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7 and on behalf of all others similarly situated

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HHI Enterprises, Inc. (erroneously sued herein as  
16 RGH Enterprises, Inc. Doing Business in California  
as HHI, Enterprise, Inc.)

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
18 **FOR THE COUNTY OF SAN BERNARDINO**  
19 **JUSTICE CENTER**

20 FRANCISCO GONZALEZ MARTINEZ,  
individually and on behalf of all others  
21 similarly situated,

22 Plaintiff,

23 vs.

24 RGH ENTERPRISES, INC. Doing Business  
25 in California as HHI ENTERPRISE, INC.  
and DOES 1 through 30, inclusive,

26 Defendants.  
27  
28

Lead Case No. CIVDS1907640  
(Consolidated with Case No.  
CIVDS1907427 for Discovery Only)  
CLASS ACTION

Assigned for all purposes to Hon. David  
Cohn, Dept. S-26

STIPULATION AND SETTLEMENT OF  
CLASS AND REPRESENTATIVE  
ACTIONS

Complaint Filed: March 12, 2019  
Trial Date: None Set

STIPULATION AND SETTLEMENT OF CLASS AND REPRESENTATIVE ACTIONS

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FRANCISCO GONZALEZ MARTINEZ,  
and on behalf of all other similarly  
aggrieved employees,  
  
Plaintiff,  
  
vs.  
  
RGH ENTERPRISES, INC. HHI  
ENTERPRISES, INC. and DOES 1  
through 30, Inclusive,  
  
Defendants.

Case No. CIVDS1907427  
  
Assigned for all purposes to Hon David  
Cohn, Dept. S-26  
  
Complaint Filed: March 8, 2019  
  
Trial Date: None Set

1 Subject to final approval by the Court, which counsel and the Parties agree to  
2 diligently pursue and recommend in good faith, Plaintiff Francisco Gonzalez Martinez  
3 ("Plaintiff"), individually and on behalf of all others similarly situated and all other  
4 aggrieved employees, on the one hand, and Defendant RGH Enterprises, Inc. dba HHI  
5 Enterprises, Inc. (erroneously sued as RGH Enterprises, Inc. Doing Business in California as  
6 HHI, Enterprise, Inc.) ("Defendant" or "RGH"), on the other hand (collectively, the  
7 "Parties" and individually, a "Party"), hereby agree to the following binding settlement of  
8 the class, and representative Actions designated *Francisco Gonzalez Martinez et al. v. RGH*  
9 *Enterprises, Inc. Doing Business in California as HHI Enterprise, Inc. et al.*, Case No.  
10 CIVDS1907640 and *Francisco Gonzalez Martinez et al. v. RGH Enterprises, Inc., HHI*  
11 *Enterprises, Inc.* Case No. CIVDS1907427 both pending before the Superior Court of  
12 California for the County of San Bernardino pursuant to the terms and conditions set forth  
13 below (the "Settlement," "Settlement Agreement" or "Agreement").

14 **1. Definitions.**

15 The following definitions are applicable to this Settlement Agreement. Definitions  
16 contained elsewhere in this Settlement Agreement will also be effective.

17 **1.1 "Actions."**

18 Collectively the Class Action Complaint entitled *Francisco Gonzalez Martinez et al.*  
19 *v. RGH Enterprises, Inc. Doing Business in California as HHI Enterprise, Inc. et al.* Case  
20 No. CIVDS1907640 filed on March 12, 2019, and the Complaint for Violations Under the  
21 California Private Attorneys General Act entitled *Francisco Gonzalez Martinez et al. v.*  
22 *RGH Enterprises, Inc., HHI Enterprises, Inc.* Case No. CIVDS1907427 filed March 8, 2019  
23 as amended on May 24, 2019, both pending before the Superior Court of California for the  
24 County of San Bernardino.

25 **1.2 "Aggrieved Employees."(PAGA)**

26 All non-exempt employees who worked for Defendant in California during the  
27 period from January 2, 2018 up to the earlier of December 17, 2020 (which is 90 days from  
28 the date the MOU was signed) or the date a signed order preliminarily approving the

1 Settlement is filed ("PAGA Period").

2 1.3 "Attorneys' Fees and Costs."

3 The attorneys' fees agreed upon by the Parties and approved by the Court for Class  
4 Counsel's litigation and resolution of the Actions, and all costs incurred and to be incurred  
5 by Class Counsel in the Actions, including, but not limited to, costs associated with  
6 documenting the Settlement, providing any notices required as part of the Settlement or  
7 Court's Order, securing the Court's approval of the Settlement, administering the Settlement,  
8 and any expert expenses. Class Counsel will request attorneys' fees not to exceed one-third  
9 (33.33%) of the Maximum Settlement Amount. The costs requested to be reimbursed will  
10 not exceed \$35,000.00. The attorneys' fees and costs awarded are subject to the Court's  
11 approval. Defendant has agreed not to oppose Class Counsel's request for attorneys' fees and  
12 reimbursement of costs and expenses as set forth above. Such Attorneys' Fees and Costs  
13 shall be paid from the Maximum Settlement Amount. Class Counsel will be issued an IRS  
14 Form 1099 for the Attorneys' Fees and Costs detailed in this Paragraph and shall be solely  
15 and legally responsible for paying all applicable taxes on the payment made pursuant to this  
16 Paragraph.

17 1.4 "Claims Administrator."

18 Phoenix Settlement Administrators (PSA) shall be the third-party class action  
19 settlement claims administrator as agreed to by the Parties and approved by the Court for the  
20 purposes of administering this Settlement. The Parties each represent that they do not have  
21 any financial interest in the Claims Administrator or otherwise have a relationship with the  
22 Claims Administrator that could create a conflict of interest.

23 1.5 "Claims Administration Costs."

24 The costs payable from the Maximum Settlement Amount to the Claims  
25 Administrator for administering this Settlement, including, but not limited to, printing,  
26 distributing, and tracking documents for this Settlement, calculating estimated amounts per  
27 Class Member, tax reporting, distributing the Maximum Settlement Amount, and providing  
28 necessary reports and declarations, and other duties and responsibilities set forth herein to

1 process this Settlement Agreement, and as requested by the Parties. The Claims  
2 Administrator shall also establish a website so that Class Members may access relevant  
3 pleadings and/or documents and be provided notice of the Final Judgment. The Claims  
4 Administration Costs will be paid from the Maximum Settlement Amount, including, if  
5 necessary, any such costs in excess of the amount represented by the Claims Administrator  
6 as being the maximum costs necessary to administer the Settlement, which are anticipated to  
7 be no greater than \$8,750. To the extent actual Claims Administration Costs are greater than  
8 \$8,750, such excess amount will be deducted from the Maximum Settlement Amount,  
9 subject to the Court's approval.

10 1.6 "Class Counsel."

11 Neal J. Fialkow of the Law Offices of Neal J. Fialkow, Inc. shall be appointed Class  
12 Counsel upon approval by the Court.

13 1.7 "Class List."

14 A complete list of all Class Members (as that term is defined below) that Defendant  
15 will diligently and in good faith compile from its records and provide to the Claims  
16 Administrator within fourteen (14) calendar days after the Preliminary Approval of this  
17 Settlement. The Class List will be formatted in a readable Microsoft Office Excel  
18 spreadsheet and will include each Class Member's full name, most recent mailing address,  
19 telephone number, Social Security number, dates of employment (i.e., hire date and  
20 termination date, if applicable), , whether they are or were a warehouse worker and any  
21 other relevant information needed to calculate settlement payments.

22 1.8 "Class Member(s)" or "Settlement Class."

23 All non-exempt employees who worked for Defendant in California during the  
24 period from March 12, 2015 up to the earlier of December 17, 2020 (90 days from the date  
25 the MOU was signed) or the date a signed order preliminarily approving the Settlement is  
26 filed ("Class Period").

27 1.9 "Class Representative's Enhancement Payment."

28 The amount to be paid to Plaintiff in recognition of his effort and work in

1 prosecuting the Actions on behalf of Class Members and for a general release of claims.  
2 Subject to the Court granting Final Approval of this Settlement Agreement, Plaintiff will  
3 request Court approval of a Class Representative's Enhancement Payments of \$25,000.00.  
4 Plaintiff will be issued an IRS Form 1099 in connection with his Class Representative  
5 Enhancement Payment. Plaintiff shall be solely and legally responsible for paying any and  
6 all applicable taxes on this payment and shall hold Defendant harmless from any claim or  
7 liability for taxes, penalties or interest arising as a result of the payment. The Class  
8 Representative's Enhancement Payment will be paid from the Maximum Settlement Amount  
9 and will be in addition to Plaintiff's Individual Settlement Payments (as that term is defined  
10 below) paid pursuant to the Settlement. Defendant has agreed not to oppose Plaintiff's  
11 request for Class Representative's Enhancement Payment as set forth above.

12 1.10 "Court."

13 Superior Court of California for the County of San Bernardino.

14 1.11 "Defendant."

15 Defendant RGH Enterprises, Inc. dba HHI Enterprises, Inc. (erroneously sued as  
16 RGH Enterprises, Inc. Doing Business in California as HHI, Enterprise, Inc.).

17 1.12 "Effective Date."

18 The sixtieth (60<sup>th</sup>) calendar day after Final Approval provided no motion to vacate  
19 the judgment, appeal writ or other appellate proceeding having been filed; or the seventh  
20 (7<sup>th</sup>) calendar day after any motion to vacate judgment, appeal, writ, or other appellate  
21 proceeding opposing this Settlement Agreement has been finally dismissed with no material  
22 change to the terms of this Settlement Agreement and there is no right to further remedies or  
23 relief, whichever is later.

24 1.13 "Final Approval" or "Final Award."

25 The Court filing a signed Order Granting Final Approval of the Settlement  
26 Agreement.

27 1.14 "Individual Settlement Payment" or "Settlement Payment Check"

28 Each Class Member's and Aggrieved Employee's share of the Net Settlement

1 Amount, which shall be distributed less employee portions of state and federal withholding  
2 taxes, including the employee FICA, FUTA and SDI contributions and any other applicable  
3 payroll deductions required by law as a result of the payment of the amount allocated as set  
4 forth herein.

5 1.15 "Information Sheet."

6 The document substantially in the form attached as Exhibit B that will be mailed to  
7 Class Members' last known addresses and will provide calculation of Individual Payments to  
8 them. The Parties agree that the Information Sheet will be in English and Spanish.

9 1.16 "LWDA Notice."

10 The Parties agree that Plaintiff will submit Notice to the Labor & Workforce  
11 Development Agency ("LWDA") of this Settlement along with a copy of this Settlement  
12 Agreement prior to the time of filing the Motion for Preliminary Approval, and will  
13 thereafter submit a copy of any judgment or any other order (e.g., the Final Award)  
14 providing for an award of civil penalties and in conformity with Labor Code section  
15 2699(1).

16 1.17 "Maximum Settlement Amount."

17 The sum of \$1,750,000.00 to be paid by Defendant in full satisfaction of all claims  
18 alleged in and arising from facts alleged in the Actions. Defendant represents that there are  
19 no more than 52,292 work weeks for non-exempt employees of Defendant from March 12,  
20 2015 through September 18, 2020. In the event the number of work weeks during the Class  
21 Period exceeds 57,521 (i.e., the greater than 10% more than 52,292), then the Maximum  
22 Settlement Amount shall be increased proportionally by the number of work weeks in excess  
23 of 57,251 multiplied by the work week value. For example, if there were 52,292 work weeks  
24 represented to exist during the Class Period, but there are actually 58,000 work weeks at the  
25 time of preliminary approval of the Settlement, and the work week value is \$5.00 per work  
26 week, Defendant will have to increase the Maximum Settlement Amount by \$2,395.00 (i.e.,  
27 479 work weeks times \$5.00 per work week). The Maximum Settlement Amount includes  
28 all Individual Settlement Payments to Class Members and/or Aggrieved Employees, the

1 PAGA Payment to the Labor & Workforce Development Agency ("LWDA") and Aggrieved  
2 Employees, the Class Representative's Enhancement Payment to Plaintiff, Claims  
3 Administration Costs to the Claims Administrator, and Class Counsel's Attorneys' Fees and  
4 Costs. Defendant will be responsible for employer's share of payroll taxes required by law,  
5 separate and in addition to the Maximum Settlement Amount.

6 1.18 "Net Settlement Amount."

7 The portion of the Maximum Settlement Amount remaining after deduction of the  
8 approved Class Representatives' Enhancement Payments, Claims Administration Costs,  
9 PAGA Payment, and Class Counsel Attorneys' Fees and Costs.

10 1.19 "Notice of Class Action Settlement."

11 The document substantially in the form attached as Exhibit A that will be mailed to  
12 Class Members' last known addresses and which will provide them with information  
13 regarding the actions and information regarding the Settlement of the Actions. The Parties  
14 agree that the Notice will be in English and Spanish.

15 1.20 "Notice of Objection."

16 A Class Member's valid and timely written objection to the Settlement Agreement.  
17 For the Notice of Objection to be valid, it must include the objector's full name, signature,  
18 address, telephone number and a written statement of all grounds for the objection  
19 accompanied by legal support, if any, for such objection. The Notice of Objection must be  
20 returned by mail or fax to the Claims Administrator at the specified address or facsimile  
21 number and postmarked or faxed on or before the Response Deadline. The date of the  
22 postmark or fax receipt confirmation will be the exclusive means to determine whether a  
23 Notice of Objection has been timely submitted. Class Members who fail to make objections  
24 in the manner specified above shall be deemed to have waived any objections and shall be  
25 foreclosed from making any objection (whether by appeal or otherwise) to the Settlement  
26 Agreement. Neither the Parties nor their counsel will solicit or otherwise encourage Class  
27 Members to submit written objections to the Settlement Agreement or appeal from the Order  
28 and Judgment. Class Counsel will not represent any Class Member with respect to any such



1 objections to this Settlement. The Claims Administrator shall provide counsel for the Parties  
2 with complete copies of all objections received, including the date of postmark or fax receipt  
3 confirmation for each objection) within five (5) business days of receipt, Class Counsel will  
4 provide copies of any objections and supporting documents to the Court at least sixteen (16)  
5 court days before the Final Approval Hearing.

6 1.21 "Notice Packet."

7 This is the packet of documents, substantially in the form of Exhibits A and B, which  
8 together will be mailed to all Class Members and which include the Notice of Class Action  
9 Settlement and Information Sheet.

10 1.22 "PAGA Payment."

11 The sum of \$25,000.00 of the Maximum Settlement Amount that will be allocated to  
12 resolve the PAGA claim asserted in the Actions. Per California Labor Code section 2699(i),  
13 75% of such penalties, or \$18,750.00 will be paid to the LWDA, and the remaining 25% or  
14 \$6,250.00 to Aggrieved Employees on a pro rata basis.

15 1.23 "Plaintiff."

16 Plaintiff Francisco Gonzalez Martinez.

17 1.24 "Preliminary Approval."

18 The Court's order granting preliminary approval of the Settlement Agreement.

19 1.25 "Qualified Settlement Account."

20 The fund established by the Claims Administrator pursuant to Internal Revenue Code  
21 section 1.468B-1.

22 1.26 "Released Claims."

23 Released Claims for the Class Claims mean all claims contained in the operative  
24 complaints filed in the Actions, and all claims that could have been brought based on the  
25 facts and allegations pled in the operative complaints of the Actions for the Class Period ,  
26 namely: failure to pay wages for hours worked including minimum wages and overtime  
27 wages; failure to provide meal and rest periods and premium wages; failure to pay vacation  
28 pay and all paid time off; failure to pay all wages due upon separation; failure to maintain

1 required records; failure to provide accurate itemized wage statements; unfair business  
2 practices; injunctive relief and restitution; penalties of any nature; liquidated damages;  
3 interest; and attorneys' fees and costs ("Class Released Claims"). Class Released Claims  
4 include all claims arising under: California Labor Code sections 200, 201, 202, 203, 204,  
5 218.5, 218.6, 226, 226(a), 226.7, 227.3, 510, 512, 1174, 1174.5, 1175, 1194, 1194.2, 1197,  
6 1197.1, and 1199; applicable Wage Orders of the California Industrial Welfare Commission;  
7 California Business and Professions Code section 17200, *et seq.*; and any other claims for  
8 violation of the California Labor Code or any other State or Federal law, statute, regulation  
9 or ordinance imposing liability and/or obligations that could be brought based on the  
10 allegations in the operative complaints.

11 Released claims for the PAGA cause of action means that Aggrieved Employees will  
12 release all claims under the California Private Attorneys General Act of 2004 ("PAGA"),  
13 California Labor Code sections 2698 *et seq.* and 2699 *et seq.*, for civil penalties for Labor  
14 Code violations contained in Plaintiff's letters to the LWDA and/or operative complaints  
15 through the PAGA Period ("PAGA Released Claims").

16 1.27 "Released Parties."

17 Defendant and Cardinal Health, Inc. as well as Defendant's parents, subsidiaries,  
18 affiliates, officers, shareholders, directors, agents, employees, attorneys and insurers.

19 1.28 "Request for Exclusion."

20 A notice submitted by a Class Member requesting to be excluded from the  
21 Settlement. For the Request for Exclusion to be valid, it must include the Class Member's  
22 full name, signature, address, telephone number and a written statement requesting to be  
23 excluded from this Settlement. The Request for Exclusion must be returned by mail or fax to  
24 the Claims Administrator at the specified address or facsimile number and postmarked or  
25 faxed on or before the Response Deadline. The date of the postmark or fax receipt  
26 confirmation will be the exclusive means to determine whether a Request for Exclusion has  
27 been timely submitted. A Class Member who does not submit a timely and valid Request for  
28 Exclusion from the Settlement will be deemed a Class Member and will be bound by all

1 terms of the Settlement Agreement if the Settlement is granted Final Approval by the Court.

2 1.29 "Response Deadline."

3 The deadline by which Class Members must mail or fax to the Claims Administrator  
4 valid Requests for Exclusion, Notices of Objection to the Settlement, or workweek disputes.  
5 The Response Deadline will be forty-five (45) calendar days from the initial mailing of the  
6 Notice Packet by the Claims Administrator, unless the 45th day falls on a Sunday or Federal  
7 holiday, in which case the Response Deadline will be extended to the next day on which the  
8 U.S. Postal Service is open. The Response Deadline for Requests for Exclusion, Notices of  
9 Objection, or workweek disputes will be extended ten (10) calendar days for any Class  
10 Member who is remailed a Notice Packet by the Claims Administrator, unless the 10th day  
11 falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended  
12 to the next day on which the U.S. Postal Service is open. The Response Deadline may also  
13 be extended by express agreement between Class Counsel and Defendant. Under no  
14 circumstances, however, will the Claims Administrator have the authority to unilaterally  
15 extend the deadline for Class Members to submit a Request for Exclusion, Notice of  
16 Objection to the Settlement, or workweek disputes.

17 1.30 "Satisfaction of Judgment."

18 Upon the Effective Date and payment by Defendants of all monies due under the  
19 Settlement Agreement and entry of the Order Granting Final Approval, the Parties shall file  
20 a Satisfaction of Judgment with the Court of the Actions.

21 1.31 Total Adjusted Workweeks

22 The total amount of warehouse workers' actual work weeks will be multiplied by 1.5  
23 and the total amount of office workers' workweeks will be added to that amount, which will  
24 then be the Total Adjusted Workweeks available to all employees.

25 **2. FUNDING OF THE MAXIMUM SETTLEMENT AMOUNT AND**  
26 **PAYMENTS.**

27 No later than forty-five (45) calendar days from the Effective Date of the Settlement,  
28 Defendant will deposit the Maximum Settlement Amount into a Qualified Settlement

1 Account to be established by the Claims Administrator. Within fourteen (14) calendar days  
2 of the full funding of the Settlement, the Claims Administrator will issue payments pursuant  
3 the terms and formula set forth in this Settlement Agreement to: (a) Class Members; (b) the  
4 California Labor & Workforce Development Agency; (c) Aggrieved Employees; (d)  
5 Plaintiff; and (d) Class Counsel. The Claims Administrator will also issue a payment to itself  
6 for Court-approved services performed in connection with this Settlement.

7 **3. ATTORNEYS' FEES AND COSTS.**

8 Defendant agrees not to oppose or impede any application by Class Counsel for  
9 attorneys' fees of not more than one-third (33.33%) of the Maximum Settlement Amount,  
10 which is estimated to be \$583,333.33 and the reimbursement of costs and expenses  
11 associated with Class Counsel's litigation and settlement of the Actions not to exceed  
12 \$35,000.00. Any amount awarded for Class Counsel's Attorneys' Fees and Costs shall be  
13 paid from the Maximum Settlement Amount. No counsel shall be entitled to attorneys' fees  
14 or costs for work performed in the Actions other than as provided in this Settlement  
15 Agreement. The instant Settlement Agreement is the exclusive means for recovery of  
16 attorneys' fees and costs incurred in the Actions by any attorney, law firm and/or other legal  
17 services provider.

18 **4. CLASS REPRESENTATIVE'S ENHANCEMENT PAYMENT.**

19 In exchange for a general release and in recognition of his effort and work in  
20 prosecuting the Actions on behalf of Class Members, Defendants agree not to oppose or  
21 impede any application or motion for Class Representative's Enhancement Payment in the  
22 amount of \$25,000.00. The Class Representative's Enhancement Payment will be paid from  
23 the Maximum Settlement Amount and will be in addition to Plaintiffs' Individual Settlement  
24 Payments paid pursuant to the Settlement. Plaintiff will be solely and legally responsible to  
25 pay any and all applicable taxes on the payment made and will indemnify and hold  
26 Defendant harmless from any claim or liability for taxes, penalties, or interest arising as a  
27 result of the payment.

28 ///



1 **5. CLAIMS ADMINISTRATION COSTS.**

2 5.1 The Claims Administrator will be paid for the reasonable costs of  
3 administration of the Settlement and distribution of payments from the Maximum Settlement  
4 Amount, which are currently estimated to be \$8,750.

5 5.2 The Parties hereby acknowledge that the Claims Administration Costs may  
6 increase above the current estimate of \$8,750 and that any such additional Claims  
7 Administration Costs that are approved by the Parties' counsel and the Court shall be taken  
8 out of the Maximum Settlement Amount.

9 **6. LABOR AND WORKFORCE DEVELOPMENT AGENCY PAYMENT.**

10 6.1 Subject to Court approval, the Parties agree that the sum of \$25,000.00 of the  
11 Maximum Settlement Amount will be allocated to resolve the PAGA claim asserted in the  
12 Actions. Per California Labor Code section 2699(i), 75% of such penalties or \$18,750.00  
13 will be paid to the LWDA, and the remaining 25% or \$6,250.00 to Aggrieved Employees.

14 **7. NET SETTLEMENT AMOUNT.**

15 7.1 The Net Settlement Amount will be determined by subtracting from the  
16 Maximum Settlement Amount any Court-approved amounts for Attorneys' Fees and Costs,  
17 the Class Representative's Enhancement Payment, the Claims Administrator's Costs, and  
18 the PAGA Payment. The Net Settlement Amount will be used to satisfy Individual  
19 Settlement Payments to Class Members from the Settlement Class in accordance with the  
20 terms of this Settlement Agreement.

21 **8. CALCULATIONS OF INDIVIDUAL SETTLEMENT PAYMENTS.**

22 8.1 For Class Members who participate in the Settlement by not requesting to be  
23 excluded from the Settlement, each Class Member's Individual Settlement Payment will be  
24 determined first by dividing the Class Member's total work weeks worked during the Class  
25 Period by the total work weeks by all Class Members within the Class Period; and then that  
26 fraction will be multiplied by the Net Settlement Amount to arrive at the Class Member's  
27 individual share of the Net Settlement Amount. The Individual Payments to Class Members  
28 will be allocated 20% as wages and 80% as penalties and interest. Warehouse workers will

1 receive 1.5 times the amount of their actual workweeks for the purpose of calculating their  
2 individual settlement amount for purposes of determining total workweeks. The total  
3 amount of warehouse workers' actual work weeks will be multiplied by 1.5 and the total  
4 amount of office workers' workweeks will be added to that amount, which will then be the  
5 Total Adjusted Workweeks available to all employees. (See paragraph 1.31).

6 To determine each employee's share, use the actual amount of workweeks worked  
7 by the employee in the Covered Period. If the employee is a warehouse worker multiply  
8 their workweeks by 1.5. The resulting fraction is expressed as the numerator over the  
9 denominator of the Total Adjusted Workweeks, as illustrated below:

$$\frac{\text{Employees' Workweeks Adjusted if Warehouse Worker}}{\text{Total Adjusted Workweeks}}$$

12 This fraction is then multiplied by the Net Settlement Amount to arrive at the Class  
13 Member's individual share of the Net Settlement Amount.

14 8.2 Each Class Member's Individual Settlement Payment will be reduced by any  
15 required deductions as set forth herein being the employee-side tax withholdings or  
16 deductions. However, Defendant will be responsible for payment of the employer's share of  
17 payroll taxes due on the portion of the Net Settlement Amount allocated to wages.

18 8.3 The Individual Settlement Payment for each Aggrieved Employee's share of  
19 the 25 % portion of the PAGA Payment will be determined first by dividing the Aggrieved  
20 Employee's total work weeks within the PAGA Period by the total number of actual work  
21 weeks worked by all Aggrieved Employees within the PAGA period; and then that fraction  
22 will be multiplied by the 25 % portion of the PAGA Payment to arrive at the Aggrieved  
23 Employee's individual share. The Individual Settlement Payments to Aggrieved Employees  
24 will be allocated 100% as penalties. Each Aggrieved Employee will be responsible for paying  
25 any personal taxes owed on the amounts received.

26 8.4 The Individual Settlement Payments made to Class Members and Aggrieved  
27 Employees under this Settlement, and any other payments made pursuant to this Settlement,  
28 will not be utilized to calculate any additional benefits under any benefit plans to which any

1 Class Members and Aggrieved Employees may be eligible, including, but not limited to,  
2 profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick  
3 leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this  
4 Settlement Agreement will not affect any rights, contributions, or amounts to which any  
5 Class Members and Aggrieved Employees may be entitled under any benefit plans.

6 8.5 Uncashed Settlement Checks. (Option 1)

7 All Settlement Payment checks issued by the Administrator to the Class  
8 Members and Aggrieved Employees will be negotiable for one-hundred eighty (180)  
9 calendar days. After one-hundred eighty (180) calendar days from the date of mailing, the  
10 Settlement Payment Checks shall become null and void. Monies remaining in the Qualified  
11 Settlement Account from the uncashed Settlement Payment Checks shall be distributed to  
12 the Legal Aid Society of San Bernardino in accordance with California Code of Civil  
13 Procedure section 384(b) and the Court's guidelines. Alternatively, if the Court does not  
14 approve the Cy Pres, recipients' uncashed settlement checks will be resolved pursuant to  
15 Section 8.6 (Option 2).

16 8.6 Uncashed Settlement Payment Checks (Option 2). All Settlement Payment  
17 Checks issued by the Claims Administrator to Class Members and Aggrieved Employees  
18 will be negotiable for one-hundred eighty (180) calendar days. After one-hundred eighty  
19 (180) calendar days from the date of mailing, the Settlement Payment Checks shall become  
20 null and void, and any monies remaining in the Qualified Settlement Account shall be  
21 distributed to the Controller of the State of California to be held pursuant to the Unclaimed  
22 Property Law, California Civil Code section-1500 et seq., for the benefit of those Settlement  
23 Class Members and Aggrieved Employees who did not cash their Settlement Payment  
24 Checks (with the identity of the participating Class Member and Aggrieved Employee) until  
25 such time that they claim their property. The Parties agree that this disposition results in no  
26 "unpaid residue" under California Civil Procedure Code section 384(b), as the entire Net  
27 Settlement Amount will be paid out to Settlement Class Members and the 25% portion of  
28 the PAGA Payment to Aggrieved Employees whether or not they all cash their checks. In

1 the event a participating Class Member fails to cash a Settlement Payment Check, the  
2 affected participating Class Member will be deemed to, nevertheless, be bound to the  
3 Settlement including the Class Release. (See ¶¶1.26, 15.1).

#### 4 **9. ADMINISTRATION PROCESS**

5 9.1 The Parties agree to cooperate in the administration of the Settlement and to  
6 make all reasonable efforts to control and minimize the costs and expenses incurred in  
7 administration of the Settlement. The Claims Administrator will provide the following  
8 services:

- 9 a. Establish and maintain a Qualified Settlement Account;
- 10 b. Calculate the Individual Settlement Payment each Class Member and  
11 Aggrieved Employee is eligible to receive;
- 12 c. Print and mail the Notice Packet;
- 13 d. Establish and maintain a toll-free information telephone support line and  
14 dedicated internet website or webpage to assist Class Members who have  
15 questions regarding the Notice Packet and post documents and information  
16 on its website;
- 17 e. Conduct additional address searches for mailed Notice Packets that are  
18 returned as undeliverable;
- 19 f. Process Requests for Exclusion, determine eligibility and calculate amount  
20 for Class Members' and Aggrieved Employees Individual Settlement  
21 Payments, field inquiries from Class Members, and administer any Requests  
22 for Exclusion. This service will include settlement proceed calculation,  
23 printing and issuance of Settlement Payment Checks, and preparation of IRS  
24 W-2 and 1099 Tax Forms. Basic accounting for and payment of employee tax  
25 withholdings and forwarding all payroll taxes and penalties to the appropriate  
26 government authorities will also be included as part of this service;
- 27 g. Issuing to Plaintiffs, Class Members, Aggrieved Employees and Class  
28 Counsel any W-2, 1099, or other tax forms as may be required by law for all



1 amounts paid pursuant to this Settlement,

2 h Provide declarations and/or other information to the Court as requested by the  
3 Parties and/or the Court; and,

4 i Provide weekly status reports to counsel for the Parties.

5 9.2 Within fourteen (14) calendar days of Preliminary Approval, Defendant will  
6 provide the Class List to the Claims Administrator.

7 9.3 Within fourteen (14) calendar days after receiving the Class List from  
8 Defendant, the Claims Administrator will mail a Notice Packet to all Class Members via  
9 regular First-Class U.S. Mail, using their last known mailing addresses identified in the  
10 Class List.

11 9.4 Prior to mailing, the Claims Administrator will perform a search based on the  
12 National Change of Address Database for information to update and correct any known or  
13 identifiable address changes. Any Notice Packets returned to the Claims Administrator as  
14 non-deliverable on or before the Response Deadline will be sent promptly via regular First-  
15 Class U.S. Mail to the forwarding address affixed thereto and the Claims Administrator will  
16 indicate the date of such re-mailing on the Notice Packet. If no forwarding address is  
17 provided, the Claims Administrator will promptly attempt to determine the correct address  
18 using a skip-trace, or other search using the name, address and/or Social Security number of  
19 the Class Member involved, and will then perform a single re-mailing. Those Class  
20 Members who receive a re-mailed Notice Packet, whether by skip-trace or by request, will  
21 have an additional ten (10) calendar days to postmark or fax a Request for Exclusion, pay  
22 period dispute or Notice of Objection to the Settlement and will be advised of the same.

23 9.5 All Class Members will be sent a Notice Packet containing the Notice of  
24 Class Action Settlement (attached as Exhibit A) and Information Sheet (attached as Exhibit  
25 B) by First Class U.S. Mail.

26 9.6 Disputed Information Sheet Procedures.

27 Class Members will have an opportunity to dispute the work week information  
28 provided in the Information Sheets sent to them. To the extent the Class Members dispute

1 the workweeks information used from Defendant's records to calculate their Individual  
2 Settlement Payments, Class Members may produce evidence to the Claims Administrator  
3 showing such information is inaccurate. Absent evidence rebutting Defendant's records,  
4 Defendant's records will be presumed determinative. However, if a Class Member produces  
5 evidence to the contrary, the Claims Administrator will evaluate the evidence submitted by  
6 the Class Member and will make the final decision as to the Individual Settlement Payment  
7 to which the Class Member may be entitled. The work week dispute must be returned by  
8 mail or fax to the Claims Administrator at the specified address or facsimile number and  
9 postmarked or faxed on or before the Response Deadline. The date of the postmark or fax  
10 receipt confirmation will be the exclusive means to determine whether a pay period dispute  
11 has been timely submitted. All such disputes are to be resolved not later than fourteen (14)  
12 calendar days after the Response Deadline.

13 **10. REQUEST FOR EXCLUSION AND OBJECTION PROCEDURES.**

14 10.1 Any Class Member wishing to opt-out from the Settlement Agreement must  
15 sign and postmark or fax a Request for Exclusion to the Claims Administrator within the  
16 Response Deadline. The date of the postmark on the return mailing envelope or the fax  
17 receipt confirmation will be the exclusive means to determine whether a Request for  
18 Exclusion has been timely submitted. All Requests for Exclusion will be submitted to the  
19 Claims Administrator, who will certify jointly to Class Counsel and Defendants' Counsel the  
20 Requests for Exclusion that were submitted. Any Class Member who does not timely seek  
21 exclusion will be bound by the terms of this Settlement Agreement. (See also paragraph 1.26  
22 Released Claims).

23 10.2 Objection Procedures.

24 Class Members who do not submit a Request for Exclusion may object to this  
25 Settlement by filing an objection with the Claims Administrator (who shall serve all  
26 objections as received on Class Counsel and Defendant's counsel, and Class Counsel shall  
27 file all such objections with the Court) within the Response Deadline. Defendant's counsel  
28 and Class Counsel shall file any responses to objections no later than the deadline to file the

1 Motion for Final Approval, unless an untimely objection is filed within ten (10) days of the  
2 Motion for Final Approval, in which case Class Counsel and Defendant's counsel shall have  
3 ten (10) days to respond. To be valid, any objection must: (a) contain the objecting Class  
4 Member's full name and current address, as well as contact information for any attorney  
5 representing the objecting Class Member for purposes of the objection; (b) include all  
6 objections and the factual and legal bases for same; (c) include any and all supporting  
7 papers, briefs, written evidence, declamations, and/or other evidence; and (d) be postmarked  
8 no later than the Response Deadline.

9 **11. DEFECTIVE SUBMISSIONS.**

10 11.1 If a Class Member's dispute regarding the Individual Settlement  
11 Payment, Notice of Objection and/or Request for Exclusion is defective as to the  
12 requirements listed herein, that Class Member will be given an opportunity to cure the  
13 defect(s). The Claims Administrator will mail the Class Member a cure letter within three  
14 (3) business days of receiving the defective submission to advise the Class Member that his  
15 or her submission is defective and that the defect must be cured to render the Objection or  
16 Request for Exclusion valid. The Class Member will have until the later of (a) the Response  
17 Deadline or (b) ten (10) calendar days from the date of the cure letter, whichever date is  
18 later, to postmark or fax a revised Objection or Request for Exclusion.

19 11.2 A copy of each cure letter will be provided to class counsel and defense  
20 counsel concurrently with the mailing to the Class Member.

21 **12. NULLIFICATION OF THE SETTLEMENT AGREEMENT.**

22 12.1 In the event: (a) the Court does not enter the Preliminary Approval Order and  
23 approve the Released Claims specified herein; (b) the Court does not finally approve the  
24 Settlement as provided herein; or (c) the Settlement does not become final for any other  
25 reason (e.g., an objection by the LWDA), this Settlement Agreement shall be null and void.  
26 Any order or judgement entered by the Court in furtherance of this Settlement Agreement  
27 shall be treated as void from the beginning, and the Stipulations and Recitals contained  
28 herein shall be of no force or effect, and shall not be treated as an admission by the Parties

1 or their counsel. In such a case, the Parties and any funds to be awarded under this  
2 Settlement Agreement shall be returned to their respective statuses as of the date and time  
3 immediately prior to the execution of this Settlement Agreement, and the Parties shall  
4 proceed in all respects as if this Settlement Agreement had not been executed, except that  
5 any fees and costs already incurred by the Claims Administrator shall be paid equally by  
6 both Parties.

7 12.2 Defendant's Option to Nullify Settlement Agreement. In the event five  
8 percent (5%) or more of the Class Members request exclusion (i.e., opt-out) of the  
9 Settlement, Defendant in its sole discretion shall have the option of nullifying the Settlement  
10 Agreement. In such a case, the Parties and funds to be awarded under this Settlement  
11 Agreement shall be returned to their respective statuses as of the date immediately prior to  
12 the execution of this Agreement. The Parties shall proceed in all respects as if this  
13 Settlement Agreement had not been executed, except that any fees and costs incurred by the  
14 Claims Administrator shall be paid by Defendant due to its sole election to nullify this  
15 Agreement.

16 **13. BINDING SETTLEMENT TERMS ON SETTLEMENT CLASS MEMBERS.**

17 Any Class Member who does not affirmatively opt-out of the Settlement Agreement  
18 by submitting a timely and valid Request for Exclusion will be bound by all its terms,  
19 including those pertaining to the Released Claims; however, a Class Member cannot exclude  
20 himself or herself from the PAGA component of this Settlement.

21 **14. REPORTS BY CLAIMS ADMINISTRATOR**

22 14.1 The Claims Administrator will provide Defendant's counsel and Class  
23 Counsel a weekly report which certifies: (a) the number of Class Members who have  
24 submitted valid Requests for Exclusion; (b) any objections submitted to the Settlement along  
25 with a copy of any such objection; and (c) whether any Class Member has submitted a  
26 challenge to any information contained in his/her Information Sheet. Additionally, the  
27 Claims Administrator will provide to counsel for both Parties any updated reports regarding  
28 the administration of the Settlement Agreement as needed or requested.

1           14.2   Upon completion of administration of the Settlement, the Claims  
2 Administrator provides a written declaration under oath to certify such completion to the  
3 Court and counsel for all Parties.

4 **15.    TAX TREATMENT OF INDIVIDUAL SETTLEMENT PAYMENTS.**

5           15.1   The portions of Individual Settlement Payments allocated to wages will be  
6 reported on an IRS Form W-2 and the portions allocated to non-wages will be reported on  
7 an IRS Form-1099 by the Claims Administrator (See paragraph 8.1). The Individual  
8 Settlement Payments will be reduced by any required legal deductions for each Class  
9 Member. All standard employee payroll deductions will be made for state and federal  
10 withholding taxes, including any other applicable payroll deductions owed by the Class  
11 Members as a result of the wage component. No withholding shall be made on non-wages  
12 such as penalties and interest. The Claims Administrator shall be responsible for issuing the  
13 payments and calculating and withholding all required state and federal taxes.

14          15.2   The Claims Administrator shall determine the eligibility for, and the amounts  
15 of, any Individual Settlement Payments under the terms of this Settlement Agreement. Any  
16 disputes not resolved by the Claims Administrator concerning the administration of the  
17 Settlement will be resolved by the Court, under the laws of the State of California. Prior to  
18 any such involvement of the Court, counsel for the Parties will confer in good faith to  
19 resolve the dispute without the necessity of involving the Court.

20          15.3   Circular 230 Disclaimer. Each Party to this Agreement acknowledges and  
21 agrees that (a) no provision of this Agreement, and no communication or disclosure between  
22 or among the Parties or their attorneys and other advisors, is or was intended to be, nor shall  
23 any such communication or disclosure constitute or be construed or be relied upon as, tax  
24 advice within the meaning of United States Treasury Department Circular 230 (31 CFR part  
25 10, as amended); (b) Plaintiff (i) has relied exclusively upon Plaintiff's own independent  
26 legal and tax advisors for advice (including tax advice) in connection with this Agreement,  
27 (ii) has not entered into this Agreement based upon the recommendation of any other Party  
28 or any attorney or advisor to any other Party, and (iii) is not entitled to rely upon any

1 communication or disclosure by any attorney or advisor to any other Party to avoid any tax  
2 penalty that may be imposed on Plaintiff; and (c) no attorney or advisor to any other Party  
3 has imposed any limitation that protects the confidentiality of any such attorney's or  
4 advisor's tax strategies (regardless of whether such limitation is legally binding) upon  
5 disclosure by Plaintiff of the tax treatment or tax structure of any transactions, including any  
6 transactions contemplated by this Agreement.

7 **16. RELEASES.**

8 16.1 Class and Aggrieved Employee Release.

9 It is the intent of Plaintiff, Class Members (except those who exclude themselves  
10 from the Settlement), Aggrieved Employees, and Defendant to fully, finally, and forever  
11 settle, compromise, and discharge the aforementioned Class Released Claims and PAGA  
12 Released Claims. On the Effective Date, and except as to such rights or claims as may be  
13 created by this Settlement Agreement, the Class Members and Aggrieved Employees fully  
14 and finally release and discharge the Released Parties from any and all Class Released  
15 Claims and PAGA Released Claims for the entire Class Period and PAGA Period. This  
16 release shall be binding on all Class Members who have not timely submitted a valid and  
17 complete Request for Exclusion, and Aggrieved Employees, including each of their  
18 respective attorneys, agents, spouses, executors, representatives, guardians ad litem, heirs,  
19 successors, and assigns, and shall inure to the benefit of the Released Parties, who shall have  
20 no further or other liability or obligation to any Class Member or Aggrieved Employee with  
21 respect to the Class Released Claims and PAGA Released Claims, except as expressly  
22 provided in this Agreement. This release excludes the release of claims not permitted by  
23 law.

24 16.2 Plaintiff's Further General Release.

25 In addition to the Class Released Claims and PAGA Released Claims, Plaintiff for  
26 himself only, as of the Effective Date fully and finally releases and discharges the Released  
27 Parties from any and all claims, whether known or unknown, under federal, state and/or  
28 local law, statute, ordinance, regulation, common law, or other source of law arising from or



1 related to his employment with Defendant except as otherwise provided in this Agreement.  
2 This release excludes the release of claims not permitted by law. Plaintiff expressly  
3 acknowledges that Plaintiff is aware of the existence of California Civil Code section 1542  
4 and its meaning and effect. Plaintiff expressly acknowledges that Plaintiff has read and  
5 understands the following provision of that section, which provides:

6 **A GENERAL RELEASE DOES NOT EXTEND TO**  
7 **CLAIMS THAT THE CREDITOR OR RELEASING**  
8 **PARTY DOES NOT KNOW OR SUSPECT TO EXIST**  
9 **IN HIS OR HER FAVOR AT THE TIME OF**  
10 **EXECUTING THE RELEASE AND THAT, IF**  
11 **KNOWN BY HIM OR HER, WOULD HAVE**  
12 **MATERIALLY AFFECTED HIS OR HER**  
13 **SETTLEMENT WITH THE DEBTOR OR RELEASED**  
14 **PARTY.**

15 Plaintiff expressly waives and releases any right to benefits Plaintiff may have under  
16 Civil Code section 1542 as it affects him only. Plaintiff further acknowledges that Plaintiff  
17 may later discover facts different from or in addition to those facts now known to Plaintiff or  
18 believed by Plaintiff to be true with respect to any or all of the matters covered by this  
19 General Release. The Parties agree that this General Release nevertheless shall remain in  
20 full and complete force and effect. Plaintiffs's Further General Release applies only to  
21 Plaintiff individually and not to Class Members.

22 16.3 The Parties and their counsel represent, covenant, and warrant that they have  
23 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,  
24 or encumber to any person or entity any portion of any liability, claim, demand, action,  
25 cause of action or right herein released and discharged.

## 26 **17. PRELIMINARY APPROVAL HEARING.**

27 17.1 Class Counsel will obtain a hearing before the Court to request Preliminary  
28 Approval of the Settlement Agreement and the entry of a Preliminary Approval Order for:  
(a) conditional certification of the Settlement Class for settlement purposes only; (b)  
Preliminary Approval of the proposed Settlement Agreement; and (c) setting a date for a  
Final Approval/Settlement Fairness Hearing.

1           17.2    The Preliminary Approval Order will provide for the Notice Packet to be sent  
2 to all Class Members as specified herein. In conjunction with the Preliminary Approval  
3 Hearing, Plaintiffs will submit this Settlement Agreement and will include the proposed  
4 Notice Packet.

5           17.3    Class Counsel will be responsible for drafting all documents necessary to  
6 obtain Preliminary Approval, subject to review and comment by Defendant's counsel. Class  
7 Counsel shall provide the Preliminary Approval Motion to Defendant's counsel for review  
8 at least three business days prior to filing. Any failure by the Court to fully and completely  
9 approve the Settlement Agreement which has the effect of preventing the full and complete  
10 approval of the Settlement Agreement as and agreed to by the Parties will result in this  
11 Settlement Agreement, and all obligations under this Settlement Agreement, being nullified  
12 and voided.

13 **18.       FINAL SETTLEMENT APPROVAL HEARING AND ENTRY OF**  
14 **JUDGMENT.**

15           18.1    Upon expiration of the Response Deadline, and with the Court's permission, a  
16 Final Approval/Settlement Fairness Hearing will be conducted to determine the Final  
17 Approval of the Settlement Agreement along with the amounts properly payable for: (a)  
18 Individual Settlement Payments to Class Members and Aggrieved Employees; (b) the  
19 LWDA Payment; (c) the Attorneys' Fees and Costs; (d) the Class Representative's  
20 Enhancement Payments; and (e) all Claims Administrator's Costs.

21           18.2    As the Court's schedule allows, the Final Approval/Settlement Fairness  
22 Hearing will be held no later than forty-five (45) calendar days after the Response Deadline.

23           18.3    Class Counsel will be responsible for drafting all documents necessary to  
24 obtain Final Approval, subject to review and comment by Defendant's counsel. Class  
25 Counsel shall provide the Final Approval Motion to Defendant's counsel for review at least  
26 three business days prior to filing. Class Counsel will also be responsible for drafting the  
27 Attorneys' Fees and Costs application to be heard at the Final Approval/Settlement Fairness  
28 Hearing. Any failure by the Court to fully and completely approve the Settlement



1 Agreement will result in this Settlement Agreement entered into by the Parties, and all  
2 obligations under this Settlement Agreement, being nullified and voided. Upon such failure,  
3 any order or judgment entered by the Court in furtherance of this Settlement Agreement  
4 shall be treated as void from the beginning, and the Stipulations and Recitals contained  
5 herein shall of no force or effect and shall not be treated as an admission by the Parties or  
6 their counsel. In such a case, the Parties and any funds to be awarded under this Settlement  
7 Agreement shall be returned to their respective statuses as of the date and time immediately  
8 prior to the execution of this Settlement Agreement, and the Parties shall proceed in all  
9 respects as if this Settlement Agreement had not been executed, except that any fees and  
10 costs already incurred by the Claims Administrator shall be paid equally by both Parties.

11 **19. JUDGMENT AND CONTINUED JURISDICTION.**

12 The notice of Final Judgment shall be given to the Class Members via a posting on  
13 the Claims Administrator website. The Court shall retain jurisdiction with respect to the  
14 interpretation, implementation, and enforcement of the terms of this Settlement Agreement  
15 and all orders and judgments entered in connection therewith, and the Parties and their  
16 counsel hereto submit to the jurisdiction of the Court for purposes of interpreting,  
17 implementing, and enforcing the Settlement embodied in this Settlement Agreement and all  
18 orders and judgments entered in connection therewith.

19 **20. GENERAL PROVISIONS.**

20 20.1 Exhibits Incorporated by Reference.

21 The terms of this Settlement include the terms set forth in all attached Exhibits,  
22 which are incorporated by this reference as though fully set forth herein. Any Exhibits to  
23 this Settlement are an integral part of the Settlement.

24 20.2 Entire Agreement.

25 This Settlement Agreement and all attached Exhibits constitute the entirety of the  
26 Parties' settlement terms. No other prior or contemporaneous written or oral agreements may  
27 be deemed binding on the Parties. Each Party to this Agreement acknowledges that no  
28 representations, inducements, promises, or other agreements have been made by or on behalf

1 of any party except those covenants, agreements and promises embodied in this Agreement.

2       20.3   Amendment or Modification.

3       The provisions of this Agreement may not be altered, amended or repealed, in whole  
4 or in part, except by the written consent of all the Parties, or all of the Parties' attorneys of  
5 record and approved by the Court.

6       20.4   Authorization to Enter Into Settlement Agreement.

7       Counsel for all Parties warrant and represent they are expressly authorized by the  
8 Parties whom they represent to negotiate this Settlement Agreement and to take all  
9 appropriate actions required or permitted to be taken by such Parties pursuant to this  
10 Settlement Agreement to effectuate its terms and to execute any other documents required to  
11 effectuate the terms of this Settlement Agreement. The Parties and their counsel will  
12 cooperate with each other and use their best efforts to effect the implementation of the  
13 Settlement.

14       20.5   Binding on Successors and Assigns.

15       This Settlement Agreement will be binding upon, and inure to the benefit of, the  
16 successors or assigns of the Parties.

17       20.6   Applicable Law.

18       This Agreement shall be deemed to have been executed and delivered within the  
19 State of California, and the rights and obligations of the parties hereto shall be construed in  
20 accordance with, and governed by, the laws of the State of California, and enforceable under  
21 Code of Civil Procedure section 664.6.

22       20.7   Execution and Counterparts.

23       This Settlement Agreement is subject only to the execution of all Parties. However,  
24 the Settlement Agreement may be executed in one or more counterparts. All executed  
25 counterparts and each of them, including facsimile and scanned copies of the signature page,  
26 will be deemed to be one and the same instrument.

27       20.8   Acknowledgement of Fair, Adequate and Reasonable Settlement.

28       The Parties believe this Settlement Agreement is a fair, adequate, and reasonable

1 settlement of the Actions and have arrived at this Settlement after arms-length negotiations  
2 and in the context of adversarial litigation, taking into account all relevant factors, present  
3 and potential. The Parties further acknowledge that they are each represented by competent  
4 counsel and that they have had an opportunity to consult with their counsel regarding the  
5 fairness and reasonableness of this Settlement.

6       20.9 Severability.

7       If any term of this Agreement is declared invalid for any reason, such determination  
8 shall not affect the validity of the remainder of the Agreement. The remaining parts of this  
9 Agreement shall remain in effect as if the Agreement had been executed without the invalid  
10 term.

11       20.10 Class Action Certification for Settlement Purposes.

12       The Parties agree to stipulate to class certification only for purposes of the  
13 Settlement. If, for any reason, the Settlement is not approved, the stipulation to certification  
14 will be void. The Parties further agree that certification for purposes of the Settlement is not  
15 an admission that class Action certification is proper under the standards applied to  
16 contested certification motions and that this Settlement Agreement will not be admissible in  
17 this or any other proceeding as evidence that either: (a) a class Action should be certified, or  
18 (b) Defendant is liable to Plaintiff or any Class Member, other than according to the  
19 Settlement's terms.

20       20.11 Non-Admission of Liability.

21       The Parties enter into this Settlement Agreement to resolve the dispute that has  
22 arisen between them and to avoid the burden, expense, and risk of continued litigation. In  
23 entering into this Settlement Agreement, Defendant does not admit, and specifically denies,  
24 it has violated any federal, state, or local law; violated any regulations or guidelines  
25 promulgated pursuant to any statute or any other applicable laws, regulations or legal  
26 requirements; breached any contract; violated or breached any duty; engaged in any  
27 misrepresentation or deception; or engaged in any other unlawful conduct with respect to  
28 their employees. Neither this Settlement Agreement, nor any of its sections, terms or

1 provisions, nor any of the negotiations connected with it, shall be construed as an admission  
2 or concession by Defendant of any such violations or failures to comply with any applicable  
3 law.

4       20.12 Captions.

5       The captions and section numbers in this Settlement Agreement are inserted for the  
6 reader's convenience, and in no way define, limit, construe or describe the scope or intent of  
7 the provisions of this Settlement Agreement.

8       20.13 Waiver.

9       No waiver of any condition or covenant contained in this Settlement Agreement or  
10 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply  
11 or constitute a further waiver by such party of the same or any other condition, covenant,  
12 right or remedy.

13       20.14 Enforcement.

14       If one or more of the Parties institutes any legal action or other proceeding against  
15 any other Party or Parties to enforce the provisions of this Settlement or to declare rights  
16 and/or obligations under this Settlement, the successful Party or Parties will be entitled to  
17 recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including  
18 expert witness fees incurred in connection with any enforcement action.

19       20.15 Mutual Preparation.

20       The Parties have had a full opportunity to negotiate the terms and conditions of this  
21 Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more  
22 strictly against one Party than another merely by virtue of the fact that it may have been  
23 prepared by counsel for one of the Parties, it being recognized that, because of the arm's-  
24 length negotiations between the Parties, all Parties have contributed to the preparation of this  
25 Settlement Agreement.

26       20.16 Representation by Counsel.

27       The Parties acknowledge that they have been represented by counsel throughout all  
28 negotiations that preceded the execution of this Settlement Agreement and that this

1 Settlement Agreement has been executed with the consent and advice of counsel and  
2 reviewed in full. Further, Plaintiff and Class Counsel warrant and represent that there are no  
3 liens on the Settlement Agreement.

4 20.17 All Terms Subject to Final Court Approval.

5 All amounts and procedures described in this Settlement Agreement herein will be  
6 subject to final Court approval.

7 20.18 Cooperation and Execution of Necessary Documents.

8 All Parties will cooperate in good faith and execute all documents to the extent  
9 reasonably necessary to effectuate the terms of this Settlement.

10 20.19 Binding Authority.

11 The Parties warrant that they understand and have full authority to enter into this  
12 Settlement, intend that this Settlement Agreement will be fully enforceable and binding on  
13 all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to  
14 enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise  
15 might apply under federal or state law.

16 20.20 Interim Stay of Actions.

17 The Parties and their counsel agree that pending Final Approval Hearing and the  
18 final Order thereon, all proceedings in the Actions, other than proceedings necessary to carry  
19 out the Settlement and enter the Final Order and Judgement are stayed tolling California  
20 Code of Civil Procedure section 583.310 through the Effective Date. All outstanding  
21 discovery motion deadlines are similarly tolled.

22 **IN WITNESS WHEREOF**, the undersigned Parties, and each of them, have  
23 executed this Agreement.

24  
25 DATED: December 2, 2020

26 

27 Francisco Gonzalez Martinez

1 DATED: December 8, 2020

RGH ENTERPRISES, INC. DBA HHI  
ENTERPRISES, INC.

2  
3 By: Christina Pate

4 As Its Authorized Agent

5 Print Name and Title:

6 Christina Pate  
7 Assistant General Counsel, Labor and Employment

8 APPROVED AS TO FORM:

9 DATED: December \_\_, 2020

LAW OFFICE OF NEAL J. FIALKOW, INC.

10  
11 By: \_\_\_\_\_

12 Neal J. Fialkow  
13 Attorney for Plaintiff  
14 Francisco Gonzalez Martinez

15  
16 DATED: December 9, 2020

WILSON TURNER KOSMO LLP

17  
18 By: Lois M. Kosch

19 Lois M. Kosch  
20 Attorney for Defendant  
21 RGH ENTERPRISES, INC. DBA HHI  
22 ENTERPRISES, INC  
23  
24  
25  
26  
27  
28



1 DATED: December \_\_, 2020

RGH ENTERPRISES, INC. DBA HHI  
ENTERPRISES, INC.

2  
3 By: \_\_\_\_\_

4 As Its Authorized Agent

5 Print Name and Title:

6  
7  
8 APPROVED AS TO FORM:

9 DATED: December 2, 2020

LAW OFFICE OF NEAL J. FIALKOW, INC.

10  
11 By:  \_\_\_\_\_

12 Neal J. Fialkow  
13 Attorney for Plaintiff  
14 Francisco Gonzalez Martinez

15  
16 DATED: December \_\_, 2020

WILSON TURNER KOSMO LLP

17  
18 By: \_\_\_\_\_

19 Lois M. Kosch  
20 Attorney for Defendant  
21 RGH ENTERPRISES, INC. DBA HHI  
22 ENTERPRISES, INC  
23  
24  
25  
26  
27  
28