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Attorneys for Plaintiff LEONARD BUTLER, on behalf of himself and all others
similarly situated and aggrieved

[Additional Counsel Listed on Next Page]

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

LEONARD BUTLER, on behalf of himself
and all others similarly situated and
aggrieved,

Plaintiff,

v.

XXALER, INC., an California Corporation;
and DOES 1 through 100,
inclusive,

Defendant.

CASE NO.: 37-2023-00052006-CU-OE-
CTL

[Assigned for all purposes to Hon. Euketa
Oliver, Dept. C-75]

**CLASS AND PAGA SETTLEMENT
AGREEMENT**

Complaint Filed: April 12, 2024
Trial Date: None Set

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7 Attorneys for Defendant, XXALER, INC.

1 This Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement” or
2 “Settlement Agreement”) is made by and between Plaintiff Leonard Butler (“Plaintiff”) and
3 Defendant XXALER, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant
4 collectively as “Parties,” or individually as “Party.”

5 **1. DEFINITIONS**

6 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour class action captioned
7 *Leonard Butler v. Xxaler, Inc.*, Case No. 37-2003-00052006-CU-OE-CTL, initiated on
8 December 1, 2023, and pending in Superior Court of the State of California, County of San
9 Diego, as consolidated with San Diego Superior Court, Case No. 37-2024-00017447-CU-OE-
10 CTL, initiated on April 12, 2024.

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

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

17 1.4. “Aggrieved Employees” means a person employed by Defendant in California and
18 classified as a non-exempt, hourly-paid employee who worked for Defendant during the PAGA
19 Period.

20 1.5. “Class” or “Settlement Class” means all persons employed by Defendant in California
21 and classified as a non-exempt, hourly-paid employee who worked for Defendant during the
22 Class Period.

23 1.6. “Class Counsel” means David D. Bibiyan, Vedang J. Patel and Megan R. Lazar of
24 Bibiyan Law Group, P.C. and Kevin A. Lipeles of Lipeles Law Group, APC.

25 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean
26 the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
27 expenses, respectively, incurred to prosecute the Action.

28 1.8. “Class Data” means Class Member identifying information in Defendant’s custody,

possession, or control, including the Class Member's (1) name; (2) last known address(es); (3) last known telephone number(s); (4) last four digits of the last known Social Security Number(s); and (5) the dates of employment (i.e., hire dates, and, if applicable, re-hire date(s) and/or separation date(s)).

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

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

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

1.12. "Class Period" means the period from December 1, 2019 through August 11, 2025.

1.13. "Class Representative" means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

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

1.15. "Court" means the Superior Court of the State of California, County of San Diego.

1.16. "Defendant" means named Defendant XXALER, Inc.

1.17. "Defense Counsel" means Heather N. Stone of Lagasse Branch Bell & Kinkead, LLP.

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

1 notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after
2 the appellate court affirms the Judgment and issues a remittitur, or the expiration of the time to
3 file a petition for writ of certiorari to the California Supreme Court; or (c) if there is an intervenor
4 and no appeal is filed, the expiration date of the time for filing or noticing any appeal of the
5 Judgment.

6 1.19. "Final Approval" means the Court's order granting final approval of the Settlement.

7 1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval
8 of the Settlement.

9 1.21. "Final Judgment" means the Judgment entered by the Court based upon the Final
10 Approval.

11 1.22. "Gross Settlement Amount" means \$295,920.00 (Two Hundred Ninety-Five Thousand
12 Nine Hundred Twenty Dollars and Zero Cents) which is the total amount Defendant agrees to
13 pay under the Settlement, except as provided in Paragraph 8.1 below and any and all employer
14 payroll taxes owed on the Wage Portions of the Individual Class Payments. The Gross Settlement
15 Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA
16 PAGA Payment, Class Counsel Fees Payment, Class Counsel Expenses Payment, Class
17 Representative Service Award, and Administrator's Expenses.

18 1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of the
19 Net Settlement Amount calculated according to the number of Workweeks worked during the
20 Class Period.

21 1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of
22 the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA
23 Period.

24 1.25. "Judgment" means the judgment entered by the Court based upon Final Approval.

25 1.26. "LWDA" means the California Labor and Workforce Development Agency, the agency
26 entitled, under Labor Code section 2699, subd. (i).

27 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA
28 under Labor Code section 2699, subd. (i).

1 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following
2 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
3 Payment, Class Representative Service Award, Class Counsel Fees Payment, Class Counsel
4 Litigation Expenses Payment, and Administration Expenses Payment. The remainder is to be
5 paid to Participating Class Members as Individual Class Payments.

6 1.29. “Non-Participating Class Member” means any Class Member who opts out of the
7 Settlement by sending the Administrator a valid and timely Request for Exclusion.

8 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee was
9 employed by Defendant for at least one day during the PAGA Period, based on hire dates, re-
10 hire dates (as applicable), and termination dates (as applicable).

11 1.31. “PAGA Period” means the period from December 1, 2022 through the end of the Class
12 Period.

13 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

14 1.33. “PAGA Notices” means Plaintiff’s December 1, 2023, December 4, 2023, and April 12,
15 2024, letters to Defendant and the LWDA, providing notice pursuant to Labor Code section
16 2699.3 subd. (a).

17 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the
18 Gross Settlement Amount: Twenty Thousand Dollars and Zero Cents (\$20,000.00), allocated
19 25% to the Aggrieved Employees (\$5,000.00) and 75% to the LWDA (\$15,000.00) in settlement
20 of PAGA claims.

21 1.35. “Participating Class Member” means a Class Member who does not submit a valid and
22 timely Request for Exclusion from the Settlement.

23 1.36. “Plaintiff,” “Named Plaintiff,” or “Class Representative” means Leonard Butler, the
24 named Plaintiff in the Action.

25 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the
26 Settlement.

27 1.38. “Preliminary Approval Order” means the proposed Order granting Preliminary Approval
28 and Approval of PAGA Settlement.

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

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

1.41. “Released Parties” means: Defendant, and any of its past, present and/or future, directors, officers, partners, principals, trustees, shareholders, owners, members, managers, employees, administrators, agents, attorneys, advisors, accountants, representatives, insurers, predecessors, successors, assigns, DBAs, parents, subsidiaries, and legally affiliated entities including without limitation ECN Services, Inc.

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

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

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

1.45. “Workweek” means any week during which a Class Member was employed by Defendant for at least one day in a non-exempt, hourly-paid position during the Class Period or PAGA Period in California, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

2. RECITALS

2.1. Procedural Background

2.1.1. On December 1, 2023, Plaintiff filed a wage and hour lawsuit against Defendant in San Diego Superior Court, Case No. 37-2003-00052006-CU-OE-CTL, alleging: (1) failure to pay overtime; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure

1 to provide rest periods; (5) failure to maintain records and provide accurate itemized wage
2 statements; (6) failure to pay wages due upon termination; (7) failure to reimburse business
3 expenses; (8) failure to provide uniform and maintenance allowance; (9) failure to provide paid
4 sick days; (10) failure to allow inspection of employment records; and (11) unfair competition.
5 (First Class Action).

6 2.1.2. On April 12, 2024, Plaintiff filed a wage and hour lawsuit against Defendant in
7 San Diego Superior Court, Case No. 37-2024-00017447-CU-OE-CTL, alleging: (1) failure to
8 pay overtime; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure
9 to provide rest periods, or compensation in lieu thereof; (5) waiting time penalties; (6) wage
10 statement violations; (7) failure to timely pay wages; (8) failure to indemnify; (9) failure to pay
11 interest on deposits; 10) violation of labor code section 227.3; and (11) unfair competition
12 (Second Class Action).

13 2.1.3. On October 14, 2025, Judge James A. Mangione, ordered the First Class Action
14 and Second Class Action consolidated for all purposes. (Collectively, the First Class Action and
15 Second Class Action are referred to herein as the “Class Action” or “Action”).

16 2.2. On December 1, 2023, December 4, 2023, and April 12, 2024, Plaintiff filed with the
17 LWDA and served on Defendant notices under Labor Code section 2699, et seq. seeking to
18 represent other non-exempt employees against Defendant for various Labor Code violations
19 (“PAGA Notices”).

20 2.3. Thereafter, the Parties agreed to exchange informal discovery and attend mediation.

21 2.4. Prior to mediation, Plaintiff obtained, through informal discovery: (1) a sampling of time
22 and payroll records for Class Members during the Class Period; (2) class data points, including
23 the number of Class Members and Workweeks during the Class Period, the number of Aggrieved
24 Employees and Pay Periods during the PAGA Period; (3) Defendant’s wage and hour policy
25 documents; (4) all documents pertaining to Plaintiff available to Defendant.

26 2.5. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in
27 *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker*
28 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

2.6. On June 11, 2025, the Parties participated in an all-day mediation presided over by Gig Kyriacou. The mediation was successful, which led to the Parties reaching an agreement to settle the Action. As part of this Agreement, the Parties agree to stipulate to Plaintiff's filing of a First Amended Complaint in the Class Action, adding all allegations set forth in the PAGA Notices, to effectively consolidate the class and PAGA claims for purposes of Settlement (hereinafter, the "Action"). The First Amended Complaint is the operative complaint in the Action ("Operative Complaint").

2.7. The Court has not granted class certification.

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

3. MONETARY TERMS

3.1. Gross Settlement Amount. Defendant promises to pay \$295,920.00 as the Gross Settlement Amount, unless increased pursuant to Paragraph 8.1 of this Agreement, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes), or any sums out of this settlement prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

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

3.2.1. To Plaintiff: Class Representative Service Award to Plaintiff in the amount of up to \$10,000.00, in addition to any Individual Class Payment and any Individual PAGA Payment Plaintiff is entitled to receive as a Participating Class Member. Defendant will not oppose Plaintiff's request for a Class Representative Service Award that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class

1 Litigation Expenses Payment, Plaintiff will seek Court approval for any Class
2 Representative Service Award prior to the Final Approval Hearing. If the Court
3 approves a Class Representative Service Award less than the amount requested, the
4 Administrator will retain the remainder in the Net Settlement Amount and shall be
5 distributed to Participating Class Members as part of their Individual Settlement
6 Payment. The Administrator will pay the Class Representative Service Award using
7 IRS Form 1099. Plaintiff assumes full responsibility and liability for any applicable
8 taxes owed on the Class Representative Service Award.

9 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one third
10 (1/3) of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph
11 8.1 of this Agreement, is currently estimated to be \$98,640.00 and a Class Counsel
12 Litigation Expenses Payment of not more than \$30,000.00. Defendant will not oppose
13 requests for these payments provided that do not exceed these amounts. Plaintiff and/or
14 Class Counsel will endeavor to file a motion for Class Counsel Fees Payment and Class
15 Litigation Expenses Payment prior to the Final Approval Hearing. If the Court
16 approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses
17 Payment less than the amounts requested, the Administrator will allocate the remainder
18 to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel
19 or any other Plaintiff's Counsel arising from any claim to any portion any Class
20 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The
21 Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses
22 Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility
23 and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel
24 Litigation Expenses Payment and holds Defendant harmless, and indemnifies
25 Defendant, from any dispute or controversy regarding any division or sharing of any of
26 these Payments. There will be no additional charge of any kind to either the Settlement
27 Class Members or request for additional consideration from Defendant for such work
28 unless, Defendant materially breaches this Agreement, including any term regarding

1 funding, and further efforts are necessary from Class Counsel to remedy said breach,
2 including, without limitation, moving the Court to enforce the Agreement. Should the
3 Court approve attorneys' fees and/or litigation costs and expenses in amounts that are
4 less than the amounts provided for herein, then the unapproved portion(s) shall be a
5 part of the Net Settlement Amount.

6 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
7 \$7,250.00 except for a showing of good cause and as approved by the Court. To the
8 extent the Administration Expenses are less or the Court approves payment less than
9 \$7,250.00, the Administrator will retain the remainder in the Net Settlement Amount.

10 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated
11 by (a) dividing the Net Settlement Amount by the total number of Workweeks worked
12 by all Participating Class Members during the Class Period and (b) multiplying the
13 result by each Participating Class Member's Workweeks.

14 3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating
15 Class Member's Individual Class Payment will be allocated to settlement of
16 wage claims (the "Wage Portion"). The Wage Portions are subject to tax
17 withholding and will be reported on an IRS W-2 Form. The 80% of each
18 Participating Class Member's Individual Class Payment will be allocated to
19 settlement of claims for interest and penalties (the "Non-Wage Portion"). The
20 Non-Wage Portions are not subject to wage withholdings and will be reported
21 on IRS 1099 Forms. Participating Class Members assume full responsibility and
22 liability for any employee taxes owed on their Individual Class Payment.

23 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual
24 Class Payments. Non-Participating Class Members will not receive any
25 Individual Class Payments. The Administrator will retain amounts equal to their
26 Individual Class Payments in the Net Settlement Amount for distribution to
27 Participating Class Members on a pro rata basis.

28 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of

\$20,000.00 to be paid from the Gross Settlement Amount, with 75% (\$15,000.00) allocated to the LWDA PAGA Payment and 25% (\$5,000.00) 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 (\$5,000.00) 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 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 PAGA Pay Periods. Based on a review of its records to date, Defendant estimates there are 117 Class Members who collectively worked a total of 6,576 Workweeks, and 84 Aggrieved Employees who worked a total of 2,0991 PAGA Pay Periods.

4.2. Class Data. Not later than 30 days after full execution of this Agreement, Defendant will simultaneously deliver enough identifying data to the Class Administrator to permit it to evaluate the accurate number of Workweeks during the Class Period (to include Class Member names and/or employee identification numbers, and beginning and end dates of work within the Class Period) in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator its employees who need access to the Class Data to effect and perform under this Agreement. The Administrator shall not provide the Class Data to Class Counsel. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted

1 class member identifying information and to provide corrected or updated Class Data as soon as
2 reasonably feasible. Without any extension of the deadline by which Defendant must send the
3 Class Data to the Administrator, Defendant and its counsel will expeditiously use best efforts, in
4 good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class
5 Data. Defendant will deliver the full Class Data to the Class Administrator within 30 days of the
6 court granting Preliminary Approval to permit class administration.

7 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement
8 Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by
9 transmitting the funds to the Administrator no later than sixty-five days (65 days) after the
10 Effective Date.

11 4.4. Within 7 days after Defendant funds the Gross Settlement Amount, the Administrator will
12 mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA
13 PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the
14 Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment.
15 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
16 Payment and the Class Representative Service Payment shall not precede disbursement of
17 Individual Class Payments, and the Individual PAGA Payments.

18 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or
19 Individual PAGA Payments and send them to the Class Members via First Class U.S.
20 Mail, postage prepaid. The face of each check shall prominently state the date (not less
21 than 180 days after the date of mailing) when the check will be voided. The
22 Administrator will cancel all checks not cashed by the void date. The Administrator
23 will send checks for Individual Settlement Payments to all Participating Class Members
24 (including those for whom Class Notice was returned undelivered). The Administrator
25 will send checks for Individual PAGA Payments to all Aggrieved Employees including
26 Non-Participating Class Members who qualify as Aggrieved Employees (including
27 those for whom Class Notice was returned undelivered). The Administrator may send
28 Participating Class Members a single check combining the Individual Class Payment

and the Individual PAGA Payment in each installment. Before mailing the Class Notice, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

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

4.4.3. 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 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, subd. (b).

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

5. RELEASE OF CLAIMS

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

5.1 Plaintiff's Release. Plaintiff and his respective former and present spouses, partners,

1 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally,
2 completely and generally release and discharge the Released Parties from any and all known or
3 unknown claims, transactions, occurrences, acts, or omission occurring, arising, or accruing at
4 any time prior to Plaintiff's execution of this Agreement. Without effecting the generality of the
5 foregoing release, Plaintiff's general and complete release includes, but is not limited to, a release
6 of: (a) all known or unknown claims arising from Plaintiff's employment or other relationship
7 with any of the Released Parties; (b) all claims that were, or reasonably could have been, alleged,
8 based on the facts contained, in the Operative Complaint and/or any of the complaints Plaintiff
9 filed prior to the Operative Complaint; and (c) all PAGA claims that were, or reasonably could
10 have been, alleged based on facts contained in the Operative Complaint and Plaintiff's PAGA
11 Notices ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to
12 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
13 benefits, social security benefits, workers' compensation benefits that arose at any time, or based
14 on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts
15 or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to
16 be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all
17 respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

18 5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
19 purposes of Plaintiff's Release only, Plaintiff expressly waives and relinquish the
20 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,
21 which reads:

22 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
23 CREDITOR OR RELEASING PARTY [PLAINTIFF] DOES NOT KNOW OR
24 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING
25 THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
26 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR
27 RELEASED PARTY [DEFENDANT OR RELEASED PARTIES].

28 5.2. Release of Class Claims: For the duration of the Class Period, all Participating Class

Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from any and all claims that were alleged, or reasonably could have been alleged, based on the facts and claims stated in the Operative Complaint, including without limitation to any and all claims for: (i) failure to pay premium overtime wages due; (ii) failure to pay minimum wages due; (iii) failure to provide meal periods and pay associated meal period premiums; (iv) failure to provide rest periods and pay associated rest period premiums; (v) failure to maintain records and provide accurate itemized wage statements; (vi) failure to pay wages due upon termination; (vii) failure to reimburse business expenses; (viii) failure to provide uniform and maintenance allowance (Lab. Code section 2802); (ix) failure to provide paid sick days; (x) failure to allow inspection of employment records; (xi) unfair competition; (xii) waiting time penalties; (xiii) failure to timely pay wages; (xiv) failure to pay interest on deposits; (xv) violations of Labor Code section 227.3, and claims arising from the same primary rights, including those under the FLSA.

5.3. Except as set forth in Section 5.2 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.4. Release of PAGA Claims: For the duration of the PAGA Period, all Aggrieved Employees, including without limitation all Non-Participating Class Members, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on any of the facts alleged in the Operative Complaint and PAGA Notices, including without limitation, any and all claims for civil/PAGA penalties or other PAGA remedies relating to: (i) failure to pay premium overtime wages due; (ii) failure to pay minimum wages due; (iii) failure to provide meal periods and pay associated meal period premiums; (iv) failure to provide rest periods and pay associated rest period premiums; (v) failure to maintain records and provide accurate itemized wage statements; (vi) failure to pay wages due upon termination; (vii) failure to reimburse

business expenses; (viii) failure to provide uniform and maintenance allowance (Lab. Code section 2802); (ix) failure to provide paid sick days; (x) failure to allow inspection of employment records; (xi) unfair competition; (xii) waiting time penalties; (xiii) failure to timely pay wages; (xiv) failure to pay interest on deposits; and (xv) violations of Labor Code section 227.3.

6. MOTION FOR PRELIMINARY APPROVAL

Class Counsel 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 endeavor to deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the Class Notice (attached hereto as Exhibit A), 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 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; (iv) 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; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notices of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class Members and the Administrator.

6.2. Responsibilities of Counsel. Class Counsel is responsible for expeditiously finalizing and

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

5 6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
6 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
7 Defense Counsel will expeditiously work together on behalf of the Parties by meeting and
8 conferring, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary
9 Approval or conditions Preliminary Approval on any material change to this Agreement, Class
10 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by
11 meeting and conferring, and in good faith, to modify the Agreement and otherwise satisfy the
12 Court's concerns.

13 7. SETTLEMENT ADMINISTRATION

14 7.1. Selection of Administrator. The Parties have jointly selected Phoenix to serve as the
15 Administrator and verified that, as a condition of appointment, Phoenix agrees to be bound by
16 this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange
17 for payment of Administration Expenses. The Parties and their Counsel represent that they have
18 no interest or relationship, financial or otherwise, with the Administrator other than a professional
19 relationship arising out of prior experiences administering settlements.

20 7.2. Employer Identification Number. The Administrator shall have and use its own Employer
21 Identification Number for purposes of calculating payroll tax withholdings and providing reports
22 state and federal tax authorities.

23 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
24 the requirements of a Qualified Settlement Fund ("QSF") under U.S. Treasury Regulation section
25 468B-1.

26 7.4. Notice to Class Members

27 7.4.1. No later than three (3) business days after receipt of the Class Data, the
28 Administrator shall notify Class Counsel that the list has been received and state the

number of Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the Class Data.

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

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

7.4.4. The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 15 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

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

1 Class Members, and the Administrator will send, via email or overnight delivery, a Class
2 Notice requiring them to exercise options under this Agreement not later than 15 days
3 after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are
4 later.

5 **7.5. Requests for Exclusion (Opt-Outs).**

6 7.5.1. Class Members who wish to exclude themselves from (opt-out of) the Class
7 Settlement must send the Administrator, by mail, a signed written Request for Exclusion
8 not later than 45 days after the Administrator mails the Class Notice (plus an additional
9 15 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion
10 is a letter from a Class Member or his/her representative, signed by the Class Member,
11 that reasonably communicates the Class Member's election to be excluded from the
12 Settlement and includes the Class Member's name, signature, the last four digits of their
13 Social Security Number, address, and email address or telephone number. To be valid,
14 a Request for Exclusion must be timely postmarked by the Response Deadline.

15 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it
16 fails to contain all the information specified in the Class Notice. The Administrator
17 shall accept any Request for Exclusion as valid if the Administrator can reasonably
18 ascertain the identity of the person as a Class Member and the Class Member's desire
19 to be excluded. The Administrator's determination shall be final and not appealable or
20 otherwise susceptible to challenge. If the Administrator has reason to question the
21 authenticity of a Request for Exclusion, the Administrator may demand additional proof
22 of the Class Member's identity. The Administrator's determination of authenticity shall
23 be final and not appealable or otherwise susceptible to challenge.

24 7.5.3. Every Class Member who does not submit a timely and valid Request for
25 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled
26 to all benefits and bound by all terms and conditions of the Settlement, including the
27 Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement,
28 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, all Aggrieved Employees are deemed to release the claims identified in Paragraph 5.4 of this Agreement and are eligible for an Individual PAGA Payment.

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

7.7. Objections to Settlement

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

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

1 A Participating Class Member who elects to send a written objection to the
2 Administrator must do so not later than 45 days after the Administrator's mailing of the
3 Class Notice (plus an additional 15 days for Class Members whose Class Notice was re-
4 mailed).

5 7.7.3. Non-Participating Class Members have no right to object to any of the class action
6 components of the Settlement.

7 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
8 performed or observed by the Administrator contained in this Agreement or otherwise.

9 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will maintain
10 and use an internet website to post information of interest to Class Members including
11 the date, time and location for the Final Approval Hearing and copies of the Settlement
12 Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class
13 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment,
14 Class Counsel Litigation Expenses Payment and Class Representative Service Award,
15 the Final Approval and the Judgment. The Administrator will also maintain and monitor
16 an email address and a toll-free telephone number to receive Class Member calls and
17 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.
20 Not later than 5 days after the expiration of the deadline for submitting Requests for
21 Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel
22 containing (a) the names and other identifying information of Class Members who have
23 timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and
24 other identifying information of Class Members who have submitted invalid Requests
25 for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted
26 (whether valid or invalid).

27 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written
28 reports to Class Counsel and Defense Counsel that, among other things, tally the number

of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

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

7.8.5. Administrator’s Declaration. Before the date by which 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 and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

7.8.6. Final Report by Settlement Administrator. Within 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

1 Court attesting to its disbursement of all payments required under this Agreement. Class
2 Counsel is responsible for filing the Administrator's declaration in Court.

3 **8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE**

4 Based on its records, Defendant estimates that, as of the date of this Settlement
5 Agreement, (1) there are 117 Class Members and 6,576 Total Workweeks during the Class Period
6 and (2) there are 84 Aggrieved Employees who worked 2,099 Pay Periods during the PAGA
7 Period.

8 8.1 Increase in Workweeks. Defendant represents that there are approximately 6,576
9 Workweeks during the Class Period. In the event the number of Workweeks during the Class
10 Period increases by more than 10%, from the original estimate of 6,576 workweeks. Specifically,
11 if the number of workweeks is more than 7,234 Workweeks, the settlement amount shall either:
12 1) be increased by the percentage that the actual number of Workweeks exceeds 7,234; or 2)
13 Defendant will have the right, in the exercise of its sole discretion, to limit the Class Period to
14 the time at which the number of workweeks reached 7,234 Workweeks. Not later than 30 days
15 after full execution of this Agreement, Defendant will simultaneously deliver enough identifying
16 data to the Class Administrator to permit it to evaluate the accurate number of Workweeks during
17 the Class Period (to include Class Member names and/or employee identification numbers, and
18 beginning and end dates of work within the Class Period) in the form of a Microsoft Excel
19 spreadsheet. Defendant shall make its election regarding the above no later than 14 days after
20 receiving notification from the administrator confirming the workweek count. Should Defendant
21 fail to make its election within the above timeframe, then option (2) shall automatically apply.

22 **9. MOTION FOR FINAL APPROVAL**

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

any disagreements concerning the Motion for Final Approval.

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

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

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

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

1 9.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
2 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material
3 modification of this Agreement (including, but not limited to, the scope of release to be granted
4 by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
5 expeditiously work together in good faith to address the appellate court's concerns and to obtain
6 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
7 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
8 the Court's award of the Class Representative Service Award or any payments to Class Counsel
9 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
10 as long as the Gross Settlement Amount remains unchanged.

11 **10. ADDITIONAL PROVISIONS**

12 10.1. No Admission of Liability, Class Certification or Representative Manageability for Other
13 Purposes. This Agreement represents a compromise and settlement of highly disputed claims.
14 Nothing in this Agreement is intended or should be construed as an admission by Defendant that
15 any of the allegations in the Operative Complaint have merit or that Defendant has any liability
16 for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that
17 Defendant's defenses in the Action have merit. The Parties agree that class certification and
18 representative treatment is for purposes of this Settlement only. If, for any reason the Court does
19 grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to
20 contest certification of any class for any reasons, and Defendant reserves all available defenses
21 to the claims in the Action, and Plaintiff reserves the right to move for class certification on any
22 grounds available and to contest Defendant's defenses. The Settlement, this Agreement, and
23 Parties' willingness to settle the Action will have no bearing on, and will not be admissible in
24 connection with, any litigation (except for proceedings to enforce or effectuate the Settlement
25 and this Agreement).

26 10.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and
27 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement
28 is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit

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

15 10.3. No Solicitation. The Parties separately agree that they and their respective counsel and
16 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal
17 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's
18 ability to communicate with Class Members in accordance with Class Counsel's ethical
19 obligations owed to Class Members.

20 10.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
21 together with its attached exhibits shall constitute the entire agreement between the Parties
22 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or
23 inducements made to or by any Party.

24 10.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
25 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate
26 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
27 its terms, and to execute any other documents reasonably required to effectuate the terms of this
28 Agreement including any amendments to this Agreement.

1 10.6. Cooperation. The Parties and their counsel will cooperate with each other and use their
2 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
3 Settlement Agreement, submitting supplemental evidence and supplementing points and
4 authorities as requested by the Court. In the event the Parties are unable to agree upon the form
5 or content of any document necessary to implement the Settlement, or on any modification of the
6 Agreement that may become necessary to implement the Settlement, the Parties will seek the
7 assistance of a mediator and/or the Court for resolution.

8 10.7. No Prior Assignments. The Parties separately represent and warrant that they have not
9 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
10 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
11 action, or right released and discharged by the Party in this Settlement.

12 10.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant, nor Defense Counsel are
13 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
14 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR
15 Part 10, as amended) or otherwise.

16 10.9. Modification of Agreement. This Agreement, and all parts of it, may be amended,
17 modified, changed, or waived only by an express written instrument signed or agreed to by all
18 Parties or their representatives, and approved by the Court. Plaintiff and Defendant expressly
19 agree that should the Parties agree to amend, modify, change, or waive this Agreement, or any
20 part of it, Class Counsel and Defense Counsel are authorized to submit to the Court any
21 amendments of this Agreement, amended Agreements, or amendments to the Agreement, on
22 behalf of the Parties once fully executed, which includes, but is not limited to, authorization of
23 the use of signatures previously provided by the Parties.

24 10.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to
25 the benefit of, the successors of each of the Parties.

26 10.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
27 governed by and interpreted according to the internal laws of the State of California, without
28 regard to conflict of law principles.

1 10.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
2 this Agreement. This Agreement will not be construed against any Party on the basis that the
3 Party was the drafter or participated in the drafting

4 10.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
5 during Action and in this Agreement relating to the confidentiality of information shall survive
6 the execution of this Agreement

7 10.14. Use of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code
8 §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant
9 in connection with the mediation, other settlement negotiations, or in connection with the
10 Settlement, may be used only with respect to this Settlement, and no other purpose, and may not
11 be used in any way that violates any existing contractual agreement, statute, or rules of court.

12 10.15. 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 10.16. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall
15 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
17 thereafter.

18 10.17. Execution in Counterparts. This Agreement may be executed in one or more counterparts
19 by facsimile, electronically (i.e., DocuSign, AdobeSign, or similar), or email which for purposes
20 of this Agreement shall be accepted as an original. All executed counterparts and each of them
21 will be deemed to be one and the same instrument if counsel for the Parties will exchange between
22 himself signed counterparts. Any executed counterpart will be admissible in evidence to prove
23 the existence and contents of this Agreement.

24 10.18. 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
26 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend
27 the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
28 process.

1 10.19. Severability. In the event that one or more of the provisions contained in this Agreement
2 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,
3 illegality, or unenforceability shall in no way effect any other provision if Defense Counsel and
4 Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to
5 proceed as if such invalid, illegal, or unenforceable provision had never been included in this
6 Agreement.

7 10.20. Defendant's Option to Void: If the number of valid requests for exclusion exceeds 10%
8 of the total of all Class Members, Defendant may, but is not obligated to, elect to withdraw from
9 the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab
10 initio, have no force or effect whatsoever, and that neither Party will have any further objection
11 to perform under this Agreement; provided, however, Defendant will remain responsible for
12 paying all Administration expenses incurred to that point. Defendant must notify Class Counsel
13 and the Court of its election to withdraw not later than 7 days within learning this information;
14 late elections will have no effect.

15 **IT IS SO AGREED:**

16
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18 **[Signatures on following page]**
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1
2 *Leonard Butler (2nd Matter)*

08/06/2026

3 For Plaintiff, Leonard Butler

For Defendant, XXALER, Inc.

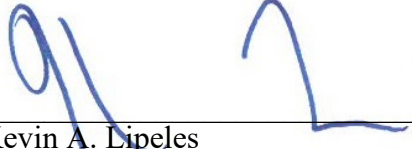
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6 **AGREED AS TO FORM ONLY:**

7
8 *David D. Bibiyan*

08/06/2026

9 David D. Bibiyan
10 Vedang J. Patel
11 Megan R. Lazar
12 Counsel for Plaintiff

Heather N. Stone
Counsel for Defendant

13 
14 Kevin A. Lipeles
15 Thomas H. Schelly
16 Jasmine J. Badawi
17 Counsel for Plaintiff

9/29/26

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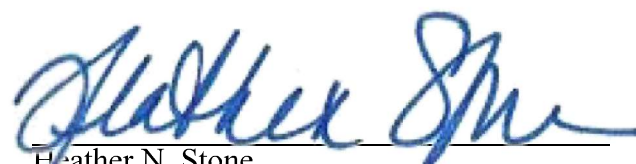
Jason Rattray

For Plaintiff, Leonard Butler

For Defendant, XXALER, Inc.

AGREED AS TO FORM ONLY:

David D. Bibiyan
Vedang J. Patel
Megan R. Lazar
Counsel for Plaintiff



Heather N. Stone
Counsel for Defendant

Kevin A. Lipeles
Thomas H. Schelly
Jasmine J. Badawi
Counsel for Plaintiff