement Amount, with 75% (\$11,250.00)
3 allocated to the LWDA PAGA Payment and 25% (\$3,750.00) allocated to the
4 Individual PAGA Payments.

5 3.2.5.1. The Administrator will calculate each Individual PAGA
6 Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA
7 Penalties (\$3,750.00) by the total number of PAGA Pay Periods worked by all
8 Aggrieved Employees during the PAGA Period; *and* (b) multiplying the result by each
9 Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full
10 responsibility and liability for any taxes owed on their Individual PAGA Payment.

11 3.2.5.2. If the Court approves PAGA Penalties of less than the amount
12 requested, the Administrator will allocate the remainder to the Net Settlement Amount.
13 The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

14 4. **SETTLEMENT FUNDING AND PAYMENTS**

15 4.1. Class Data. Not later than 7 days after the Court grants Preliminary Approval of the
16 Settlement, Defendant will deliver their respective Class Data to the Administrator, in the form of a
17 Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must
18 maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for
19 no other purpose, and restrict access to the Class Data to only those Administrator employees who
20 need access to the Class Data to effect and perform under this Agreement. Defendant will notify Class
21 Counsel if any Defendant discovers that the Class Data omitted Class Member identifying information
22 and to provide corrected or updated Class Data to the Administrator as soon as reasonably feasible.
23 Without any extension of the deadline by which Defendant must send the Class Data to the
24 Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to
25 reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

26 4.2. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement
27 Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by
28 transmitting the funds to the Administrator no later than 30 days after the Effective Date.

1 4.3. Payments from the Gross Settlement Amount. Within 7 days after Defendant funds the
2 Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all
3 Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the
4 Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class
5 Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel
6 Litigation Expenses Payment and the Class Representative Service Payment shall not precede
7 disbursement of Individual Class Payments and the Individual PAGA Payments.

8 4.3.1. The Administrator will issue checks for the Individual Class Payments and Individual
9 PAGA Payments and send them to the Class Members via First Class U.S. Mail,
10 postage prepaid. The face of each check shall prominently state the date (not less than
11 180 days after the date of mailing) when the check will be voided. The Administrator
12 will cancel all checks not cashed by the void date. The Administrator will send checks
13 for Individual Settlement Payments to all Participating Class Members (including those
14 for whom Class Notice was returned undelivered). The Administrator will send checks
15 for Individual PAGA Payments to all Aggrieved Employees including Non-
16 Participating Class Members who qualify as Aggrieved Employees (including those for
17 whom Class Notice was returned undelivered). The Administrator may send
18 Participating Class Members a single check combining the Individual Class Payment
19 and the Individual PAGA Payment. Before mailing any checks, the Settlement
20 Administrator must update the recipients' mailing addresses using the National Change
21 of Address Database.

22 4.3.2. The Administrator must conduct a Class Member Address Search for all other Class
23 Members whose checks are returned undelivered without USPS forwarding address.
24 Within 7 days of receiving a returned check the Administrator must re-mail checks to
25 the USPS forwarding address provided or to an address ascertained through the Class
26 Member Address Search. The Administrator need not take further steps to deliver
27 checks to Class Members whose re-mailed checks are returned as undelivered. The
28 Administrator shall promptly send a replacement check to any Class Member whose

original check was lost or misplaced, requested by the Class Member prior to the void date.

4.3.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Office, Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384.

4.3.4. The Individual Settlement Payments made to Participating Class Members, and the Individual PAGA Payments made to PAGA Employees, under this Settlement, as well as any other payments made pursuant to this Settlement, shall not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan or program sponsored by Defendant (collectively, the "Benefit Plans"). Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any Benefit Plans. The Parties further agree that any payments made under the terms of this Settlement do not represent any modification of any Class Member's previously credited hours of service or other eligibility criteria and shall not be considered wages, compensation, or earnings in any year for purposes of determining any eligibility for, vesting of, credit to, or benefit accrual within, any Benefit Plans for purposes of determining any rights, eligibility, hours of service, benefit accruals, contributions or amounts to which any Class Member may be entitled with respect to any such Benefit Plans.

5. RELEASE OF CLAIMS

Effective upon the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wages Portion of the Individual Class Payments, Plaintiff, the Participating Class Members, Aggrieved Employees, and Defendant, release all claims

1 mutually against all Released Parties as follows:

2 5.1. The Parties' Release. Plaintiff, and Defendant, and their respective former and present
3 spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally,
4 release and discharge Released Parties from all claims, causes of action, transactions, occurrences,
5 rights, damages (including punitive, statutory or liquidated damages), penalties, liabilities, restitution,
6 attorneys' fees, costs, expenses, interests and losses under federal, state, local or common law, or at
7 equity, whether known or unknown, accrued or unaccrued, asserted or unasserted, which Plaintiff, or
8 Defendant, has or may have against the Released Parties as of the date of execution of this Agreement,
9 including but not limited to: (a) all claims that were, or reasonably could have been, alleged related to
10 or arising out of Plaintiff's employment with Defendant, and vice versa, and the termination of that
11 employment; (b) all claims that were, or reasonably could have been, alleged based on the facts
12 contained, in the Complaints filed in this Action, the PAGA Notices, or ascertained during the
13 pendency of the Action; *and* (c) all claims released under Paragraphs 5.2 and 5.3 below (collectively
14 the "Parties' Release"). The Parties' Release does not extend to any claims or actions to enforce this
15 Agreement, or to any claims for unemployment benefits, social security benefits, workers'
16 compensation benefits that arose at any time, or based on occurrences after the Class Period. However,
17 Plaintiff's Release does prevent Plaintiff from making any individual or personal recovery against the
18 Released Parties, including the recovery of money damages, reinstatement or other legal or equitable
19 relief, as a result of filing a charge or complaint with a government agency against any of the Released
20 Parties, with the exception of any right to seek or recover a monetary whistleblower award from a
21 government-administered whistleblower award program for providing information directly to a
22 government agency. Plaintiff's Release does not include Plaintiff's purported claims under the Fair
23 Employment and Housing Act, the California Family Rights Act, discrimination, retaliation,
24 harassment, wrongful termination in violation of public policy, intentional infliction of emotional
25 distress, and negligent infliction of emotional distress, that are the subject of separate disputes between
26 Plaintiff and Defendant. The Parties acknowledge that they may discover facts or law different from,
27 or in addition to, the facts or law that the Parties now know or believes to be true but agrees,
28 nonetheless, that the Parties' Release shall be and remain effective in all respects, notwithstanding

1 such different or additional facts or discovery of them.

2 5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes

3 of Plaintiff's Release only, Plaintiff expressly waives and relinquishes the provisions,
4 rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

9 Plaintiff's Waiver under California Civil Code section 1542 expressly excludes the
10 Individual Claims.

11 5.2. Release by Participating Class Members: For the entirety of the Class Period, all
12 Participating Class Members, on behalf of themselves and their respective former and present
13 representatives, agents, attorneys, heirs, executors, administrators, successors, and assigns, hereby
14 fully and forever release and discharge all of the Released Parties, or any of them, from all claims that
15 were alleged in the Operative Complaint, or reasonably could have been alleged based on the facts
16 stated in the Operative Complaint, including: (1) all claims for failure to pay overtime wages; (2) all
17 claims for failure to pay minimum wages; (3) all claims for failure to provide compliant meal periods,
18 or compensation in lieu thereof; (4) all claims for failure to provide compliant rest periods, or
19 compensation in lieu thereof; (5) all claims for the failure to pay wages due upon termination or
20 resignation; (6) all claims for non-compliant wage statements; (7) all claims for failure to timely pay
21 wages; (8) all claims for unpaid expenses; (9) all claims for failure to maintain accurate employment
22 records; (10) all claims asserted through California Business & Professions Code section 17200, *et seq.*;
23 and (11) PAGA arising out of the violations referenced in the Operative Complaint.

24 5.3. Release by Aggrieved Employees: For the entirety of the PAGA Period, all Aggrieved
25 Employees, on behalf of themselves and their respective former and present representatives, agents,
26 attorneys, heirs, executors, administrators, successors, and assigns, hereby fully and forever release
27 and discharge the Released Parties, or any of them, from all claims for PAGA penalties that were
28 alleged in the Operative Complaint, or reasonably could have been alleged, based on the PAGA Period

facts stated in the Operative Complaint and the PAGA Notices, including, claims for PAGA penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 in connection with alleged violations of Labor Code sections Labor Code sections 201, 201.3, 202, 203, 204, 204b, 204.1, 205, 205.5, 210, 226, 226.3, 226.7, 232, 232.5, 246 *et seq.*, 432, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, 2810.3, and 2810.5.

6. MOTION FOR PRELIMINARY APPROVAL

Plaintiff will prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals.

6.1. Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel at least 3 business days prior to filing all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve, competency, operative procedures for protecting the security of Class Data, amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance, all facts relevant to any actual or potential conflicts of interest with Class Members, and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members; (vi) a signed declaration from Class Counsel attesting to its competency to represent Class Members, its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vii) a redlined version of the Parties’ Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (viii) all facts relevant to any actual or potential conflict of interest with Class Members and the Administrator.

1 6.2. Responsibilities of Counsel. Class Counsel is responsible for expeditiously finalizing
2 and filing the Motion for Preliminary Approval after the full execution of this Agreement; obtaining a
3 prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate
4 in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the
5 Court's Preliminary Approval to the Administrator.

6 6.3. Disputed Information. Class Members will have an opportunity to dispute the
7 information provided in their Class Notices. To the extent Class Members dispute their total
8 Workweeks while working for Defendant as a non-exempt employee in California during the Class
9 Period, Class Members may produce evidence to the Administrator showing that such information
10 in the Class Notice is inaccurate. The Settlement Administrator will decide the dispute. Defendant's
11 records will be presumed correct, but the Settlement Administrator will evaluate the evidence
12 submitted by the Class Member and will make the final decision as to the merits of the dispute,
13 which decision shall be final and unappealable by any Party or Class Member. All disputes will be
14 resolved within ten (10) business days of the Response Deadline.

15 7. **SETTLEMENT ADMINISTRATION**

16 7.1. Selection of Administrator. The Parties have jointly selected Phoenix to serve as the
17 Administrator and verified that, as a condition of appointment, Phoenix agrees to be bound by this
18 Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for
19 payment of Administration Expenses. The Parties and their Counsel represent that they have no
20 interest or relationship, financial or otherwise, with the Administrator other than a professional
21 relationship arising out of prior experiences administering settlements.

22 7.2. Employer Identification Number. The Administrator shall have and use its own
23 Employer Identification Number for purposes of calculating payroll tax withholdings and providing
24 reports state and federal tax authorities.

25 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that
26 meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section
27 468B-1.
28

1 7.4. Notice to Class Members

2 7.4.1. No later than three (3) business days after receipt of the Class Data, the Administrator
3 shall notify Class Counsel that the list has been received and state the number of Class
4 Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.

5 7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14 days
6 after receiving the Class Data, the Administrator will send to all Class Members
7 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail,
8 the Class Notice with Spanish translation, substantially in the form attached to this
9 Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate
10 the dollar amounts of any Individual Class Payment and Individual PAGA Payment
11 payable to the Class Member (as applicable), and the number of Workweeks and PAGA
12 Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices,
13 the Administrator shall update Class Member addresses using the National Change of
14 Address database.

15 7.4.3. Not later than 3 business days after the Administrator’s receipt of any Class Notice
16 returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice
17 using any forwarding address provided by the USPS. If the USPS does not provide a
18 forwarding address, the Administrator shall conduct a Class Member Address Search,
19 and re-mail the Class Notice to the most current address obtained. The Administrator
20 has no obligation to make further attempts to locate or send Class Notice to Class
21 Members whose Class Notice is returned by the USPS a second time.

22 7.4.4. The deadlines for Class Members’ written objections, Challenges to Workweeks or Pay
23 Periods, and Requests for Exclusion will be extended an additional 15 days beyond
24 the 45 days otherwise provided in the Class Notice for all Class Members whose notice
25 is re-mailed. The Administrator will inform the Class Member of the extended
26 deadline with the re-mailed Class Notice. If the Administrator, Defendant or Class
27 Counsel is contacted by or otherwise discovers any persons who believe they should
28 have been included in the Class Data and should have received Class Notice, the

Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 15 days after mailing of Class Notice, or the deadline dates in the Class Notice, whichever are later.

7.5. Requests for Exclusion (Opt-Outs).

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

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

7.5.3. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all

benefits and bound by all terms and conditions of the Settlement, including the Releases under Paragraphs 5.2 and 5.3 of this Agreement, and the Judgment, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Class Members who opt out and who are Aggrieved Employees are deemed to release the Released PAGA Claims identified in Paragraph 5.3 of this Agreement and will receive an Individual PAGA Payment. Aggrieved Employees do not have the right to exclude themselves from the release of Released PAGA Claims.

7.6. Objections to Settlement

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

7.6.2. Participating Class Members may send written objections to the Administrator, by fax or mail. For the written objection to be valid, it must include: (a) the objector's full name, signature, and address (for correspondence and identity verification purposes), and telephone number; (b) a written statement of all any grounds for the objection they wish to be considered accompanied by any legal support for such objection; (c) copies of any papers, briefs, or other documents upon which the objection is based; *and* (d) a statement whether the objector intends to appear at the final fairness hearing. Class Members need not include legal arguments for their written objections to be considered. If an objector also wishes to appear at the Final Approval and Fairness Hearing, in person or through an attorney, he or she need not file a notice of intention to appear at the same time as the objection is filed. Any Class Member who does not submit a

1 timely, valid written objection to the Settlement, may still appear in Court (or hire an
2 attorney to appear in Court) to present verbal objections at the Final Approval Hearing.
3 A Participating Class Member who elects to send a written objection must send the
4 objection to the Administrator not later than 45 days after the Administrator's mailing
5 of the Class Notice (plus an additional 15 days for those Class Members whose Class
6 Notice was re-mailed).

7 7.6.3. Non-Participating Class Members have no right to object to any of the class action
8 components of the Settlement.

9 7.6.4. If a Class Member timely submits both a written objection and a valid Request for
10 Exclusion, the Request for Exclusion will be given effect and considered valid, the
11 written objection shall be rejected, and the Class Member shall not participate in or be
12 bound by the Settlement except as otherwise set forth in Paragraph 7.5.4.

13 7.7. Administrator Duties. The Administrator has a duty to perform or observe all tasks to
14 be performed or observed by the Administrator contained in this Agreement or otherwise.

15 7.7.1. Mailing Address and Fax Number. The Administrator will maintain a mailing address
16 and fax number to receive Class Member faxes and postmarked Requests for Exclusion,
17 objections to the Settlement, and challenges to information in a Class Member's Class
18 Notice.

19 7.7.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
20 promptly review on a rolling basis Requests for Exclusion to ascertain their validity.

21 7.7.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports
22 to Class Counsel and Defense Counsel that, among other things, tally the number of:
23 Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for
24 Exclusion (whether valid or invalid) received, objections received, challenges to
25 Workweeks and/or Pay Periods received and resolved, and checks mailed for
26 Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The
27 Weekly Reports must include provide the Administrator's assessment of the validity of
28 Requests for Exclusion and attach copies of all Requests for Exclusion and objections

received.

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

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

7.7.6. Administration of Taxes by the Settlement Administrator. The Settlement Administrator will be responsible for issuing to Plaintiff, Participating Class Members, Aggrieved Employees, and Class Counsel, any and all W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement. The Settlement Administrator will also be responsible for forwarding all payroll taxes and penalties to the appropriate government authorities.

8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE

Based on a review of their records, Defendant estimates that, as of the date of this Settlement

1 Agreement, there are approximately 416 Total Workweeks during the Class Period.

2 8.1. Increase in Workweeks. In the event the number of Workweeks worked by Class
3 Members during the Class Period increases by more than 10%, or 42 Workweeks, then the Gross
4 Settlement Amount shall be increased proportionally by the Workweeks in excess of 458 Workweeks
5 (416 Workweeks + 42 Workweeks) multiplied by the Workweek Value. The “Workweek Value” shall
6 be calculated by dividing the originally agreed-upon Gross Settlement Amount (\$175,000.00) by 416
7 which amounts to a Workweek Value of \$421.00. Thus, for example should there be 460 Workweeks
8 in the Class Period, then the Gross Settlement Amount shall be increased by \$842.00. ((460
9 Workweeks – 458 Workweeks) x \$421.00 per Workweek.)

10 **9. DEFENDANT’S RIGHT TO WITHDRAW**

11 If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 7% of
12 the total of all Class Members, Defendant may, but is not obligated to, withdraw from the Settlement.
13 The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or
14 effect whatsoever, and that neither Party will have any further obligation to perform under this
15 Agreement. Defendant must notify Class Counsel and the Court of its election to withdraw not later
16 than seven (7) days after the Administrator sends the final Exclusion List to Defense Counsel. Should
17 Defendant elect to withdraw from the Settlement, Defendant shall remain responsible for paying all
18 Settlement Administration expenses incurred through the date of withdrawal.

19 **10. MOTION FOR FINAL APPROVAL**

20 Prior to the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final
21 approval of the Settlement that includes a request for approval of the PAGA settlement under Labor
22 Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively
23 “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel
24 at least three (3) business days prior to filing the Motion for Final Approval. Class Counsel and
25 Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to
26 resolve any disagreements concerning the Motion for Final Approval.

27 10.1. Response to Objections. Each Party retains the right to respond to any objection raised
28 by a Participating Class Member, including the right to file responsive documents in Court no later

1 than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by
2 the Court.

3 10.2. Duty to Cooperate. If (a) the Court does not grant Final Approval or conditions Final
4 Approval on any material change to the Settlement (including, but not limited to, the scope of release
5 to be granted by Class Members), or (b) if the Settlement does not become final for any other reason,
6 then this Agreement, and any documents generated to bring it into effect, will be null and void.
7 However, the Parties shall work together in good faith in an effort to address Court concerns prior to
8 any nullification of the Settlement. Any order or judgment entered by the Court in furtherance of this
9 Agreement and this Settlement will likewise be treated as void from the beginning. The Court's
10 decision to award less than the amounts requested for the Class Representative Service Payment, Class
11 Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Administration Expenses
12 Payment, shall not constitute a material change to the Settlement within the meaning of this Paragraph.

13 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment,
14 the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i)
15 enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii)
16 addressing such post-Judgment matters as are permitted by law.

17 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
18 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class
19 Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective
20 counsel, and all Participating Class Members who did not object to the Settlement as provided in this
21 Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and
22 appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary
23 writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such
24 motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform
25 under this Agreement will be suspended until such time as the appeal is finally resolved and the
26 Judgment becomes final.

27 10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
28 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material

modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this Paragraph, as long as the Gross Settlement Amount does not increase.

11. AMENDED JUDGMENT

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

12. ADDITIONAL PROVISIONS

12.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Complaints filed in this Action or the PAGA Notices or any other claim made by Plaintiff has merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or enter Judgment, the stipulation to certification and representative treatment shall be void and Defendant may contest certification and representative treatment for any reason. Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation or other dispute (except for proceedings to enforce or effectuate the Settlement and this Agreement). Except as necessary in a proceeding to enforce the terms of this Settlement, this Agreement and its terms and provisions will not be offered or received as evidence in

1 any action or proceeding to establish any liability or admission on the part of any of the Released
2 Parties or to establish the existence of any condition constituting a violation of, or a non-compliance
3 with, federal, state, local or other applicable law by any of the Released Parties.

4 12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and
5 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is
6 filed, they and each of them will not disclose, disseminate or publicize, or cause or permit another
7 person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly,
8 specifically or generally, to any person, corporation, association, government agency, or other entity
9 except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep
10 this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report
11 income to appropriate taxing authorities; (4) in response to a court order or subpoena; *or* (5) in
12 response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees
13 to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking
14 such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to,
15 directly or indirectly, initiate any conversation or other communication, before the filing of the Motion
16 for Preliminary Approval, any with third party regarding the terms of this Agreement.

17 12.3. No Solicitation. The Parties separately agree that they and their respective counsel and
18 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from
19 the Judgment. Class Counsel will not represent any Class Members with respect to any such objections
20 or opt outs. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to
21 communicate with Class Members in accordance with Class Counsel's ethical obligations owed to
22 Class Members.

23 12.4. No Public Comment: The Parties and their counsel agree that they will not issue any
24 press releases, initiate any contact with the press, respond to any press inquiry, or have any
25 communication with the press about the fact, amount or terms of Settlement.

26 12.5. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
27 together with its attached exhibits shall constitute the entire agreement between the Parties relating to
28 the Settlement, superseding any and all oral representations, warranties, covenants, or inducements

1 made to or by any Party.

2 12.6. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
3 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate
4 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its
5 terms, and to execute any other documents reasonably required to effectuate the terms of this
6 Agreement including any amendments to this Agreement.

7 12.7. Cooperation. The Parties and their counsel will cooperate with each other and use
8 their best efforts, in good faith, to implement the Settlement by, among other things, modifying the
9 Settlement Agreement, submitting supplemental evidence and supplementing points and authorities
10 as requested by the Court. In the event the Parties are unable to agree upon the form or content of any
11 document necessary to implement the Settlement, or on any modification of the Agreement that may
12 become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or
13 the Court for resolution.

14 12.8. No Prior Assignments. The Parties separately represent and warrant that they have not
15 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber
16 to any person or entity and portion of any liability, claim, demand, action, cause of action, or right
17 released and discharged by the Party in this Settlement.

18 12.9. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are
19 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon
20 as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as
21 amended) or otherwise.

22 12.10. Modification of Agreement. This Agreement, and all parts of it, may be amended,
23 modified, changed, or waived only by an express written instrument signed by all Parties or their
24 respective counsel, and approved by the Court.

25 12.11. Agreement Binding on Successors. This Agreement will be binding upon, and inure to
26 the benefit of, the successors of each of the Parties.

27 12.12. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
28 governed by and interpreted according to the internal laws of the State of California, without regard

1 to conflict of law principles.

2 12.13. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation
3 of this Agreement. This Agreement will not be construed against any Party on the basis that the Party
4 was the drafter or participated in the drafting

5 12.14. Confidentiality. To the extent permitted by law, all agreements made, and orders
6 entered during Action and in this Agreement relating to the confidentiality of information shall survive
7 the execution of this Agreement

8 12.15. Use and Return of Class Data. Information and documents provided to Class Counsel
9 pursuant to Cal. Evid. Code § 1152, and all copies and summaries of the Class Data provided to Class
10 Counsel by Defendant in connection with the mediation, other settlement negotiations, or in
11 connection with the Settlement, may be used only with respect to this Settlement, and no other purpose,
12 and may not be used in any way that violates any existing contractual agreement, statute, or rule of
13 court.

14 12.16. Headings. The descriptive heading of any section or paragraph of this Agreement is
15 inserted for convenience of reference only and does not constitute a part of this Agreement.

16 12.17. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall
17 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend
18 or federal legal holiday, such date or deadline shall be on the first business day thereafter.

19 12.18. Execution in Counterparts. This Agreement may be executed in one or more
20 counterparts by facsimile, electronically (*i.e.*, DocuSign), copied, or scanned copies of the signature
21 page, all of which for purposes of this Agreement shall be accepted as an original. All executed
22 counterparts and each of them will be deemed to be one and the same instrument. Any executed
23 counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

24 12.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the
25 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree
26 that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to
27 bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

28 12.20. Severability. In the event that one or more of the provisions contained in this

1 Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such
2 invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendant's
3 Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in
4 writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in
5 this Agreement. Before declaring any provision of this Agreement invalid, the Court will first attempt
6 to construe the provision as valid to the fullest extent possible consistent with applicable precedents
7 so as to define all provisions of this Agreement valid and enforceable.

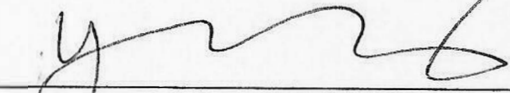
8 12.21. Breach. In the event any civil action or litigation instituted to remedy, prevent, or obtain
9 relief from a Material Breach of this Settlement Agreement by a Party, the prevailing Party in such
10 enforcement action will be entitled to attorneys' fees and costs in connection with such enforcement
11 action. Any attorneys' fees and costs awarded against the Class Members and in favor of Defendant
12 shall be paid by Class Counsel. "Material Breach" as used in this paragraph means a material breach
13 of the Settlement Agreement terms that prevents the Settlement from being completed in accordance
14 with its terms, including any failure by Defendant to fund the Settlement and any breach of section
15 12.3 by Class Counsel. However, the Parties shall work together in good faith in an effort to remedy
16 any perceived material breach of the Settlement Agreement before instituting any civil action or
17 litigation to remedy, prevent, or obtain relief related to the breach.

18 [Signature blocks on following page.]
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7 

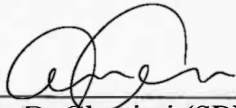
Brian Gonzalez (Jan 25, 2025 19:31 PST)

8 Plaintiff Brian Gonzalez
9

10
11 

12 Defendant Excellence Shipping, Inc.
13
14
15
16
17

18 **APPROVED AS TO FORM**
19

20
21 

22 Aidin D. Ghavimi (SBN 305808)

23 *aidin@starpoinlaw.com*

Zachary D. Greenberg (SBN 331501)

24 *zach@starpoinlaw.com*

STARPOINT, LC

15233 Ventura Boulevard, Suite PH16

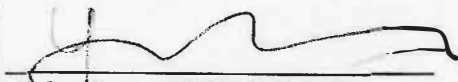
Sherman Oaks, CA 91403

T: (310) 424-9971

F: (424) 255-4035

27 *Counsel for Plaintiff Brian Gonzalez*
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Yulan Long (SBN 343970)
AttorneyLong@JoyJonie.com
556 N. Diamond Bar Blvd., Ste. 108
Diamond Bar, CA 91765
T: (571) 375-9865
Counsel for Defendant Excellence Shipping, Inc.