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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF LOS ANGELES**

19 **KERRY N. EVANS**, an individual, on behalf
20 of himself and others similarly situated,

21 Plaintiff,

22 v.

23 **AMERI-KLEEN**, a California Corporation, and
24 **DOES 1-50**, inclusive,

25 Defendants.

26 **JOSE BALTAZAR**,

27 PLAINTIFF,

28 v.

AMERI-KLEEN and **DOES 1 through 50**,
inclusive,

Defendants

Case No.: 19STCV23104

**JOINT STIPULATION OF SETTLEMENT
AND RELEASE OF CLASS AND
REPRESENTATIVE ACTION**

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1 This Joint Stipulation Of Settlement And Release Of Class And Representative Action
2 (“Stipulation” or “Settlement”) is made and entered into between Plaintiffs Kerry N. Evans and Jose
3 Baltazar (“Plaintiff”) on behalf of themselves, the state of California pursuant to the Private Attorneys
4 General Act, Labor Code section 2698, *et. seq* (“PAGA”), and as representatives of the Settlement Class
5 (as defined below) and Defendant Ameri-Kleen (“Defendant”) (Plaintiffs and Defendant hereinafter are
6 collectively referred to as the “Parties”). This is a non-reversionary Settlement in which there will not be
7 a claim process, and Defendant and the Releasees (as defined below) shall pay 100% of the Gross
8 Settlement Amount (as defined below) pursuant to the Payment Plan (as defined below). This
9 Stipulation is subject to the approval of the Court, pursuant to California Rules of Court, Rule 3.769(c),
10 (d) and (e), Labor Code section 2699(1)(2), and Code of Civil Procedure, section 382, and is made for
11 the sole purpose of attempting to consummate settlement of the Action, as defined below, on a class-
12 wide basis subject to the following terms and conditions. As detailed below, in the event the Court does
13 not enter an order granting final approval of this Settlement or the conditions precedent are not met for
14 any reason, this Stipulation is void and of no force or effect whatsoever.

15 **I. DEFINITIONS**

16 As used in this Stipulation, the following terms shall have the meanings specified below. To the
17 extent terms or phrases used in this Stipulation are not specifically defined below, but are defined
18 elsewhere in this Stipulation, they are incorporated by reference into this definition section.

19 **A. Actions.** “Actions” shall mean the above captioned actions titled *KERRY N. EVANS, an*
20 *individual, on behalf of himself and others similarly situated, Plaintiff v. AMERI-KLEEN, a California*
21 *Corporation and DOES 1-50, inclusive, Defendants, Los Angeles County Superior Court Case No.*
22 *19STCV23104; and JOSE BALTAZAR, Plaintiff v. AMERI-KLEEN and DOES 1 through 50, inclusive,*
23 *Defendants, Santa Cruz County Superior Court Case No. 19CV02685.*

24 **B. Administrative Expenses.** “Administrative Expenses” shall mean all costs and
25 expenses associated with and paid to the third-party Settlement Administrator, which are anticipated not
26 to exceed twenty five thousand dollars (\$25,000.00).

27 **C. Released Claims.** “Claims” or “Released Claims” shall mean all claims in the
28 Consolidated Second Amended Complaint (the “Complaint”) and

1 all claims set forth in the two above-listed actions asserted against Defendant during the Settlement
2 Class Period from July 3, 2015 through preliminary approval, with respect to claims for (1)
3 Defendant's failure to provide meal periods and/or pay missed meal period premiums (Labor Code §§
4 226.7, 512 and IWC Wage order 5-2001); (2) Defendant's failure to pay minimum wages for all hours
5 worked (Labor Code §§ 1194 and 1194.2); (3) Defendant's failure to provide complete/accurate wage
6 statements (Labor Code § 226); (4) waiting time penalties (Labor Code § 201-203); (5) Defendant's
7 failure to pay overtime wages (Labor Code § 510); (6) failure to provide rest periods (Labor Code §
8 226.7); (7) Derivative UCL violations (Cal. Bus. & Prof. Code §§ 17200 *et seq.*); (8) Derivative
9 penalties pursuant to PAGA (Cal. Labor Code §§ 2699, *et seq.* and 558), as well as PAGA penalties for
10 Labor Code § 2802 claims, and all other wage and hour claims arising from the facts and causes of
11 action alleged in the Amended Complaint and based on the factual predicates of the Amended
12 Complaint that will include all the foregoing claims, under California, federal or local law. The
13 Released Claims do not include any claims for workers compensation, unemployment, or disability
14 benefits of any nature, nor do they include any claims, actions, or causes of action which may be
15 possessed by Settlement Class Members under state or federal anti-discrimination statutes, including,
16 without limitation, the Cal. Fair Employment and Housing Act, the Cal. Government Code § 12940, *et*
17 *seq.*; the Unruh Civil Rights Act, the Cal. Civil Code § 51, *et seq.*; the California Constitution; Title VII
18 of the Civil Rights Act of 1964, 42 U.S.C. § 2000, *et seq.*; the Americans with Disabilities Act, as
19 amended, 42 U.S.C. § 12101, *et seq.*; the Employee Retirement Income Security Act of 1974, as
20 amended, 29 U.S.C. § 1001 *et seq.*; the Fair Credit Reporting Act, the Investigative Consumer
21 Reporting Agencies Act (ICRAA), and/or the Consumer Credit Reporting Agencies Act (CCRAA).

22 **D. Class Attorney Fees and Expenses.** "Class Attorney Fees and Expenses" shall mean
23 Class Counsel's attorney fees and expenses.

24 **E. Class Counsel.** "Class Counsel" shall mean Craig J. Ackermann and Avi Kreitenberg
25 of Ackermann & Tilajef, P.C., David S. Winston of Winston Law Group, P.C., and Kevin Mahoney and
26 Beyonca Alemzadeh of Mahoney Law Group, APC.

27 **F. Class, Settlement Class, Class Member or Settlement Class Member.** "Class,"
28 "Settlement Class," "Class Member," or "Settlement Class Member" shall mean Plaintiffs and all non-

1 exempt sanitors employed by Defendant Ameri-Kleen who work or worked for Defendant in California
2 from July 3, 2015 through the date of entry of preliminary approval. The Class will not include
3 individuals hired by Defendant after March 30, 2020. According to Defendant's records, as of
4 November 16, 2019, there are approximately 2,095 Class Members. Furthermore, Defendant has
5 represented that the Class worked approximately 54,000 workweeks from July 3, 2015 through
6 November 16, 2019.

7 **G. Class Notice.** "Class Notice" shall mean the Notice of Proposed Class Action
8 Settlement and Hearing Date for Court Approval, as set forth in the form of **Exhibit 1** attached hereto,
9 or as otherwise modified or approved by the Court, which is to be mailed to Class Members.

10 **H. Class Participants.** "Class Participants" shall mean any and all Class Members who,
11 following class notice distribution, do not timely submit a valid Request for Exclusion/Opt-Out of the
12 Class Settlement or who have previously signed a release with Defendants regarding any of the
13 allegations as alleged in the Amended Complaint.

14 **I. Class Period or Covered Period.** "Class Period" or "Covered Period" shall mean the
15 period from July 3, 2015 to the date of preliminary approval of this Settlement.

16 **J. Class Representatives.** "Class Representatives" shall mean Plaintiffs Kerry N. Evans
17 and Jose Baltazar.

18 **K. Class Representatives' Released Claims:** "Class Representatives' Released Claims"
19 or "Release of Claims by Plaintiffs" shall mean the claims and causes of action released by Plaintiffs
20 Kerry N. Evans and Jose Baltazar, as set forth in Section I., C. of this Agreement.

21 **L. Class Settlement.** "Class Settlement" shall mean the settlement embodied in this
22 Stipulation, which is subject to Court approval.

23 **M. Amended Complaint, Second Amended Complaint, or Operative Complaint.**
24 "Amended Complaint," "Second Amended Complaint," and/or "Operative Amended Complaint"
25 means the forthcoming Second Amended Complaint to be filed in the *Evans* Action that will set forth
26 all Class Members, all claims referenced above, and all of the Class Counsel referenced above. Counsel
27 for the *Baltazar* Action will move to stay the *Baltazar* Action by stipulation with Defendant. After final
28

1 approval is entered and a final judgment is obtained in the *Evans* Action that is unappealable, the
2 *Baltazar* Action shall be dismissed based on the final judgment of the *Evans* Action.

3 **N. Court.** “Court” shall mean the Los Angeles County Superior Court.

4 **O. Plaintiffs.** “Plaintiffs” shall mean the named Plaintiffs Kerry N. Evans and Jose
5 Baltazar.

6 **P. Defendant, Releasees, or Released Parties.** “Defendant,” “Releasees,” or “Released
7 Parties” shall mean and refer to Ameri-Kleen, and all of their past, present, or future affiliated entities,
8 parents, subsidiaries, predecessors or merged entities, partners, and each of their past, present and future
9 owners, officers, directors, trustees, agents, shareholders, executives, managers, trustees, employees .

10 **Q. Defense Counsel.** “Defense Counsel,” “Defendant’s Counsel” or “Releasees’ Counsel”
11 shall mean Elizabeth R. Leitzinger and Gladys Rodriguez-Morales of Fenton & Keller, A Professional
12 Corporation.

13 **R. Effective Date.** “Effective Date” will be the date the court grants final approval to the
14 settlement, if no objections by settlement class members have been filed or any objections have been
15 withdrawn. If objections are filed and overruled, and no appeal is taken of the Judgment, then the
16 Effective Date will be sixty (60) days after service of Notice of Entry of said Judgment. If an appeal is
17 taken from the court overruling any objections, then the Effective Date will be the date the appeal is
18 withdrawn or after an appellate decision affirming the final approval become final.

19 **S. Employee’s Taxes and Required Withholding.** “Employee’s Taxes and Required
20 Withholding” shall mean the employee’s share of any and all applicable federal, state or local payroll
21 taxes, including those collected under authority of the Federal Insurance Contributions Act (“FICA”),
22 FUTA and/or SUTA on the portion of any Class Participant’s Individual Settlement Amount, as defined
23 below, that constitutes wages. The Employee’s Taxes and Required Withholdings will be withheld from
24 and paid out of the Net Settlement Amount.

25 **T. Employer’s Taxes.** “Employer’s Taxes” shall mean and refer to Defendant’s share of
26 payroll taxes (*e.g.*, UI, ETT, Social Security and Medicare taxes) that is owed on the portion of any
27 Class Participant’s Individual Settlement Amount that constitutes wages. The Employer’s Taxes shall
28 be paid separately to the Settlement Administrator by Defendant and Releasees in addition to the Gross

1 Settlement Amount and shall **not** be paid from the Gross Settlement Amount or Net Settlement
2 Amount.

3 **U. Final Approval and Fairness Hearing.** “Final Approval and Fairness Hearing” shall
4 mean the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Class
5 Settlement.

6 **V. Gross Settlement Amount.** “Gross Settlement Amount” or “GSA” is the agreed-upon,
7 non-reversionary settlement amount totaling five hundred fifty thousand dollars (\$550,000.00), which
8 represents the non-reversionary amount payable in this Settlement by Defendant and Releasees and
9 includes all attorneys’ fees and costs, costs of settlement administration by the Settlement Administrator,
10 the Service Award to the Class Representatives, payment in the total amount of ten thousand dollars
11 (\$10,000.00) for PAGA penalties (75% or \$7,500.00 of which will be paid to the Labor & Workforce
12 Development Agency (“LWDA”) and 25% or \$2,500.00 will be allocated for distribution to the
13 Settlement Class Members), and the amounts payable to the Settlement Class. The Gross Settlement
14 Amount does not include the Employer’s portion of employer-side payroll taxes on the settlement
15 amount allocated to wages as set forth herein, which Defendant and/or the Releasees shall pay in
16 addition to the GSA for amounts paid to the Settlement Class.

17 **W. Hearing on Preliminary Approval.** “Hearing on Preliminary Approval” shall mean
18 the hearing held on the motion for preliminary approval of the Class Settlement.

19 **X. Judgment.** “Judgment” refers to the judgment entered by the Court in conjunction with
20 an order finally approving this Settlement and releasing the Released Claims specified herein.

21 **Y. Service Awards.** “Service Awards” shall mean the amounts approved by the Court, not
22 to exceed five thousand dollars (\$5,000.00), to be paid to each of the Class Representatives in
23 recognition of their efforts and time on behalf of the Class and as consideration for full, general, and
24 comprehensive releases and Civil Code section 1542 waivers of the Class Representatives’ Released
25 Claims.

26 **Z. Individual Settlement Amount.** “Individual Settlement Amount” shall mean the
27 amount that is ultimately distributed to each Class Member, net of any applicable Employee’s Taxes and
28 Required Withholdings. The Individual Settlement Amount shall consist of each Class Participant’s pro

1 rata portion of the Net Settlement Amount.

2 **AA. Net Settlement Amount.** “Net Settlement Amount” shall mean the Gross Settlement
3 Amount minus Administration Expenses, Class Attorney Fees and Expenses, PAGA Payment, and the
4 Service Awards.

5 **BB. Opt-Out(s).** “Opt-Out(s)” shall mean any and all persons who timely and validly
6 request exclusion from the Class Settlement in accordance with the terms herein and no later than the
7 Response Deadline.

8 **CC. PAGA Payment.** “PAGA Payment” means the penalties pursuant to California Labor
9 Code sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA") and
10 Labor Code section 226.3, that the Parties have agreed is a reasonable sum to be paid in settlement of
11 the PAGA claims included in the Action, which is ten thousand dollars (\$10,000.00) for PAGA
12 penalties, (75% or \$7,500.00 of which will be paid to the Labor & Workforce Development Agency
13 (“LWDA”), and 25% or \$2,500.00 will be distributed to the Class Participants). Class Counsel shall
14 give timely notice of the Class Settlement to the LWDA under Labor Code section 2699(1)(2).

15 **DD. Parties.** “Parties” shall mean Plaintiffs and Defendant.

16 **EE. Payment Plan.** “Payment Plan” shall mean the schedule by which Defendant will fund
17 the Settlement. Defendant shall fund 10% of the Settlement within ninety (90) days of March 30, 2020,
18 and another 10% shall be funded within 90 days of the initial 10% payment. These funds shall be
19 deposited in a trust account to be established by the Settlement Administrator. Defendant shall fund a
20 further one hundred thirty-three thousand dollars (\$133,000.00) of the Settlement Amount within six
21 months of the Effective Date. Defendant shall fund the remaining balance of the Settlement Amount
22 within six months after Defendant’s one hundred thirty-three thousand dollars (\$133,000.00) installment
23 payment.

24 **FF. Preliminary Approval Date.** “Preliminary Approval Date” shall mean the date upon
25 which the Court enters an order preliminarily approving this Stipulation.

26 **GG. Response Deadline.** “Response Deadline” shall mean the date sixty (60) days following
27 the date on which the Settlement Administrator first mails Class Notice to the Settlement Class
28 Members.

1 **HH. Settlement Administrator.** “Settlement Administrator” shall mean a third-party
2 administrator to be agreed by the parties, to be determined by bid, and approved by the Court, who will
3 be responsible for administration of the Settlement and related matters.

4 **II. Stipulation.** “Stipulation” shall mean this Joint Stipulation of Settlement and Release of
5 Class and Representative Action, including any attached exhibits.

6 **II. FACTUAL AND PROCEDURAL BACKGROUND OF ACTION**

7 **A. Plaintiffs’ Claims and Procedural History.** On July 1, 2019, Plaintiff Evans submitted
8 his PAGA letter to the LWDA alleging Defendant failed to provide timely meal periods within the first
9 five (5) hours and to provide lawful second meal periods for shifts worked in excess of ten (10) hours
10 and/or pay meal period premiums for late meal breaks in violation of Labor Code §§ 226.7 and 512;
11 failed to pay minimum wages for all hours worked based upon Ameri-Kleen’s alleged policy and
12 practice of automatically deducting thirty (30) minutes from each shift worked in excess of six (6) hours
13 regardless of whether or not an employee received a meal period and/or the amount of time spent on the
14 meal period (if any), in violation of Labor Code § 1194; failed to provide a standalone disclosure in
15 violation of the Fair Credit Reporting Act and the California Consumer Reporting Agencies Act; failed
16 to provide accurate itemized wage statements in violation of Labor Code § 226 based upon the
17 foregoing; and failed to timely pay wages upon separation of employment in violation of Labor Code §
18 203; failed to timely pay wages in violation of Labor Code §§ 204 and 210; and failed to reimburse
19 business-related expenses in violation of Labor Code § 2802. Thereafter, on July 3, 2019, Plaintiff
20 Evans filed his class action complaint in the Los Angeles County Superior Court alleging six causes of
21 action: (1) failure to provide meal periods and/or pay missed meal period premiums (Labor Code §§
22 226.7, 512, and IWC Wage Order 5-2001); (2) failure to pay minimum wages for all hours worked
23 (Labor Code §§ 1194 and 1194.2); (3) failure to provide complete/accurate wage statements (Labor
24 Code § 226); (4) waiting time penalties (Labor Code § 201-203); (5) violations of the Fair Credit
25 Reporting Act (15 U.S.C. § 1681 *et seq.* and Investigative Consumer Reporting Agencies Act (Civil
26 Code § 1786, *et seq.*); and (6) UCL violations (Bus. & Prof. Code §§ 17200 *et seq.*). Thereafter, the
27 Parties stipulated to the filing of Plaintiff Evans’ First Amended Complaint dismissing his fifth cause of
28 action for Violations of the Fair Credit Reporting Act and Investigative Consumer Reporting Agencies

1 Act and pleading a PAGA claim.

2 On August 27, 2019, Plaintiff Baltazar submitted his PAGA letter to the LWDA alleging
3 Defendant violated Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, and 1194. Thereafter, on
4 September 5, 2019, Plaintiff Baltazar filed his class action complaint in the Santa Cruz County Superior
5 Court alleging six causes of action: (1) failure to pay overtime wages (Labor Code § 510); (2) failure to
6 provide rest periods (Labor Code § 226.7); (3) failure to provide meal periods (Labor Code §§ 226.7,
7 512); (4) failure to timely pay wages at separation (Labor Code §§ 201-203); (5) failure to provide
8 accurate wage statements (Labor Code § 226); and (6) unfair business practices (Cal. Bus. Prof. Code §
9 17200 *et seq.*). Thereafter, counsel for the Plaintiffs agreed to jointly prosecute the Actions.

10 **B. Discovery, Investigation, and Research.** In advance of the mediation, Defendant
11 provided informal discovery on a rolling basis consisting of information about the number of Class
12 Members and a 10% sampling of Class Members paystubs and timecards for two of Defendant's
13 locations. On March 23, 2020, the Parties participated in private mediation with well-respected, third-
14 party neutral Michael J. Loeb, Esq. of JAMS. At the mediation, the Parties failed to resolve the Action;
15 however, the Parties were able to resolve the Action through subsequent negotiations aided by the
16 mediator resulting in the instant proposed Settlement. At all times, the Parties' settlement negotiations
17 have been non-collusive, adversarial, and at arm's length. The Parties' litigation was at all times
18 contentious and many disagreements arose throughout the litigation of this case and negotiation of the
19 proposed Settlement. The Parties agree that the above-described investigation and evaluation, as well as
20 discovery and the information exchanged during the settlement negotiations, are more than sufficient to
21 assess the merits of the Parties' respective positions and to compromise the issues on a fair and equitable
22 basis. The Parties have engaged in sufficient investigation and discovery to assess the relative merits of
23 the claims of the Class Representatives and of Defendant and Releasees' defenses to them.

24 **C. Defendant's Denials of Wrongdoing and Liability.** Defendant and Releasees have
25 denied and continue to deny each and all of the allegations, claims, and contentions alleged by Plaintiffs
26 in the Actions. Defendant and Releasees deny the allegations contained in the Operative Complaint, and
27 further deny that they committed any misconduct, other wrongdoing or any actionable conduct.
28 Defendant and Releasees have expressly denied and continue to deny all charges of wrongdoing or

1 liability arising out of any of the conduct, statements, acts or omissions alleged in the Actions.
2 Defendant and Releasees contend that they complied in good faith with California and federal wage and
3 hour laws and have dealt legally and fairly with Plaintiffs and Settlement Class Members. Defendant
4 and Releasees further deny, for any purpose other than settling this Action, that these claims are
5 appropriate for class or representative treatment. Nonetheless, and without admission of fault, Defendant
6 and Releasees have concluded that further proceedings in the Action would be protracted and expensive
7 and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and
8 conditions set forth in this Stipulation in order to dispose of burdensome and protracted litigation, to
9 permit the operation of Defendant's business without further expensive litigation and the distraction and
10 diversion of its personnel with respect to matters at issue in the Action. Defendant has also taken into
11 account the uncertainty and risks inherent in any litigation, especially in complex cases such as this
12 Action. Defendant has, therefore, determined that it is desirable and beneficial that the Action be settled
13 in the manner and upon the terms and conditions set forth in this Stipulation.

14 **III. CONDITIONAL CLASS CERTIFICATION AND APPOINTMENT OF CLASS**
15 **COUNSEL**

16 **A. The Settlement Class.** For the purposes of this Stipulation and the Class Settlement of
17 this Action only, the Parties stipulate to conditional class certification of the Settlement Class.
18 Defendant's counsel believes this conditional certification for settlement purposes only is appropriate
19 because the Released Claims are being compromised without need to establish the elements of those
20 claims on which liability turns.

21 **B. Appointment of Class Counsel.** For purposes of this Stipulation and subject to the
22 Court's approval, the Parties hereby stipulate to the appointment of Class Counsel as counsel for the
23 Class and the effectuation of the Class Settlement pursuant to this Stipulation.

24 **IV. CLASS SETTLEMENT CONSIDERATION**

25 **A. Settlement Amount.** The Parties agree to settle this Action, in consideration for the
26 releases and other terms described herein, Defendant shall pay the Gross Settlement Amount of five
27 hundred fifty-thousand dollars (\$550,000.00) into a Qualified Settlement Fund to be established by the
28 Settlement Administrator, pursuant to the Payment Plan. There shall be no reversion to Defendant or

1 Releasees. The Gross Settlement Amount and other actions and forbearances taken by Defendant and
2 Releasees shall constitute adequate consideration for the Class Settlement and will be made in full and
3 final settlement of: (a) the Released Claims, (b) any claim for Class Attorneys' Fees and Expenses, (c)
4 Administrative Expenses, (d) the Service Awards; (e) PAGA Payment; and (f) any other obligation of
5 Defendant and Releasees under this Stipulation (other than the Employer's Taxes on the portion of the
6 Net Settlement Amount allocated to the payment of wages). After the Court issues an order
7 preliminarily approving this Class Settlement, the Settlement Administrator will distribute the Class
8 Notice to the Settlement Class Members as set forth herein, which shall describe the terms of the Class
9 Settlement and procedures to opt out, object, or participate in the Class Settlement, as well as the timing
10 for payment in the event that the Settlement is given final approval by the Court.

11 **B. Service Awards for Class Representatives.** The Class Representatives may petition the
12 Court to approve a Service Award in an amount up to five thousand dollars (\$5,000.00) each (totaling
13 \$10,000.00) for their efforts on behalf of the Settlement Class in this Action, including assisting in the
14 investigation and consulting with Class Counsel and providing crucial documents to Class Counsel and
15 in exchange for general releases of all claims as set forth below. Defendant and Releasees shall not
16 oppose any request by Class Representatives for Service Awards in such an amount. Any Service
17 Awards approved by the Court shall be paid to the Class Representatives from the Gross Settlement
18 Amount and shall be in addition to any distribution to which they may otherwise be entitled as a
19 Settlement Class Member. The Service Awards shall not be considered wages, and the Settlement
20 Administrator shall issue the Class Representatives an IRS Form 1099 reflecting such payments. The
21 Class Representatives shall be responsible for the payment of any and all taxes with respect to their
22 Service Awards and shall hold Defendant and Releasees harmless and indemnify Defendant and
23 Releasees from any and all liability with regard thereto.

24 **C. Payment to Individual Class Members.** Each Class Member shall be eligible to
25 receive payment of their Individual Settlement Amount as follows: Each Settlement Class Member's
26 share shall be based on his or her percentage of weeks worked during the Settlement Class Period (i.e.,
27 the proportional amount of weeks worked of each settlement class member during the Settlement Class
28 Period as a percentage of all weeks worked by all Settlement Class Members). The Settlement

1 Administrator shall aggregate the weeks worked for all Class Participants to determine the total number
2 of weeks worked. As to a Class Member who opts out of the Settlement by submitting a valid Request
3 for Exclusion (as defined below), the Class Member's Total Settlement Payment will **not** be paid to that
4 Class Member and will be added to the Net Settlement Amount and distributed among eligible Class
5 Participants on a pro-rata basis. However, the portion of the PAGA penalty payment allocated to Class
6 Members who worked during the PAGA covered period (one year prior to the LWDA letter through
7 preliminary approval), shall be distributed to the Class members in the PAGA covered period regardless
8 of whether or not they opt out of the Settlement.

9 **D. Tax Treatment and Payment.** For the purpose of calculating Employee's Taxes and
10 Required Withholding for the Individual Settlement Amounts for Class Participants (including any
11 payments to the Class Representatives but exclusive of their Service Awards), 10% of each Individual
12 Settlement Amount paid to each Class Member shall constitute wages and reported on an IRS W-2 form
13 on that basis and 90% shall be considered non-wage premiums, penalties and interest, to be reported on
14 an IRS form 1099. Prior to final distribution, the Settlement Administrator shall calculate the total
15 Employee's Taxes and Required Withholding due as a result of the wage portion of Class Participants'
16 anticipated Individual Settlement Amounts and such actual amount will be deducted from the Net
17 Settlement Amount. Additionally, prior to the final funding of the Gross Settlement Amount and final
18 distribution, the Settlement Administrator shall calculate the total Employers' Taxes due on the wage
19 portion of the Class Participants' Individual Settlement Amounts and issue instructions to Defendant and
20 Releasees to separately fund these tax obligations/withholdings. The Parties understand that Plaintiffs
21 and the Class Participants who receive any payment pursuant to this Stipulation shall be solely
22 responsible for any and all other individual tax obligations associated with this Class Settlement.

23 **E. No Effect on Employee Benefit Plans.** Neither the Class Settlement nor any amounts
24 paid under the Class Settlement will have any effect on any employee benefit plan, including modify
25 any previously credited hours, days, or weeks of service under any employee benefit plan, policy or
26 bonus program sponsored by Defendant or Releasees. Such amounts will not form the basis for
27 additional contributions to, benefits under, or any other monetary entitlement under Defendant's or
28 Releasees sponsored benefit plans, policies or bonus programs. The payments made under the terms of

1 this Stipulation shall not be applied retroactively, currently, or on a going forward basis, as salary,
2 earnings, wages, or any other form of compensation for the purposes of any of Defendant's or
3 Releasees' benefit plan, policy or bonus program. Defendant and Releasees retain the right to modify
4 the language of its benefits plans, policies and bonus programs to effect this intent and to make clear that
5 any amounts paid pursuant to this Stipulation are not for "weeks worked" or any similar measuring term
6 as defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit
7 accrual, or any other purpose, and that additional contributions or benefits are not required by this
8 Stipulation. Defendant and Releasees do not consider the Class Settlement payments "compensation" for
9 purposes of determining eligibility for, or benefit accrual within, any benefit plans, policies, or bonus
10 programs, or any other plan sponsored by Defendant or Releasees.

11 **F. Class Counsels' Attorneys' Fees and Expenses.** Concurrently with the motion for
12 final approval of the Class Settlement, Class Counsel may submit an application for an award of Class
13 Attorney Fees and Expenses with the fee portion not to exceed one third of the Gross Settlement
14 Amount (*i.e.*, \$183,333.33) and the award of costs and expenses of up to an additional twenty thousand
15 dollars (\$20,000.00). Defendant and Releasees agree not to object to any such fee, cost or expense
16 application in those amounts. As a condition of this Class Settlement, Class Counsel has agreed to
17 pursue fees only in the manner reflected by this Section. Any Class Attorney Fees and Expenses
18 awarded by the Court shall be paid from the Gross Settlement Amount in arriving at the Net Settlement
19 Amount and shall not constitute payment to any Settlement Class Members. If Class Counsel
20 voluntarily reduces the request for Class Attorney Fees or Expenses or the Court's award of Class
21 Attorney Fees or Expenses is less than set forth above, the Net Settlement Amount shall be recalculated
22 to reflect the actual Class Attorney Fees and Expenses awarded. Any of the proposed attorneys' fees
23 awarded will be divided equally between Ackermann & Tilajef, P.C., Winston Law Group, P.C., and
24 Mahoney Law Group, APC Plaintiffs retained the firms and have given written consent to this division
25 of attorneys' fees, and it is herein and will be disclosed to the Court as part of the approval process.

26 The Class Attorney Fees and Expenses approved by the Court shall encompass: (a) all work
27 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
28 represent the Settlement Class through the date of this Stipulation; (b) all work to be performed and

1 costs to be incurred in connection with approval by the Court of the Class Settlement, including any
2 appeal; and (c) all work to be performed and costs and expenses, if any, incurred in connection with
3 administering the Class Settlement through the Effective Date and Judgment entered in the Action.

4 **V. SETTLEMENT ADMINISTRATION COSTS AND EXPENSES**

5 **A. The Settlement Administrator's Costs and Expenses.** All costs and expenses due to
6 the Settlement Administrator in connection with its administration of the Class Settlement, including,
7 but not limited to, providing the Class Notice, locating Settlement Class Members, processing Opt-Out
8 requests and objections, distributing the portion of the PAGA Payment payable to the LWDA, and
9 calculating, administering and distributing Individual Settlement Amounts to the Class Participants, and
10 related tax forms, shall be paid from the Gross Settlement Amount, and is not anticipated to exceed
11 twenty-five thousand dollars (\$25,000.00).

12 **B. Payment by Defendant and Releasees.** The Settlement Administrator will calculate
13 the Employer's Taxes and inform Defendant and Releasees of the total amount of such Employer's
14 Taxes within seven (7) calendar days of the Effective Date. Defendant shall fund 10% of the Settlement
15 within 90 days of March 30, 2020, and another 10% shall be funded within 90 days of the initial 10%
16 payment. Defendant shall fund a further one hundred thirty-three thousand dollars (\$133,000.00) of the
17 Settlement Amount within six months of the Effective Date. Defendant shall fund the remaining
18 balance of the Settlement Amount within six months after Defendant's one hundred thirty-three
19 thousand dollars (\$133,000.00) installment payment. Defendant and Releasees shall deposit the
20 Employer's portion of the payroll taxes into the Qualified Settlement Fund on the same day that
21 Defendant and Releasees makes the final installment payment of the Gross Settlement Amount with the
22 Settlement Administrator or if the Settlement Administrator's figures need to be adjusted in any
23 manner, within 5 business days thereafter.

24 **C. Tax Liability.** Defendant and Releasees make no representation as to the tax treatment
25 or legal effect of the payments called for hereunder, and Plaintiffs and Class Participants are not relying
26 on any statement, representation, or calculation by Defendant and Releasees or by the Settlement
27 Administrator in this regard. This Stipulation does not constitute tax advice to any recipient of monies.

28 **Creation of Qualified Settlement Fund ("QSF")**

- 1 a. The Parties understand and agree that the Gross Settlement Amount will qualify and
2 be characterized as a Qualified Settlement Fund ("QSF") under the provisions of the
3 U.S. Treasury Regulations 1.468B-1 and 1.468B-5, and the QSF will be taxed as a
4 separate entity for purposes of all federal, state and local taxes, and further agree to
5 treat the QSF on a basis consistent therewith, that the QSF will be characterized as
6 the employer of all Class Participants for purposes of determining all tax obligations
7 associated with any and all payments under this Settlement, and the QSF will bear
8 full responsibility for all taxes associated with the QSF and individual settlement
9 payments under this Agreement. Defendant is still financially responsible for any
10 employer payroll taxes required by law, including the employer's share of FICA,
11 FUTA, and SDI contributions separate and apart from the Gross Settlement Amount.
12 However, any employee taxes required to be withheld will be paid from the QSF.
- 13 b. The Settlement Administrator shall be responsible for ensuring that all taxes
14 associated with the Agreement are timely paid to the appropriate authorities. The
15 Settlement Administrator's responsibilities include the following: (i) filing all
16 federal, state and local employment tax returns, income tax returns, and other tax
17 returns associated with the taxes, (ii) timely and proper filing of all required federal,
18 state and local information returns (e.g., 1099s, W-2s, etc.) with the appropriate
19 taxing authorities, and (iii) completion of any other steps necessary for compliance
20 with any tax obligations of the QSF under federal, state and/or local law. In addition,
21 the Settlement Administrator shall timely make such elections as necessary or
22 advisable to carry out the provisions of this paragraph. Such elections shall be made
23 in compliance with the procedures and requirements contained in the QSF
24 regulations. It shall be the responsibility of the Settlement Administrator to timely
25 and properly prepare and deliver all necessary documentation for signature as may be
26 required, and thereafter to cause the appropriate filing of such documentation to
27 occur. To the extent that, for any period of time, the QSF is not treated as a
28 "qualified settlement fund" within the meaning of the U.S. Treasury Regulations
1.468B-1 and 1.468B-5, the Settlement Administrator shall promptly notify
Plaintiffs' Counsel and counsel for Defendant of that fact.
- c. All taxes (including any interest or penalties) arising with respect to income earned
by the QSF, including any taxes or tax detriments that may be imposed upon or
incurred by Defendant with respect to any income earned by the QSF for any period
during which the QSF does not qualify as a "qualified settlement fund" for federal or
state income tax purposes, shall be paid from the QSF. All expenses and costs
incurred in connection with the operation and implementation of this section
(including without limitation, expenses of attorneys and/or accountants and mailing
and distribution expenses related to filing (or failing to file) the tax returns described
herein) shall be paid from the QSF.

VI. NOTICE TO CLASS MEMBERS AND SETTLEMENT ADMINISTRATION PROCESS

A. The Settlement Administrator. The Settlement Administrator will be responsible for mailing the Class Notice, as set forth in **Exhibit 1** as modified or approved by the Court, to Settlement Class Members, handling inquiries from Settlement Class Members concerning the Class Notice,

1 determining Individual Settlement Amounts, maintaining the settlement funds in an a Qualified
2 Settlement Fund, preparing, administering, and distributing Individual Settlement Amounts to Class
3 Participants, resolving disputes regarding weeks worked, issuing a final report, and performing such
4 other duties where appropriate as the Parties may direct or the Court may order.

5 On a weekly basis, the Settlement Administrator will concurrently provide reports to Class
6 Counsel and Defense Counsel summarizing the number of validated and timely objections and Opt-Out
7 Requests, any returned mail, re-mailings of Class Notice, or other relevant information. The Settlement
8 Administrator will provide Class Counsel and Defense Counsel via e-mail date-stamped copies of
9 Requests for Exclusion (“Opt-Outs”) or objections no later than five (5) days after their receipt by the
10 Settlement Administrator. The Settlement Administrator will provide Class Counsel with proof of
11 mailing of the Class Notice, without listing individual Class Member names, for submission to the Court
12 at the time Class Counsel files its motion in support of the Court’s Final Approval and Fairness Hearing.
13 No later than ten (10) days prior to the Final Approval and Fairness Hearing, the Settlement
14 Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary
15 information regarding (a) the total amount of final Individual Settlement Amounts of each Class
16 Participant, (b) the number of Class Participants to receive such payments, and (c) the final number of
17 Opt-Outs and objections.

18 Prior to the calculation and distribution of the Individual Settlement Amounts, the Settlement
19 Administrator shall calculate the total Administrative Expenses through the conclusion of their services
20 and provide this calculation to Class Counsel and Defense Counsel for review and approval. Upon
21 approval, the actual amount of Administrative Expenses will be deducted from the Gross Settlement
22 Amount prior to the final calculation of the Individual Settlement Amounts. If the cost of administration
23 is more than twenty-five thousand dollars (\$25,000.00), the additional cost will come from the Gross
24 Settlement Amount.

25 **B. Notice to Settlement Class Members.** Notice shall be provided to Settlement Class
26 Members in the following manner: Within fourteen (14) days after the Preliminary Approval Date,
27 Defendant shall provide the Settlement Administrator with an updated list of Class Members containing
28 names, social security numbers, dates of employment, last-known addresses and phone numbers (the

1 “Database”). The Database shall be marked “Confidential –Settlement Administrator’s Eyes Only.”
2 Class Counsel shall not receive a copy of this list. The Settlement Administrator shall not share or
3 disclosure the Database with anyone, including Class Counsel.

4 Within 28 days following the Preliminary Approval Date, the Settlement Administrator shall
5 determine the number of weeks worked for each Class Member as well as each Class Members’ pro rata
6 share of the Net Settlement Amount. The Settlement Administrator will populate the data for the
7 estimated portion of the Net Settlement Amount for each Class Member and send each Class Member
8 the Class Notice, as set forth in **Exhibit 1**, via first-class, United States mail. The Class Notice will
9 inform Class Members of his/her estimated share.

10 **C. Request for Exclusion Procedure.** Class Members who do not timely Opt-Out of the
11 Class Settlement will be deemed to participate in the Class Settlement and shall become a Class
12 Participant without having to submit a claim form or take any other action. In order to Opt-Out of the
13 Class Settlement, the Class Member must submit a letter or postcard to the Settlement Administrator by
14 the Response Deadline. The Request for Exclusion must state the Settlement Class Member’s name,
15 employee identification number and/or the last four digits of the employee’s social security number for
16 identification purposes, address for correspondence, signature, and should state words to the effect of,

17 “I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN EVANS
18 V. AMERI-KLEEN.”

19 Any Request for Exclusion that is not postmarked by the Response Deadline will be invalid. In the
20 event that, prior to the Response Deadline, any Class Notice mailed to a Settlement Class Member is
21 returned as having been undelivered by the U.S. Postal Service, the Settlement Administrator shall
22 perform a skip trace search and seek an address correction for such Settlement Class Member(s), and a
23 second Class Notice will be sent to any new or different address obtained. Such Settlement Class
24 Member(s) shall have an additional 14 calendar days in which to Opt-Out.

25 It will be presumed that, if an envelope containing the Class Notice has not been returned within
26 twenty-eight (28) days of the mailing, the Class Member received the Class Notice. At least 30 days
27 prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall concurrently
28 provide Class Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing

1 with regard to the mailing of the Class Notice and its attempts to locate Class Members. The declaration
2 shall specify the number of Class Members to whom Class Notice was sent and the number of Class
3 Members to whom Class Notice was not delivered, as well as information relating to the number of
4 Requests for Exclusions and objectors. Class Counsel shall file this declaration with the Court.

5 If the Settlement Administrator determines that a Request for Exclusion received from a Class
6 Member before the Response Deadline is deficient, then the Settlement Administrator shall mail a
7 deficiency letter to that Class Member identifying the problem.

8 Those Settlement Class Members who do not timely submit a Request for Exclusion will be
9 bound by the Release of the Settlement Class set forth in this Stipulation.

10 **D. Objections.** The Class Notice shall inform the Class Members of their right to object to
11 the Class Settlement. Any Settlement Class Member who wishes to object to the Class Settlement should
12 submit a written objection to the Settlement Administrator no later than the Response Deadline. All
13 Class Member objections should state the Class Member's name and provide each specific reason in
14 support of the objection. Class Members need not include legal arguments for their written objections to
15 be considered. If an objector also wishes to appear at the Final Approval and Fairness Hearing, in person
16 or through an attorney, he or she need not file a notice of intention to appear at the same time as the
17 objection is filed. Filing the notice of intention to appear is not necessary to preserve the right to appear
18 at the Final Approval and Fairness Hearing. Absent Class Members need not file anything with the
19 Court. The Settlement Administrator will promptly serve copies of any objection or notice of intention
20 to appear on Class Counsel and Defense Counsel. Settlement Class Members may appear at the Final
21 Approval Hearing, either in person or through a lawyer retained at their own expense.

22 If a Class Member submits both a Request for Exclusion and a written objection, the Request for
23 Exclusion shall be void and the Class Member shall be deemed part of the Class and bound by the
24 Judgment upon approval by the Court.

25 **VII. CLASS SETTLEMENT FUNDING AND DISTRIBUTION**

26 **A. Allocation of the Gross Settlement Amount.** The claims of all Settlement Class
27 Members are settled for the Gross Settlement Amount of five hundred fifty thousand dollars
28 (\$550,000.00), which will be allocated as follows:

1 a. The Administrative Expenses, estimated not to exceed twenty-five thousand dollars
2 (\$25,000.00);

3 b. The Class Attorney Fees and Expenses not to exceed one hundred eighty-three thousand
4 dollars (\$183,333.33) in fees and expenses not to exceed twenty thousand dollars (\$20,000.00);

5 c. PAGA Payment of ten thousand dollars (\$10,000.00), of which \$7,500.00 shall be paid
6 to the LWDA and \$2,500 shall be distributed to Class members who worked during the PAGA covered
7 period;

8 d. Service Awards, not to exceed five thousand dollars (\$5,000.00) each (totaling
9 \$10,000.00); and

10 e. the remainder shall be the Net Settlement Amount to be distributed to Class Participants.

11 For purposes of calculating the estimated Individual Settlement Amounts, the Settlement
12 Administrator shall calculate the estimated Net Settlement Amount based on the estimated values in
13 Section 1(a-d) prior to sending Notice to the Settlement Class Members. Prior to final distribution, the
14 Settlement Administrator shall calculate the final Net Settlement Amount based on the actual values in
15 Section 1 (a-d).

16 **B. Calculation of the Individual Settlement Amounts.** Defendant and Releasees shall
17 have no responsibility for deciding the validity of the Individual Settlement Amounts or any other
18 payments made pursuant to this Stipulation, shall have no involvement in or responsibility for the
19 determination or payment of Employee's Taxes and Required Withholding, and shall have no liability
20 for any errors made with respect to such Employee's Taxes and Required Withholding. Although the
21 Settlement Administrator will calculate and pay the standard Employee's Taxes and Required
22 Withholding on the portion of the Individual Settlement Amounts constituting wages on their behalf,
23 Plaintiffs and Class Participants represent and understand that they shall be solely responsible for any
24 and all tax obligation associated with their respective Individual Settlement Amounts.

25 **C. Time for Payment of Attorney Fees and Expenses to Class Counsel.** The Settlement
26 Administrator shall distribute to Class Counsel the attorneys' fees and expenses approved by the Court
27 to Class Counsel within fifteen (15) calendar days after Defendant and/or Releasees deposit the final
28 installment payment of the Gross Settlement Amount with the Settlement Administrator.

1 **D. Time for Payment of Service Awards to Class Representatives.** The Settlement
2 Administrator shall distribute to the Class Representatives the Service Awards approved by the Court
3 within fifteen (15) calendar days after Defendant and/or Releasees deposit the final installment payment
4 of the Gross Settlement Amount with the Settlement Administrator.

5 **E. Time for Payment of PAGA Payment to the LWDA.** The Settlement Administrator
6 shall distribute to the LWDA the portion of the PAGA Payment due to it and approved by the Court
7 within 15 calendar days after Defendant and/or Releasees deposit the final installment payment of the
8 Gross Settlement Amount with the Settlement Administrator.

9 **F. Time for Payment of Taxes and Required Withholding and Individual Settlement**
10 **Amounts.** The Settlement Administrator shall make every effort to pay the Employee's Taxes and
11 Required Withholding associated with each Class Participant's Individual Settlement Amount and mail
12 the Individual Settlement Amount to each Settlement Class Member by first-class U.S. mail, to the last-
13 known address within fifteen (15) calendar days after the Defendant and/or Releasees deposit the final
14 installment payment of the Gross Settlement Amount with the Settlement Administrator. If the
15 Settlement Administrator is not able to do so within the time period set forth above, it shall so inform
16 Class Counsel and Defense Counsel and provide an approximate date by which the Employee's Taxes
17 and Required Withholding shall be paid and the Individual Settlement Amounts will be mailed. Under
18 no circumstances shall the Settlement Administrator distribute checks to Class Members until all
19 Individual Settlement Amounts have been considered, calculated, and accounted for, and the all of the
20 remaining monetary obligations have been calculated and accounted for. Within two-hundred (200)
21 days of mailing each Class Participant's Individual Settlement Amount, the Settlement Administrator
22 shall provide to Class Counsel a declaration of payment to file with the Court. In the event that any
23 Class Member is deceased, payment shall be made payable to the estate of that Settlement Class
24 Member and delivered to the executor or administrator of that estate, unless the Settlement
25 Administrator has received an affidavit or declaration pursuant to Cal. Probate Code § 13101, in which
26 case payment shall be made to the affiant(s) or declarant(s).

27 **G. Non-Cashed Settlement Checks.** Any funds associated with checks that have not been
28 cashed within one hundred eighty (180) days, will become void and the Individual Settlement Amount

1 associated with the un-cashed check shall be paid out in accordance with Code of Civil Procedure
2 section 384 or any other method of distribution consistent with Code of Civil Procedure section 384.
3 The Parties agree that the *cy pres* recipient shall be CASA of Los Angeles, or other mutually agreeable
4 *cy pres* recipient should the Court not approve the Parties' proposed beneficiary and/or as otherwise
5 consistent with Code of Civil Procedure section 384.

6 **VIII. NULLIFICATION OF THIS STIPULATION**

7 **A. Non-Approval of the Stipulation.** In the event that the Court fails to approve the
8 Settlement, or in the event of an appeal if the appropriate appellate court reverses any order approving
9 the Settlement, or if the Settlement Agreement is otherwise terminated: (1) the Settlement Agreement
10 shall have no force and effect and the parties shall be restored to their respective positions prior to
11 entering into it, and no Party shall be bound by any of the terms of the Settlement Agreement; (2)
12 Defendant and Released Parties shall have no obligation to make any payments to the Settlement Class
13 Members, Plaintiffs, or Class counsel; (3) any preliminary approval order, final approval order or
14 judgment, shall be vacated; (4) the Settlement Agreement and all negotiations, statements, proceedings
15 and data relating thereto shall be deemed confidential mediation settlement communications and not
16 subject to disclosure for any purpose in any proceeding. The Parties shall make good faith efforts to
17 resolve any issues raised by the Court during the approval process.

18 **B. Plaintiffs' Rights to Void Class Settlement.** In the event that the settlement class
19 contains 20% more individuals or workweeks, as of preliminary approval, then Plaintiffs will have the
20 right to void this Agreement, unless Defendant agrees to increase the Settlement Amount
21 proportionately.

22 **C. Defendant's Rights to Void Class Settlement.** In the event that more than 5% of the
23 Class Members submit valid Requests for Exclusion/ to opt-out of the Settlement, Defendant will have
24 the right to rescind and **terminate** the Settlement without prejudice to its pre-settlement positions and
25 defenses in the litigation. Should the threshold for opt-outs be exceeded, the Settlement Administrator
26 shall notify lead counsel for all Parties via email immediately. If Defendant exercises this option,
27 Defendant shall be responsible for all Settlement Administrator fees and costs actually incurred.

28 **D. Invalidation.** Invalidation of any material portion of the Class Settlement shall

1 invalidate the Class Settlement in its entirety, unless the Parties shall subsequently agree in writing that
2 the remaining provisions of the Class Settlement are to remain in full force and effect.

3 **E. Stay Upon Appeal.** In the event of a timely appeal from the approval of the Class
4 Settlement and judgment, the judgment shall be stayed, and Defendant and Releasees shall not be
5 obligated to fund the Gross Settlement Amount or take any other actions required by this Stipulation
6 until all appeal rights have been exhausted by operation of law.

7 **IX. MOTION FOR COURT APPROVAL**

8 **A. Preliminary Approval.** Class Counsel will submit this Stipulation to the Court along
9 with a Motion for Preliminary Approval of the Class Settlement. Each party shall cooperate to present
10 the Class Settlement to the Court for preliminary approval within forty-five (45) days of execution of
11 this Stipulation. Concurrently with the filing of the Motion for Preliminary Approval of Class
12 Settlement, Class Counsel will serve a copy of the motion for preliminary approval on the LWDA
13 pursuant to Labor Code section 2699(1)(2). Class Counsel will provide proof of submission of the
14 Settlement to the LWDA when moving for preliminary approval.

15 **B. Final Approval.** The Final Approval and Fairness Hearing shall be held before the
16 Court. At the Final Approval and Fairness Hearing, Plaintiffs shall move the Court for the entry of the
17 final order certifying the Class for settlement purposes only and approving the Class Settlement as being
18 fair, reasonable, and adequate to the Class Participants within the meaning of California Rules of Court,
19 Rule 3.769(c), (d) and (e) and for the entry of a final judgment of the Action consistent with the terms of
20 the Class Settlement and California Rule of Court 3.769(h). Class Counsel and Defense Counsel shall
21 submit to the Court such pleadings and/or evidence as may be required for the Court's determination.
22 The Parties will comply with the Court's Procedural Guidelines for final Approval of Class Action
23 Settlements and with Code of Civ. Proc. § 384 that the Parties participate in a compliance hearing
24 regarding the distribution of funds unless the Court takes such a hearing off-calendar after reviewing the
25 Settlement Administrator's declaration of compliance.

26 **X. RELEASES AND WAIVERS**

27 **A. Released Claims of Class Participants.** Upon the Effective Date, each Settlement
28 Class Member who has not submitted a valid Request for Exclusion, and Plaintiffs, will release the

1 Released Parties, and each of them, from all claims in the Consolidated Second Amended Complaint
2 (the “Complaint”) and all claims set forth in two above-listed actions asserted against Defendant during
3 the Settlement Class Period from July 3, 2015 through preliminary approval (with respect to claims for
4 (1) Defendant’s failure to provide meal periods and/or pay missed meal period premiums (Labor Code
5 §§ 226.7, 512 and IWC Wage order 5-2001); (2) Defendant’s failure to pay minimum wages for all
6 hours worked (Labor Code §§ 1194 and 1194.2); (3) Defendant’s failure to provide complete/accurate
7 wage statements (Labor Code § 226); (4) waiting time penalties (Labor Code § 201-203); (5)
8 Defendant’s failure to pay overtime wages (Labor Code § 510); (6) failure to provide rest periods
9 (Labor Code § 226.7); (7) Derivative UCL violations (Cal. Bus. & Prof. Code §§ 17200 *et seq.*); (8)
10 Derivative penalties pursuant to PAGA (Cal. Labor Code §§ 2699, *et seq.* and 558), as well as PAGA
11 penalties for Labor Code § 2802 claims, and all other wage and hour claims arising from the facts and
12 causes of action alleged in the Complaint and based on the factual predicates of the Complaint that will
13 include all the foregoing claims, under California, federal or local law. The Released Claims do not
14 include any claims for workers compensation, unemployment, or disability benefits of any nature, nor
15 do they include any claims, actions, or causes of action which may be possessed by Settlement Class
16 Members under state or federal anti-discrimination statutes, including, without limitation, the Cal. Fair
17 Employment and Housing Act, the Cal. Government Code § 12940, *et seq.*; the Unruh Civil Rights Act,
18 the Cal. Civil Code § 51, *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964,
19 42 U.S.C. § 2000, *et seq.*; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, *et seq.*;
20 the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.*; the Fair
21 Credit Reporting Act, the Investigative Consumer Reporting Agencies Act (ICRAA), and/or the
22 Consumer Credit Reporting Agencies Act (CCRAA).

23 It is the desire of the Parties and the Settlement Class Members to fully, finally, and forever
24 settle, compromise, and discharge the Released Claims.

25 Each Settlement Class Member, except those who submit valid Requests for Exclusion/ Opt-
26 Outs, will be bound by this release of Released Claims as a result of the Class Settlement and to the
27 terms of the final judgment and the satisfaction of such judgment.

28 Settlement Class Members who do not opt out will be deemed to have acknowledged and agreed

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

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

9 **B. Release of Claims by Plaintiffs.** Plaintiffs, on behalf of themselves and their heirs,
10 beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assignees,
11 and representatives, shall and do hereby forever completely release, discharge and agree to hold
12 harmless the Released Parties from any and all charges, complaints, claims, liabilities, obligations,
13 promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
14 losses, debts and expenses (including attorney fees and costs), known or unknown, at law or in equity,
15 which they may now have or may have after the signing of this Stipulation, arising out of or in any way
16 connected with his employment with Defendant and Releasees including, the Released Claims, claims
17 that were asserted or could have been asserted in the Operative Complaint, and any and all transactions,
18 occurrences, or matters between the Parties occurring prior to the date this Stipulation is fully executed.
19 Without limiting the generality of the foregoing, this release shall include, but not be limited to, any and
20 all claims under the (a) Americans With Disabilities Act, as amended; (b) Title VII of the Civil Rights
21 Act of 1964, as amended; (c) the Civil Rights Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e) the
22 Age Discrimination in Employment Act, as amended; (f) the Fair Labor Standards Act, as amended; (g)
23 the Equal Pay Act; (h) the Employee Retirement Income Security Act, as amended; (i) the Consolidated
24 Omnibus Budget Reconciliation Act; (j) the Rehabilitation Act of 1973; (k) the Family and Medical
25 Leave Act; (l) the Civil Rights Act of 1966; (m) the California Fair Employment and Housing Act; (n)
26 the California Constitution; (o) the California Labor Code; (p) the California Government Code; (q) the
27 California Civil Code; and (r) any and all other federal, state and local statutes, ordinances, regulations,
28 rules and other laws, and any and all claims based on constitutional, statutory, common law or
regulatory grounds as well as any other claims based on theories of wrongful or constructive discharge,

1 breach of contract or implied contract, fraud, misrepresentation, promissory estoppel or intentional
2 and/or negligent infliction of emotional distress, or damages under any other federal, state or local
3 statutes, ordinances, regulations, rules or laws. This release is for any and all relief, no matter how
4 denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses, compensatory
5 damages, tortious damages, liquidated damages, punitive damages, damages for pain and suffering, and
6 attorney fees and costs, and Plaintiffs hereby forever completely release, discharges and agree to hold
7 harmless Defendant and the Released Parties from any and all claims for attorney fees and costs arising
8 out of the matters released in this Stipulation.

9 Plaintiffs specifically acknowledge that they are aware of and familiar with the provisions of
10 Section 1542, which provides as follows:

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

14 Plaintiffs, being aware of Section 1542, hereby expressly waive and relinquish all rights and benefits
15 they may have under Section 1542 as well as any other statutes or common law principles of a similar
16 effect. Plaintiffs may hereafter discover facts in addition to or different from those which they now
17 know or believe to be true with respect to the subject matter of all the claims referenced herein, but
18 stipulate and agree that, upon the Effective Date, Plaintiffs shall and hereby do fully, finally, completely
19 and forever settle and release any and all claims against the Released Parties, known or unknown,
20 suspected or unsuspected, contingent or non-contingent, that were asserted or could have been asserted
21 upon any theory of law or equity without regard to the subsequent discovery of existence of such
22 different or additional facts.

23 **XI. DUTIES OF THE PARTIES**

24 **A. Mutual Full Cooperation.** The Parties agree to cooperate fully with one another to
25 accomplish and implement the terms of this Stipulation. Such cooperation shall include, but not be
26 limited to, execution of such other documents and the taking of such other actions as may reasonably be
27 necessary to fulfill the terms of this Class Settlement. The Parties shall use their best efforts, including
28 all efforts contemplated by this Stipulation and any other efforts that may become necessary by court

1 order or otherwise, to effectuate this Stipulation and the terms set forth herein. As soon as practicable
2 after execution of this Stipulation, Class Counsel, with the cooperation of Defendant and Defense
3 Counsel, shall take all necessary and reasonable steps to secure the Court's final approval of this
4 Stipulation and will work together to make any non-material modifications of the Settlement requested
5 by the Court to obtain approval of the Parties' Proposed Settlement.

6 **B. Duty to Support and Defend the Class Settlement.** The Parties agree to abide by all
7 of the terms of the Class Settlement in good faith and to support the Class Settlement fully and to use
8 their best efforts to defend this Class Settlement from any legal challenge, whether by appeal or
9 collateral attack.

10 **C. Duties Prior to Court Approval.** Class Counsel shall promptly submit this Stipulation
11 to the Court for preliminary approval and determination by the Court as to its fairness, adequacy, and
12 reasonableness. Promptly upon execution of this Stipulation, Class Counsel shall apply to the Court for
13 the entry of a preliminary order, scheduling a hearing on the question of whether the proposed Class
14 Settlement should be approved as fair, reasonable, and adequate as to the Settlement Class Members,
15 approving as to form and content the proposed Class Notice attached hereto as **Exhibit 1** and as set forth
16 above in Section VI, respectively, and directing the mailing of the Class Notice to Settlement Class
17 Members.

18 **XII. MISCELLANEOUS PROVISIONS**

19 **A. Voiding the Stipulation.** Pending Court approval and other than as provided in Section
20 VIII herein, if any of the conditions set forth in this Stipulation are not met and satisfied, this Stipulation
21 shall, at the option of either Plaintiffs or Defendant, be ineffective, void, and of no further force and
22 effect, and shall not be used or be admissible in any subsequent proceeding, either in this Court or in any
23 other court or forum. If either Party decides to void the Settlement, then the Settlement and conditional
24 class certification shall be considered void, and neither the Settlement Agreement, conditional class
25 certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and the
26 Parties shall stand in the same position, without prejudice, as if this Stipulation had been neither entered
27 into nor filed with the Court. Should either Party choose to void the Class Settlement under this
28 paragraph, such Party shall be responsible for all Settlement Administrator fees and costs actually

1 incurred.

2 **B. Different Facts.** The Parties hereto, and each of them, acknowledge that, except for
3 matters expressly represented herein, the facts in relation to the dispute and all claims released by the
4 terms of this Stipulation may turn out to be other than or different from the facts now known by each
5 party and/or its counsel, or believed by such Party or counsel to be true, and each Party therefore
6 expressly assumes the risk of the existence of different or presently unknown facts, and agrees that this
7 Stipulation shall be in all respects effective and binding despite such difference.

8 **C. No Prior Assignments.** The Parties represent, covenant, and warrant that they have not
9 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
10 any person or entity any portion of any liability, claim, demand, action, cause of action, or right herein
11 released and discharged except as set forth herein.

12 **D. Non-Admission.** Nothing in this Stipulation shall be construed as or deemed to be an
13 admission by any Party of any liability, culpability, negligence, or wrongdoing toward any other Party,
14 or any other person, and the Parties specifically disclaim any liability, culpability, negligence, or
15 wrongdoing toward the each other or any other person. Each of the Parties has entered into this
16 Stipulation with the intention to avoid further disputes and litigation with the attendant inconvenience,
17 expenses, and contingencies. Nothing herein shall constitute any admission by Defendant or Releasees
18 of wrongdoing or liability, or of the truth of any factual allegations in the Action. Nothing herein shall
19 constitute any admission by Defendant regarding the merits of the Claims in this Action, including but
20 not limited to claims for unpaid wages under California and/or federal law. Nothing herein shall
21 constitute an admission by Defendant that the Action was properly brought as a class or representative
22 action other than for settlement purposes. To the contrary, Defendant has denied and continues to deny
23 each and every material factual allegation and all Claims. To this end, the Class Settlement of the
24 Action, the negotiation and execution of this Stipulation, and all acts performed or documents executed
25 pursuant to or in furtherance of this Stipulation or the Class Settlement are not, shall not be deemed to
26 be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of
27 Defendant or Releasees or of the truth of any of the factual allegations in the Complaint in the Action;
28 and are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or

1 omission on the part of Defendant or Releasees in any civil, criminal or administrative proceeding in any
2 court, administrative agency or other tribunal. It is understood and agreed that this Settlement is a
3 compromise of the disputed claim and that this Settlement Agreement is not to be construed as an
4 admission of liability on the part of any of the Parties hereto and that Defendant deny liability and intend
5 to avoid litigation and buy peace.

6 **E. Confidentiality, Media, or Press Inquiries.** Other than information necessary to secure
7 Court approval of this settlement, the Parties (including legal counsel) agree to keep confidential all
8 matters relative to this Settlement, including the terms of the Settlement and the facts and circumstances
9 leading up to it. If asked about the disputes between the Parties, the Parties shall provide no other
10 statement than “the matter has been resolved” or “the matter has settled.” The Parties may, however,
11 discuss the terms of this Settlement with their spouses, attorneys, financial advisors, tax advisors, and
12 accountants, or upon a valid court order, at which time the individual receiving information about the
13 terms of this Settlement shall be informed that the terms of this Settlement are confidential, and the
14 individual may not reveal or disclose to any third party the terms of the Settlement. Nothing in this
15 Agreement shall prohibit Class Counsel from disclosing this Settlement in declarations submitted to
16 Courts concerning their qualifications to serve as Class and/or PAGA Counsel. Furthermore, nothing in
17 this Agreement shall prohibit Class Counsel from carrying out their duties as Class and/or PAGA
18 Counsel.

19 **F. Non-Retaliation.** Defendant and Releasees understand and acknowledge that it has a
20 legal obligation not to retaliate against any Settlement Class Member who elects to participate in the
21 Class Settlement or elects to Opt-Out of the Class Settlement. Defendant and Releasees will refer any
22 inquiries regarding this Class Settlement to the Settlement Administrator or Class Counsel and will not
23 discourage Settlement Class Members who are employees, directly or indirectly, from participating in,
24 opting out or objecting to the Class Settlement. Defendant and Releasees shall not encourage Class
25 Members to request exclusion from and/or object to the Settlement.

26 **G. Construction.** The Parties hereto agree that the terms and conditions of this Stipulation
27 are the result of lengthy, intensive, arms-length non-collusive negotiations between the Parties and that
28 this Stipulation is not to be construed in favor of or against any party by reason of the extent to which

1 any party or its counsel participated in the drafting of this Stipulation. If any of the dates in the
2 Stipulation fall on a weekend, bank or court holiday, the time to act shall be extended to the next
3 business day.

4 **H. Governing Law.** This Stipulation is intended to and shall be governed by the laws of
5 the State of California, without regard to conflict of law principles, in all respects, including execution,
6 interpretation, performance, and enforcement.

7 **I. Notices.** Except for Settlement Class Member Notices required to be made by the
8 Settlement Administrator, any and all notices or other communications required or permitted under this
9 Stipulation shall be in writing and shall be sufficiently given if delivered in person to the party or their
10 counsel by U.S. certified mail, postage prepaid or overnight delivery and e-mail addressed to the address
11 of the Party's Counsel as set forth in this Stipulation.

12 **J. Captions and Interpretations.** Section titles or captions contained herein are inserted
13 as a matter of convenience and for reference only and in no way define, limit, extend, or describe the
14 scope of this Stipulation or any provision thereof.

15 **K. Modification.** This Stipulation may not be changed, altered, or modified, except in
16 writing signed by the Parties and approved by the Court. This Stipulation may not be discharged except
17 by performance in accordance with its terms or by a writing signed by the Parties.

18 **L. Integration Clause.** This Stipulation contains the entire agreement between the Parties
19 relating to the Class Settlement of the Action and the transactions contemplated thereby, and all prior or
20 contemporaneous agreements, understandings, representations, and statements, whether oral or written,
21 and whether by a party or such party's legal counsel, are hereby superseded. No rights under this
22 Stipulation may be waived except in writing as provided above.

23 **M. Successors and Assigns.** This Stipulation shall be binding upon and inure to the benefit
24 of the Parties and Settlement Class Members (excluding only persons who timely Opt-Out by submitting
25 valid Requests for Exclusion) and their respective present and former heirs, trustees, executors,
26 administrators, representatives, officers, directors, shareholders, agents, employees, insurers, attorneys,
27 accountants, auditors, advisors, consultants, pension and welfare benefit plans, fiduciaries, parent
28 companies, subsidiaries, affiliates, related companies, joint ventures, predecessors, successors, and

1 assigns.

2 **N. Corporate Signatories.** Any person executing this Stipulation or any such related
3 document on behalf of a corporate signatory or on behalf of a partnership hereby warrants and promises,
4 for the benefit of all Parties hereto, that such person has been duly authorized by such corporation or
5 partnership to execute this Stipulation or any such related document.

6 **O. Execution in Counterparts.** This Stipulation shall become effective upon its execution
7 by all of the undersigned and may be executed electronically (such as via DocuSign). The Parties may
8 execute this Stipulation in counterparts, and execution of counterparts shall have the same force and
9 effect as if all Settling Parties had signed the same instrument.

10 **P. Attorneys' Fees, Costs and Expenses.** Except as otherwise specifically provided for
11 herein, each party shall bear his or her or its own attorney's fees, costs and expenses, taxable or
12 otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement thereof
13 from any other party to this Stipulation.

14 **Q. Action to Enforce Agreement.** In any suit or court action to enforce the terms of this
15 Agreement, the prevailing party shall be entitled to recover his or her or its attorney fees and costs. A
16 party claiming a breach will give notice of the claimed breach to the other party, along with a 30 day
17 opportunity to cure the breach

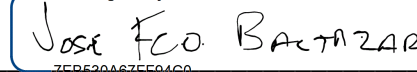
18 **IN WITNESS WHEREOF,** the Parties and their counsel have executed this Stipulation on the
19 date below their signatures or the signature of their representatives. The date of the Stipulation shall be
20 the date of the latest signature.

21 Dated: May __, 2020

22 _____
KERRY N. EVANS as an Individual, Class
Representative, and PAGA Representative

23 Dated: May ¹⁹ __, 2020

DocuSigned by:

24 

25 _____
JOSE BALTAZAR as an Individual, Class
Representative, and PAGA Representative

26
27 Dated: May __, 2020

28 _____
On behalf of Ameri-Kleen

By: _____

Its : _____

1 assigns.

2 **N. Corporate Signatories.** Any person executing this Stipulation or any such related
3 document on behalf of a corporate signatory or on behalf of a partnership hereby warrants and promises,
4 for the benefit of all Parties hereto, that such person has been duly authorized by such corporation or
5 partnership to execute this Stipulation or any such related document.

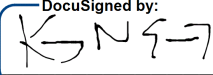
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19 date below their signatures or the signature of their representatives. The date of the Stipulation shall be
20 the date of the latest signature.

21 Dated: May __, 2020
5/20/2020

DocuSigned by:


22 _____
KERRY N. EVANS as an Individual, Class
Representative, and PAGA Representative

23 Dated: May __, 2020

24 _____
JOSE BALTAZAR as an Individual, Class
Representative, and PAGA Representative

25 Dated: May __, 2020

26 _____
On behalf of Ameri-Kleen

27 By: _____
28 Its : _____

1 assigns.

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3 document on behalf of a corporate signatory or on behalf of a partnership hereby warrants and promises,
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5 partnership to execute this Stipulation or any such related document.

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19 date below their signatures or the signature of their representatives. The date of the Stipulation shall be
20 the date of the latest signature.

21 Dated: June __, 2020

22 _____
KERRY N. EVANS as an Individual, Class
Representative, and PAGA Representative

23 Dated: June __, 2020

24 _____
JOSE BALTAZAR as an Individual, Class
Representative, and PAGA Representative

26 Jun 2, 2020
27 Dated: June __, 2020

28 *Brett Meyers*

On behalf of Ameri-Kleen
By: Brett Meyers
Its: President