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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF SANTA BARBARA**

17 SALVADOR MESA, an individual, on
behalf of himself and others similarly
18 situated,

19 Plaintiff,

20 vs.

21 FIELDING GRADUATE UNIVERSITY, a
California Corporation and DOES 1 through
50, inclusive,

22 Defendants.

Case No.: 24CV00853

CLASS ACTION

Assigned for All Purposes

To: Hon. Donna D Geck
Dept.: SB Dept. 4

**CLASS AND PAGA ACTION
SETTLEMENT AGREEMENT**

Class Complaint Filed: February 15, 2024
First Amended Complaint: March 7, 2024
Trial Date: None Set

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Salvador Mesa (“Plaintiff”) and defendant Fielding Graduate University (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “the Parties,” or individually as “Party.”

1. DEFINITIONS.

1.1 “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Salvador Mesa v. Fielding Graduate University* filed on February 15, 2024, and pending in Superior Court of the State of California, County of Santa Barbara, Case No. 24CV00853.

1.2 “Administrator” means Apex Class Action (“Apex”), the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3 “Administration Costs” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement. Apex has provided a not to exceed bid of \$7,000 to administer this Settlement.

1.4 “Aggrieved Employee” means and includes all individuals who were or have been employed by Defendant (also “FGU”) in California as non-exempt employees at any time during the PAGA Period.

1.5 “Class” means all individuals employed as non-exempt, hourly employees by FGU within the State of California during the Class Period.

1.6 “Class Counsel” means Emil Davtyan, David Yeremian, Alvin B. Lindsay, and Melissa Rodriguez of D.LAW, INC.

1.7 “Class Counsel Fees Payment” means an award of attorneys’ fees granted to Class Counsel and paid from the Gross Settlement Amount. The Parties have agreed Plaintiff will request approval from the Court of up to one-third of the Gross Settlement Amount (i.e., up to \$200,000.00 (Two Hundred Thousand Dollars and Zero Cents)).

1.8 “Class Counsel Litigation Expenses Payment” means the amount allocated to Class Counsel for reimbursement of reasonable expenses and costs incurred to prosecute the Action and

1 paid from the Gross Settlement Amount. The Parties have agreed Plaintiff will request approval
2 from the Court of up to \$15,000.00 (Fifteen Thousand Dollars and zero cents).

3 1.9 “Class Data” means Class Member identifying information in Defendant’s possession
4 including the Class Member’s name, last-known mailing address, Social Security number, and
5 number of Class Period Workweeks and PAGA Pay Periods.

6 1.10 “Class Member” or “Settlement Class Member” means a member of the Class, as
7 either a Participating Class Member or Non-Participating Class Member (including a Non-
8 Participating Class Member who qualifies as an Aggrieved Employee).

9 1.11 “Class Member Address Search” means the Administrator’s investigation and search
10 for current Class Member mailing addresses using all reasonably available sources, methods, and
11 means including, but not limited to, the National Change of Address database, skip traces, and direct
12 contact by the Administrator with Class Members.

13 1.12 “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION
14 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class
15 Members in the form, without material variation, attached as **Exhibit A** and incorporated by
16 reference into this Agreement.

17 1.13 “Class Period” or “Class Settlement Period” means the period from February 15,
18 2020 and ending on September 16, 2024.

19 1.14 “Class Representative” means the named Plaintiff, Salvador Mesa, in the Operative
20 Complaint in the Action seeking Court approval to serve as a Class Representative.

21 1.15 “Class Representative Service Payment” or “Enhancement Award” means the
22 payment to the Class Representative for initiating the Action and providing services in support of
23 the Action. Defendant agrees not to oppose a request for a Representative Enhancement Award of
24 up to \$10,000.00 for Plaintiff.

25 1.16 “Court” means the Superior Court of California, County of Santa Barbara.

26 1.17 “Defendant” means named Defendant FIELDING GRADUATE UNIVERSITY
27 (also “FGU”).

28 1.18 “Defense Counsel” means Fisher & Phillips LLP.

1 1.19 “Effective Date” means the effective date of Settlement which will be the later of the
2 following: (a) if no timely objections are filed or if all objections are withdrawn, the date upon which
3 the Court enters Final Approval; (b) if an objection is filed and not withdrawn, the date for filing an
4 appeal and no such appeal being filed; or (c) if any timely appeals are filed, the date of the resolution
5 (or withdrawal) of any such appeal in a way that does not alter the terms of the Settlement.

6 1.20 “Final Approval” means the Court’s order granting final approval of the Settlement.

7 1.21 “Final Approval Hearing” means the Court’s hearing on the Motion for Final
8 Approval of the Settlement.

9 1.22 “Final Judgment” means the Judgment Entered by the Court upon Granting Final
10 Approval of the Settlement.

11 1.23 “Gross Settlement Amount” or “GSA” means the non-reversionary payment of
12 \$600,000.00 (Six Hundred Thirty Thousand Dollars with Zero Cents), which is the total amount
13 Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross
14 Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the
15 LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative
16 Service Payment, the Administrator’s Expenses, and all employee-side taxes arising from the
17 payments made under this Settlement.

18 1.24 “Individual Class Payment” means the Participating Class Member’s pro rata share
19 of the Net Settlement Amount calculated according to the number of Workweeks worked during the
20 Class Period.

21 1.25 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of
22 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked
23 during the PAGA Period.

24 1.26 “Judgment” means the judgment entered by the Court based upon the Final
25 Approval.

26 1.27 “LWDA” means the California Labor and Workforce Development Agency, the
27 agency entitled, under Labor Code section 2699, subd. (i).
28

1 1.28 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA
2 under Labor Code section 2699, subd. (i).

3 1.29 “Net Settlement Amount” means the Gross Settlement Amount, less the following
4 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
5 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
6 Litigation Expenses Payment, the Administration Expenses Payment, and all employee side taxes
7 arising from the payments made under this Settlement. The remainder is to be paid to Participating
8 Class Members as Individual Class Payments on a *pro rata* basis.

9 1.30 “Non-Participating Class Member” means any Class Member who opts out of the
10 Settlement by sending the Administrator a valid and timely Request for Exclusion.

11 1.31 “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee
12 worked for Defendant for at least one day during the PAGA Period.

13 1.32 “PAGA Period” means the period from February 15, 2023 and ending on September
14 16, 2024.

15 1.33 “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

16 1.34 “PAGA Notice” means Plaintiff’s February 15, 2024 letter to LWDA (LWDA-CM-
17 1011329-24) and the providing notice pursuant to Labor Code section 2699.3, subd.(a).

18 1.35 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from
19 the Gross Settlement Amount (\$50,000.00), allocated 25% to the Aggrieved Employees
20 (\$12,500.00) and 75% to LWDA (\$37,500.00) in settlement of PAGA claims.

21 1.36 “Participating Class Member” means a Class Member who does not submit a valid
22 and timely Request for Exclusion from the Settlement.

23 1.37 “Plaintiff” means SALVADOR MESA, the named plaintiff in the Action.

24 1.38 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of
25 the Settlement.

26 1.39 “Preliminary Approval Order” means the proposed Order Granting Preliminary
27 Approval and Approval of PAGA Settlement.

28

1 1.40 “Released Class Claims” means the claims being released as described in Paragraph
2 5.2 below.

3 1.41 “Released PAGA Claims” means the claims being released as described in Paragraph
4 5.4 below.

5 1.42 “Released Parties” means: Defendant Fielding Graduate University, as named by
6 Plaintiff in the Mesa FAC, and its past, present and/or future, direct and/or indirect, officers,
7 directors, members, managers, employees, agents, representatives, attorneys, insurers, partners,
8 investors, shareholders, administrators, parent companies, subsidiaries, sectors, affiliates, divisions,
9 predecessors, successors, assigns, and joint venturers

10 1.43 “Request for Exclusion” means a Class Member’s submission of a written request to
11 be excluded from the Class Settlement signed by the Class Member.

12 1.44 “Response Deadline” means forty-five (45) days after the Administrator mails Notice
13 to Class Members and Aggrieved Employees and shall be the last date on which Class Members
14 may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail
15 his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after
16 having been returned undeliverable to the Administrator shall have an additional 14 calendar days
17 beyond the Response Deadline has expired.

18 1.45 “Settlement” means the disposition of the Action effected by this Agreement and the
19 Judgment.

20 1.46 “Workweek” means any week during which a Class Member worked for Defendant
21 for at least one day, during the Class Period.

22 **2. RECITALS.**

23 2.1 On February 15, 2024, Plaintiff Salvador Mesa commenced a Class Action by filing
24 a Complaint alleging causes of action against Defendant for (1) Failure to Pay Minimum Wages;
25 (2) Failure to Pay Wages and Overtime under Labor Code 510; (3) Meal Period Liability Under
26 Labor Code 226.7; (4) Rest Break Liability Under Labor Code 226.7; (5) Violation of Labor Code
27 226; (6) Violation of Labor Code 221; (7) Violation of Labor Code § 204; (8) Violation of Labor
28 Code § 203; (9) Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5; (10)

1 Violation of Labor Code § 2802; (10) Failure to Reimburse Necessary Business Expenses Under
2 Labor Code § 2802; (11) Violation of Business & Professions Code 17200 *et seq.* On March 7,
3 2022, Plaintiff Salvador Mesa filed a First Amended Complaint adding a cause of action for
4 penalties under PAGA (“Operative Complaint”). Defendant denies the allegations in the Operative
5 Complaint, denies any failure to comply with the laws identified in the Operative Complaint, and
6 denies any and all liability for the causes of action alleged.

7 2.2 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice
8 to Defendant and the LWDA by sending the PAGA Notice on February 15, 2024 (LWDA-CM-
9 1011329-24).

10 2.3 On July 17, 2024, the Parties participated in an all-day mediation presided over by
11 Mediator Lisa Klerman and were able to agree to general settlement terms. The Parties memorialized
12 their agreement in a Memorandum of Understanding on August 5, 2024 that led to this Agreement
13 to settle the Action.

14 2.4 In advance of mediation, Class Counsel conducted a thorough investigation into the
15 facts of, and applicable law to, the Action, including speaking to current and former employees of
16 Defendant regarding Defendant’s employment policies and practices. Prior to mediation, to properly
17 evaluate the strengths and weakness of the claims and engage in meaningful settlement discussions,
18 Plaintiffs also obtained and analyzed a representative sampling of time and payroll data for Class
19 Members and the necessary policy documents through informal discovery to properly evaluate the
20 strengths and weakness of the claims and engage in meaningful settlement discussions. Plaintiff’s
21 investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker*
22 *Retail, Inc.*, 48 Cal.App.4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168
23 Cal.App.4th 116, 129-130 (2008) (“*Dunk/Kullar*”).

24 2.5 The Court has not granted class certification because the Parties engaged in
25 mediation before any class certification.

26 2.6 The Parties, Class Counsel, and Defense Counsel represent that they are not aware
27 of any other pending matter or action asserting claims that will be extinguished or affected by the
28 Settlement.

1 **3. MONETARY TERMS.**

2 3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below,
3 Defendant will pay a non-reversionary Gross Settlement Amount ("GSA") in the amount of
4 \$600,000.00 (Six Hundred Thousand Dollars and Zero Cents) to fully settle, resolve, and extinguish
5 all claims asserted in the Action, including without limitation all claims asserted in the PAGA Letter
6 referenced in Plaintiff's First Amended Complaint in the Action and to separately pay any and all
7 employer payroll taxes owed on the wage portions of the Individual Class Payments. Defendant has
8 no obligation to pay the GSA (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of
9 this Agreement. The Administrator will disburse the entire GSA without asking or requiring
10 Participating Class Members or Aggrieved Employees to submit any claim as a condition of
11 payment. None of the GSA will revert to Defendant.

12 3.2 Payments from the Gross Settlement Amount. The Administrator will make and
13 deduct the following payments from the GSA, in the amounts specified by the Court in the Final
14 Approval:

15 3.2.1 To Plaintiff: A payment for the Class Representative Service Payment to the Class
16 Representative, Salvador Mesa, of not more than \$10,000.00 (Ten Thousand Dollars and Zero
17 Cents) in addition to any Individual Class Payment and any Individual PAGA Payment the Class
18 Representative is entitled to receive as a Participating Class Member. Defendant will not oppose
19 Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As
20 part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff
21 will seek Court approval for any Class Representative Service Payments no later than 16 (sixteen)
22 court days prior to the Final Approval Hearing, or as otherwise ordered by the Court. If the Court
23 approves a Class Representative Service Payment less than the amount requested, the Administrator
24 will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class
25 Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and
26 liability for employee taxes owed on the Class Representative Service Payment.

27 3.2.2 To Class Counsel: A Class Counsel Fee Payment of not more than one-third which
28 is currently estimated to be \$200,000.00 (Two Hundred Thousand and Zero Cents) and a Class

1 Counsel Litigation Expenses Payment of not more than \$15,000.00 (Fifteen Thousand Dollars and
2 Zero Cents). Defendant will not oppose requests for these payments provided that such requests do
3 not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees
4 Payment and Class Litigation Expenses Payment no later than 16 (sixteen) court days prior to the
5 Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel
6 Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the
7 remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel
8 or any other Plaintiff's Counsel arising from any claim to any portion of Class Counsel Fee Payment
9 and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel
10 Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class
11 Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment
12 and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies
13 Defendant, from any dispute or controversy regarding any division or sharing of any of these
14 Payments.

15 3.2.3 To the Administrator: An Administrator Expenses Payment to Apex not to exceed
16 \$7,000.00 (Seven Thousand Dollars and Zero Cents) except for a showing of good cause and as
17 approved by the Court. To the extent the Administration Expenses are less or the Court approves
18 payment of less than \$7,000.00, the Administrator will retain the remainder in the Net Settlement
19 Amount.

20 3.2.4 To Each Participating Class Member: An Individual Class Payment is calculated by
21 (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all
22 Participating Class Members during the Class Period and (b) multiplying the result by each
23 Participating Class Member's Workweeks.

24 3.2.4.1 Tax Allocation of Individual Class Payments. 20% of each Participating
25 Class Member's Individual Class Payment will be allocated to the Settlement of wage claims (the
26 "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS
27 W-2 Form. 40% of each Participating Class Member's Individual Class Payment will be allocated
28 to the settlement of claims for interest and the remaining 40% will go toward penalties (the "Non-

Wage Portion”). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. The Settlement Administrator will be responsible for issuing to Participating Class Members a form W-2 for amounts deemed wages and an IRS Form 1099 for the amounts deemed penalties and interest. 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.

3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00) to be paid from the Gross Settlement Amount, with 75% (\$37,500.00) allocated to the LWDA PAGA Payment and 25% (\$12,500.00) allocated to the Individual PAGA Payments.

3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties of \$12,500.00 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1 Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 149 Class Members who collectively worked a total of 15,370 Workweeks from February 15, 2020 and ending on September 16, 2024, and 93 Aggrieved Employees who worked a total of 2,816 PAGA Pay Periods from February 15, 2023 and ending on September 16, 2024.

1 4.2 Class Data. Not later than fourteen (14) days after the Court grants Preliminary Approval of
2 the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft
3 Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the
4 Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other
5 purpose, and restrict access to the Class Data to Administrator employees who need access to the
6 Class Data to effect and perform under this Agreement. Defendant has a continuing duty to
7 immediately notify Class Counsel if it discovers that the Class Data omitted Class Member
8 identifying information and to provide corrected or updated Class Data as soon as reasonably
9 feasible. Without any extension of the deadline by which Defendant must send the Class Data to the
10 Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to
11 reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

12 4.3 Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement
13 Amount and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by
14 transmitting the funds to the Administrator no later than 14 (fourteen) days after the Effective Date.

15 4.4 Payments from the Gross Settlement Amount. Within 14 (fourteen) days after Defendant
16 funds the GSA, the Administrator will mail checks for all Individual Class Payments, all Individual
17 PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class
18 Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class
19 Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class
20 Counsel Litigation Expenses Payment, and the Class Representative Service Payment shall not
21 precede disbursement of Individual Class Payments and Individual PAGA Payments.

22 4.4.1 The Administrator will issue checks for the Individual Class Payments and/or
23 Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail. The
24 face of each check shall prominently state the date (180 days after the date of mailing) when the
25 check will be voided ("Void Date"). The Administrator will cancel all checks not cashed by the
26 Void Date. The Administrator will send checks for Individual Settlement Payments to all
27 Participating Class Members (including those for whom the Class Notice was returned undelivered).
28 The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees

1 including Non-Participating Class Members who qualify as Aggrieved Employees (including those
2 for whom Class Notice was returned undelivered). The Administrator may send Participating Class
3 Members a single check combining the Individual Class Payment and the Individual PAGA
4 Payment should they also be eligible as a PAGA Aggrieved Employee. Before mailing any checks,
5 the Settlement Administrator must update the recipients' mailing addresses using the National
6 Change of Address Database.

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

15 4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA
16 Payment check is uncashed and canceled after the void date, the Administrator shall transmit the
17 funds represented by such checks to the California Controller's Unclaimed Property Fund in the
18 name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of
19 California Code of Civil Procedure Section 384, subd. (b).

20 4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not
21 obligate Defendant to confer any additional benefits or make any additional payments to Class
22 Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

23 5. **RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the GSA and
24 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
25 Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as
26 follows:

27 5.1 Plaintiff's Release. Plaintiff and his or her respective former and present spouses,
28 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release

1 and discharge Released Parties from all claims, transactions, or occurrences, that occurred during
2 the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have
3 been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims
4 that were, or reasonably could have been, alleged based on facts contained in the Operative
5 Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under paragraph
6 5.2 and 5.4, below ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or
7 actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits,
8 disability benefits, social security benefits, workers' compensation benefits that arose at any time,
9 or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover
10 facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to
11 be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
12 notwithstanding such different or additional facts or Plaintiff's discovery of them.

13 5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes
14 of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits,
15 if any, of section 1542 of the California Civil Code, which reads:

16 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
17 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
18 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
19 **RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE**
20 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**
21 **DEBTOR OR RELEASED PARTY.**

22 5.2 Released Class Claims: All Participating Class Members, on behalf of themselves and their
23 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
24 and assigns, release Released Parties from any of the claims, causes of action or legal theories of
25 relief pleaded and/or that could have been pled in the Operative Complaint, including: (1) failure to
26 pay minimum wages; (2) failure to pay wages and overtime under Labor Code 510; (3) meal period
27 liability under Labor Code 226.7; (4) rest break liability under Labor Code 226.7; (5) violation of
28 Labor Code 226; (6) violation of Labor Code 221; (7) violation of Labor Code § 204; (8) violation

1 of Labor Code § 203; (9) failure to maintain records required under Labor Code §§ 1174, 1174.5;
2 (10) failure to reimburse necessary business expenses under Labor Code § 2802; and (11) violation
3 of Business & Professions Code 17200 *et seq.*, and from the claims, causes of action or legal theories
4 of relief that could have been alleged in the Operative Complaint based on the allegations therein
5 (collectively, the “Released Class Claims”). The Released Claims include claims under: Labor Code
6 sections 201, 202, 203, 204, 210, 218, 218.5, 218.6, 221, 226, 226.4, 226.7, 246, 248.1, 248.2, 248.5,
7 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5,
8 1199, 2802, 2810.5, Business & Professions Code section 17200, *et seq.*, and the applicable IWC
9 Wage Orders.

10 5.3 This release shall apply to claims arising during the Class Period. Except as set forth in
11 Section 5.2 and 5.4 of this Agreement, Participating Class Members do not release any other claims,
12 including claims for vested benefits, violation of the Fair Employment and Housing Act,
13 unemployment insurance, disability, social security, workers’ compensation, or claims based on
14 facts occurring outside the Class Period.

15 5.4 Released PAGA Claims: All Aggrieved Employees, including Non-Participating Class
16 Members who are Aggrieved Employees, are deemed to release, on behalf of themselves and their
17 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
18 and assigns, the Released Parties from all claims for any and all claims for the recovery for civil
19 penalties, attorneys fees and costs permissible under PAGA which Plaintiff and/or the Aggrieved
20 Employees had, or may claim to have, against Released Parties, arising out of the violations alleged
21 in the Mesa FAC, or the PAGA Notice submitted in connection with the Mesa Action, including
22 failure to pay overtime compensation, failure to pay minimum wages, failure to provide compliant
23 meal and rest breaks, failure to pay meal and rest period premiums, failure to pay all wages owed at
24 discharge or resignation; failure to timely pay wages during employment; failure to provide
25 complete and accurate wage statements; failure to keep complete and accurate payroll records;
26 failure to reimburse necessary business-related expenses; and violations of Labor Code sections 201,
27 202, 203, 204, 206.5, 210, 218, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.4, 226.7, 246, 248.1, 248.2,
28 248.5, 432.5, 510, 511, 512(a), 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.1, 1194.2,

1 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, 2698, et seq., 2800, 2802, 2926, 2927, and the applicable
2 IWC Wage Orders. This release is limited to claims arising during the PAGA Period (collectively,
3 the “Released PAGA Claims”).

4 6. **MOTION FOR PRELIMINARY APPROVAL.** Plaintiff will prepare and file a motion
5 for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s
6 current checklist for Preliminary Approvals.

7 6.1 **Plaintiff’s Responsibilities.** Plaintiff will prepare and deliver to Defense Counsel all
8 documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and
9 memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the
10 Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code
11 Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval
12 of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the
13 Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its
14 willingness to serve; competency; operative procedures for protecting the security of Class Data;
15 amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all
16 facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and
17 extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed
18 declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts
19 relevant to any actual or potential conflicts of interest with Class Members, and/or the
20 Administrator; (vi) a signed declaration from Class Counsel attesting to its competency to represent
21 the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial
22 notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code
23 section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vii) all
24 facts relevant to any actual or potential conflict of interest with Class Members, and/or the
25 Administrator. In their Declarations, Plaintiff and Class Counsel shall aver that they are not aware
26 of any other pending matter or action asserting claims that will be extinguished or adversely affected
27 by the Settlement.

1 6.2 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for
2 expeditiously finalizing and filing the Motion for Preliminary Approval; obtaining a prompt hearing
3 date for the Motion for Preliminary Approval, and filing the Motion for Preliminary Approval no
4 later than 16 (sixteen) court days before the hearing, unless otherwise ordered by the Court; and
5 appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is
6 responsible for delivering the Court’s Preliminary Approval to the Administrator.

7 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
8 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
9 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or
10 by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary
11 Approval or conditions Preliminary Approval on any material change to this Agreement, Class
12 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting
13 in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the
14 Court’s concerns.

15 **7. SETTLEMENT ADMINISTRATION.**

16 7.1 Selection of Administrator. The Parties have jointly selected Apex Class Action (“Apex”) to
17 serve as the Administrator and verified that, as a condition of appointment, Apex agrees to be bound
18 by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange
19 for 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 Employer
23 Identification Number for purposes of calculating payroll tax withholdings and providing reports to
24 state and federal tax authorities.

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

1 7.4 Notice to Class Members.

2 7.4.1 No later than five (5) calendar 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 Members,
4 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
6 (fourteen) days 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, the Class
8 Notice with Spanish translation substantially in the form attached to this Agreement as Exhibit A.
9 The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual
10 Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of
11 Workweeks and PAGA Pay Periods used to calculate these amounts. Before mailing Class Notices,
12 the Administrator shall update Class Member addresses using the National Change of Address
13 database.

14 7.4.3 Not later than five (5) calendar days after the Administrator’s receipt of any Class
15 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using
16 any forwarding address provided by the USPS. If the USPS does not provide a forwarding address,
17 the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to
18 the most current address obtained. The Administrator has no obligation to make further attempts to
19 locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second
20 time.

21 7.4.4 The deadlines for Class Members’ written objections, challenges to Workweeks
22 and/or Pay Periods, and Requests for Exclusion will be extended an additional fourteen days (14)
23 days beyond the forty-five (45) days otherwise provided in the Class Notice for all Class Members
24 whose notice is re-mailed. The Administrator will inform the Class Member of the extended
25 deadline with the re-mailed Class Notice.

26 7.4.5 If the Administrator, Defendant, or Class Counsel is contacted by or otherwise
27 discovers any persons who believe they should have been included in the Class Data and should
28 have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone,

1 and in good faith in an effort to agree on whether to include them as Class Members. If the Parties
2 agree, such persons will be Class Members entitled to the same rights as other Class Members, and
3 the Administrator will send, via email or overnight delivery, a Class Notice requiring them to
4 exercise options under this Agreement not later than 14 (fourteen) days after receipt of Class Notice,
5 or the deadline dates in the Class Notice, whichever are later.

6 7.5 Requests for Exclusion (Opt-Outs).

7 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement
8 must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later
9 than 45 days after the Administrator mails the Class Notice (plus an additional 14 (fourteen) days
10 for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a
11 Class Member or his/her representative that reasonably communicates the Class Member's election
12 to be excluded from the Settlement and includes the Class Member's name, address, and email
13 address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed,
14 or postmarked by the Response Deadline. Class Members will not be barred from appearing at the
15 final approval hearing if they have not complied with the objection procedures for mailing
16 objections to the Settlement Administrator.

17 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails
18 to contain all the information specified in the Class Notice. The Administrator shall accept any
19 Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the
20 person as a Class Member and the Class Member's desire to be excluded. The Administrator's
21 determination shall be final and not appealable or otherwise susceptible to challenge. If the
22 Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator
23 may demand additional proof of the Class Member's identity. The Administrator's determination of
24 authenticity shall be final and not appealable or otherwise susceptible to challenge.

25 7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion
26 is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and
27 bound by all terms and conditions of the Settlement, including the Participating Class Members'
28

1 Releases under Paragraphs 5.2 and 5.4 of this Agreement, regardless of whether the Participating
2 Class Member actually receives the Class Notice or objects to the Settlement.

3 7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-
4 Participating Class Member and shall not receive an Individual Class Payment or have the right to
5 object to the class action components of the Settlement. Because future PAGA claims are subject to
6 claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved
7 Employees are deemed to release the claims identified in Paragraph 5.4 of this Agreement and are
8 eligible for an Individual PAGA Payment.

9 7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after the
10 Administrator mails the Class Notice (plus an additional 14 (fourteen) days for Class Members
11 whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay
12 Periods allocated to the Class Member in the Class Notice. The Class Member may challenge the
13 allocation by communicating with the Administrator via fax, email, or mail. The Administrator must
14 encourage the challenging Class Member to submit supporting documentation. In the absence of
15 any contrary documentation, the Administrator is entitled to presume that the Workweeks contained
16 in the Class Notice are correct so long as they are consistent with the Class Data. The
17 Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods
18 shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall
19 promptly provide copies of all challenges to the calculation of Workweeks and/or Pay Periods to
20 Defense Counsel and Class Counsel and the Administrator's determination of the challenges.

21 7.7 Objections to Settlement.

22 7.7.1 Only Participating Class Members may object to the class action components of the
23 Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or
24 amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses
25 Payment, and/or Class Representative Service Payment.

26 7.7.2 Participating Class Members may send written objections to the Administrator, by
27 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an
28 attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A

1 Participating Class Member who elects to send a written objection to the Administrator must do so
2 not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 14
3 (fourteen) days for Class Members whose Class Notice was re-mailed). Class Members will not be
4 barred from appearing at the final approval hearing if they have not complied with the objection
5 procedures for mailing objections to the Settlement Administrator.

6 7.7.3 Non-Participating Class Members have no right to object to any of the class action
7 components of the Settlement.

8 7.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
9 performed or observed by the Administrator contained in this Agreement or otherwise.

10 7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish,
11 maintain and use an internet website to post information of interest to Class Members including the
12 date, time, and location for the Final Approval Hearing and copies of the Settlement Agreement;
13 Motion for Preliminary Approval; Preliminary Approval Order; Class Notice; Motion for Final
14 Approval; Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment
15 and Class Representative Service Payment; the Final Approval Order; and the Judgment. The
16 Administrator will also maintain and monitor an email address and a toll-free telephone number to
17 receive Class Member calls, faxes, and emails.

18 7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
19 promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than
20 five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the
21 Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and
22 other identifying information of Class Members who have timely submitted valid Requests for
23 Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members
24 who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from
25 Settlement submitted (whether valid or invalid).

26 7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports
27 to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices
28 mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or

1 invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or
2 resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments
3 (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the
4 validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections
5 received.

6 7.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to
7 address and make final decisions consistent with the terms of this Agreement on all Class Member
8 challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision
9 shall be final and not appealable or otherwise susceptible to challenge.

10 7.8.5 Administrator’s Declaration. Not later than 14 (fourteen) days before the date by
11 which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator
12 will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court
13 attesting to its due diligence and compliance with all of its obligations under this Agreement,
14 including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered,
15 the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for
16 Exclusion from Settlement it received (both valid or invalid), the number of written objections and
17 attach the Exclusion List. The Administrator will supplement its declaration as needed or requested
18 by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s
19 declaration(s) in Court.

20 7.8.6 Final Report by Settlement Administrator. Within 10 (ten) days after the
21 Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide
22 Class Counsel and Defense Counsel with a final report detailing its disbursements by employee
23 identification number only of all payments made under this Agreement. At least 15 (fifteen) days
24 before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel
25 and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement
26 of all payments required under this Agreement. Class Counsel is responsible for filing the
27 Administrator's declaration in Court.

1 8. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on its records,
2 Defendant represents there are 149 Class Members who collectively worked a total of 15,370
3 Workweeks from February 15, 2020 to September 16, 2024, and 93 Aggrieved Employees who
4 worked a total of 2,816 PAGA Pay Periods from February 15, 2023 to September 16, 2024. Should
5 the final number of Class Workweeks worked by the Class Members during the Class Period
6 ultimately increase by more than 10% of the Class Workweeks Amount (i.e., by more than 1,537),
7 Defendant shall increase the Gross Settlement Amount on a pro-rata basis equal to the percentage
8 increase in the number of workweeks worked by the Class Members above 10% of the Class
9 Workweeks Amount. For example, if the number of workweeks worked by Class Members during
10 the Class Period increases by 11% to 17,061 workweeks, the Gross Settlement Amount will increase
11 by 1% to \$606,000 (“Escalator Clause”)

12 9. If this provision is triggered so as to increase the GSA, the Parties agree that the portion of
13 the GSA allocated to attorneys’ fees will increase proportionally such that the total amount of
14 attorneys’ fees remains one-third of the GSA after the upward adjustment required by this provision
15 is implemented.

16 10. **DEFENDANT’S RIGHT TO WITHDRAW.** Defendant represents, as of the date of this
17 Settlement Agreement, there are 149 Class Members. If the number of valid Requests for Exclusion
18 identified in the Exclusion List exceeds ten percent (10%) of the total of all Class Members (i.e.
19 more than fifteen (15) opt-outs), Defendant may, but is not obligated, to elect to withdraw from the
20 Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be *void ab initio*,
21 have no force or effect whatsoever, and that neither Party will have any further obligation to perform
22 under this Agreement; provided, however, Defendant will remain responsible for paying all
23 Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel
24 and the Court of its election to withdraw not later than 20 (twenty) days after the Administrator
25 sends the final Exclusion List to Defense Counsel; late elections will have no effect.

26 11. **MOTION FOR FINAL APPROVAL.** Not later than 16 (sixteen) court days before the
27 calendared Final Approval Hearing, unless otherwise scheduled by the Court, Plaintiff will file in
28 Court, a Motion for Final Approval of the Settlement that includes a request for approval of the

1 PAGA settlement under Labor Code section 2699, subd. (l); a Proposed Final Approval Order; and
2 a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of
3 these documents to Defense Counsel not later than seven (7) days prior to filing the Motion for Final
4 Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by
5 telephone, and in good faith, to resolve any disagreements concerning the Motion for Final
6 Approval.

7 11.1 Response to Objections. Each Party retains the right to respond to any objection
8 raised by a Participating Class Member, including the right to file responsive documents in Court
9 no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or
10 accepted by the Court.

11 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
12 Approval on any material change to the Settlement (including, but not limited to, the scope of release
13 to be granted by Class Members), the Parties will expeditiously work together in good faith to
14 address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The
15 Court’s decision to award less than the amounts requested for the Class Representative Service
16 Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or
17 Administrator Expenses Payment shall not constitute a material modification to the Agreement
18 within the meaning of this paragraph.

19 11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment,
20 the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of
21 (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and
22 (iii) addressing such post-Judgment matters as are permitted by law.

23 11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
24 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class
25 Counsel Litigation Expenses Payment as set forth in this Settlement, the Parties, their respective
26 counsel, and all Participating Class Members who did not object to the Settlement as provided in
27 this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment
28 and appellate proceedings, the right to file motions to vacate judgment, motions for new trial,

1 extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to
2 oppose such motions, writs, or appeals. If an objector appeals the Judgment, the Parties' obligations
3 to perform under this Agreement will be suspended until such time as the appeal is finally resolved
4 and the Judgment becomes final, except as to matters that do not affect the amount of the Net
5 Settlement Amount.

6 11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
7 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material
8 modification of this Agreement (including, but not limited to, the scope of release to be granted by
9 Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously
10 work together in good faith to address the appellate court's concerns and to obtain Final Approval
11 and Entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses
12 reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's
13 award of the Class Representative Service Payment or any payments to Class Counsel shall not
14 constitute a material modification of the Judgment within the meaning of this paragraph, as long as
15 the Gross Settlement Amount remains unchanged.

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

19 13. ADDITIONAL PROVISIONS.

20 13.1 No Admission of Liability, Class Certification, or Representative Manageability for
21 Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims.
22 Nothing in this Agreement is intended or should be construed as an admission by Defendant that
23 any of the allegations in the Operative Complaint have merit or that Defendant has any liability for
24 any claims asserted; nor should it be intended or construed as an admission by Plaintiff that
25 Defendant's defenses in the Action have merit. The Parties agree that class certification and
26 representative treatment is for purposes of this Settlement only. If, for any reason, the Court does
27 not grant Preliminary Approval, Final Approval, or enter Judgment, Defendant reserves the right to
28 contest certification of any class for any reason, Defendant reserves all available defenses to the

1 claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds
2 available and to contest Defendant's defenses. The Settlement, this Agreement, and Parties'
3 willingness to settle the Action will have no bearing on, and will not be admissible in connection
4 with, any litigation (except for proceedings to enforce or effectuate the Settlement and this
5 Agreement).

6 13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant,
7 and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement
8 is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit
9 another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or
10 indirectly, specifically or generally, to any person, corporation, association, government agency, or
11 other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be
12 instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent
13 necessary to report income to appropriate taxing authorities; (4) in response to a court order or
14 subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government
15 agency. Each Party agrees to immediately notify the other Party of any judicial or agency order,
16 inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant, and Defense
17 Counsel separately agree not to, directly or indirectly, initiate any conversation or other
18 communication, before the filing of the Motion for Preliminary Approval, with any third party
19 regarding this Agreement or the matters giving rise to this Agreement except to respond only that
20 "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's
21 communications with Class Members in accordance with Class Counsel's ethical obligations owed
22 to Class Members.

23 13.3 No Solicitation. The Parties separately agree that they and their respective counsel
24 and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal
25 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability
26 to communicate with Class Members in accordance with Class Counsel's ethical obligations owed
27 to Class Members.

1 13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this
2 Agreement together with its attached exhibits shall constitute the entire agreement between the
3 Parties relating to the Settlement, superseding any and all oral representations, warranties,
4 covenants, or inducements made to or by any Party.

5 13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
6 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate
7 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its
8 terms, and to execute any other documents reasonably required to effectuate the terms of this
9 Agreement including any amendments to this Agreement.

10 13.6 Cooperation. The Parties and their counsel will cooperate with each other and use
11 their best efforts, in good faith, to implement the Settlement by, among other things, modifying the
12 Settlement Agreement, submitting supplemental evidence, and supplementing points and authorities
13 as requested by the Court. In the event the Parties are unable to agree upon the form or content of
14 any document necessary to implement the Settlement, or on any modification of the Agreement that
15 may become necessary to implement the Settlement, the Parties will seek the assistance of a
16 mediator and/or the Court for resolution.

17 13.7 No Prior Assignments. The Parties separately represent and warrant that they have
18 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
19 encumber to any person or entity and portion of any liability, claim, demand, action, cause of action,
20 or right released and discharged by the Party in this Settlement.

21 13.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel
22 are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
23 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part
24 10, as amended) or otherwise.

25 13.9 Modification of Agreement. This Agreement, and all parts of it, may be amended,
26 modified, changed, or waived only by an express written instrument signed by all Parties or their
27 representatives, and approved by the Court.

1 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure
2 to the benefit of, the successors of each of the Parties.

3 13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be
4 governed by and interpreted according to the internal laws of the state of California, without regard
5 to conflict of law principles.

6 13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation
7 of this Agreement. This Agreement will not be construed against any Party on the basis that the
8 Party was the drafter or participated in the drafting.

9 13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders
10 entered during Action and in this Agreement relating to the confidentiality of information shall
11 survive the execution of this Agreement.

12 13.14 Headings. The descriptive heading of any section or paragraph of this Agreement is
13 inserted for convenience of reference only and does not constitute a part of this Agreement.

14 13.15 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement
15 shall be to calendar days. In the event, any date or deadline set forth in this Agreement falls on a
16 weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

17 13.16 Notice. All notices, demands, or other communications between the Parties in
18 connection with this Agreement will be in writing and deemed to have been duly given as of the
19 third business day after mailing by United States mail, or the day sent by email or messenger,
20 addressed as follows:

21 To Plaintiff:

22 D.LAW, INC.
23 Emil Davtyan
24 Emil@d.law
25 Alvin B. Lindsay
26 a.lindsay@d.law
27 450 North Brand, Suite 840
28 Glendale, CA 91203
 Telephone: (818) 962-6465
 Fax: (818) 962-6469

To Defendant:

Lonnie D. Giamela
lgiamela@fisherphillips.com
Harrison Thorne
hthorne@fisherphillips.com
FISHER & PHILLIPS LLP
444 South Flower Street, Suite 1500
Los Angeles, California 90071
Telephone: (213) 330-4500
Facsimile: (213) 330-4501

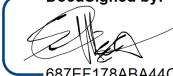
13.17 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or by email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same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

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

IT IS SO AGREED.

By the Parties:

DATED: 10/23/2024 _____

DocuSigned by:

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Plaintiff SALVADOR MESA

DATED: _____

Defendant FIELDING GRADUATE UNIVERSITY

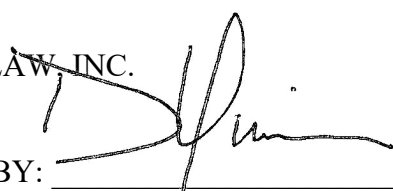
By: June Klein

Position: Chief Financial Officer

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Approved by counsel:

DATED: October 23, 2024

D.LAW INC.

BY: _____
David Yeremian
Alvin B. Lindsay
Melissa Rodriguez
Counsel for Plaintiff Salvador Mesa

DATED: October __, 2024

FISHER & PHILLIPS LLP

BY: _____
Lonnie D. Giamela
Harrison Thorne
Counsel for Defendant Fielding Graduate University

To Defendant:

Lonnie D. Giamela
lgiamela@fisherphillips.com
Harrison Thorne
hthorne@fisherphillips.com
FISHER & PHILLIPS LLP
444 South Flower Street, Suite 1500
Los Angeles, California 90071
Telephone: (213) 330-4500
Facsimile: (213) 330-4501

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

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

IT IS SO AGREED.

By the Parties:

DATED: _____

Plaintiff SALVADOR MESA

DATED: 10/24/2024 PDT _____

June Klein

Defendant FIELDING GRADUATE UNIVERSITY

By: June Klein

Position: Chief Financial Officer

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Approved by counsel:

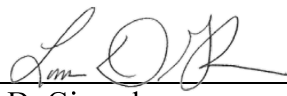
DATED: October __, 2024

D.LAW, INC.

BY: _____
David Yeremian
Alvin B. Lindsay
Melissa Rodriguez
Counsel for Plaintiff Salvador Mesa

DATED: October 24, 2024

FISHER & PHILLIPS LLP

BY:  _____
Lonnie D. Giamela
Harrison Thorne
Counsel for Defendant Fielding Graduate University

Signature Certificate



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