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9 Attorneys for Plaintiff and the Putative Class

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SAN BERNARDINO**

12 MARTHA CUEVAS, on behalf of herself and
13 all others similarly situated;

14 Plaintiff,

15 v.

16
17 ACTION EMBROIDERY CORP., a California
Corporation; and DOES 1 through 20,
18 inclusive;

19 Defendants.
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CASE NO.: CIVDS2012230

**CLASS ACTION SETTLEMENT
AGREEMENT**

1 This Class Action Settlement Agreement is entered into by and between Plaintiff Maria
2 Cuelas, individually and on behalf of all others similarly situated, and Defendant Action
3 Embroidery Corp. The settlement memorialized in this Settlement Agreement is referred to
4 hereinafter as the “Settlement.”

5 **A. Definitions**

6 1. “Action” or “Lawsuit” means and refers to the case entitled *Martha Cuevas v.*
7 *Action Embroidery Corp.*, San Bernardino County Superior Court Case No. CIVDS2012230.

8 2. “Agreement” or “Settlement Agreement” shall mean this Class Action Settlement
9 Agreement.

10 3. “Class Counsel” refers to Jonathan Melmed of Melmed Law Group PC and
11 Mehrdad Bokhour of Bokhour Law, P.C.

12 4. “Class Data” means a complete list of all Settlement Class Members that Defendant
13 will diligently and in good faith compile from their records and provide to the Settlement
14 Administrator within fourteen (14) days after entry of the Preliminary Approval Order. The Class
15 List shall be on one spreadsheet and shall include the Settlement Class Members’ full names; last
16 known addresses; telephone numbers; Social Security Numbers; and the total Weeks Worked
17 during the Class Period for each Settlement Class Member.

18 5. “Class Period” is deemed to be the period between May 29, 2016 through May 29,
19 2020.

20 6. “Class Representative” or “Plaintiff” means and refers to Martha Cuevas.

21 7. “Complaint” refers to the Complaint filed in this matter on May 29, 2020.

22 8. “Court” or “Judge” means the California Superior Court, County of San
23 Bernardino.

24 9. “Defendant” means and refers to Action Embroidery Corp.

25 10. “Defendant’s Counsel” or “Defense Counsel” means and refers to Tristan A.
26 Mullin, Esq., and Mihret Getabicha of Pettit Kohn Ingrassia Lutz & Dolin PC.

27 11. “Final Effective Date” means the latest of the following dates: (i) if no Class
28 Member timely and properly intervenes or files a motion to vacate the judgment approving the

1 Settlement Agreement under Code of Civil Procedure § 663, the date the Court enters an order
2 granting Final Approval of the Settlement Agreement; (ii) if a Class Member intervenes or files a
3 motion to vacate the judgment approving the Settlement Agreement, sixty-five (65) calendar days
4 following the date the Court enters an order granting final approval, assuming no appeal is filed;
5 or (iii) if a Class Member intervenes or files a motion to vacate the judgment approving the
6 Settlement Agreement, and if a timely appeal is filed, the date of final resolution of that appeal
7 (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial
8 approval of the Settlement Agreement.

9 12. “Final Approval” refers to the order of the Court granting final approval of this
10 Settlement Agreement and entering a judgment approving this Settlement Agreement (the
11 “Judgment”) on substantially the terms provided herein or as the same may be modified by
12 subsequent agreement of the Parties.

13 13. “Final Settlement Class” means, collectively, all Settlement Class Members who
14 have not validly opted out of the Settlement Class by submitting timely and proper Requests for
15 Exclusion.

16 14. “Individual Settlement Amount” shall have the meaning ascribed to it in Paragraph
17 43(c) below.

18 15. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 43(b)
19 below.

20 16. “Notice Packet” means the notice of settlement of class action and hearing and
21 notice of estimated individual settlement share that will be sent to the Settlement Class Members.

22 17. “Notice Response Deadline” is 45 calendar days from the date the Notice Packet is
23 mailed to the Settlement Class Members.

24 18. “Objecting Settlement Class Member” means a Settlement Class Member, other
25 than Plaintiff, who submits a valid and timely objection to the terms of this Settlement Agreement,
26 pursuant to Paragraph 64(c) below.

27 19. “Participating Class Member” means any and all Settlement Class Members who
28 are deemed to participate and receive an Individual Settlement Amount and do not validly opt-out

1 by submitting a timely and proper Request for Exclusion.

2 20. "Parties" or "Settling Parties" mean Plaintiff, the Settlement Class Members, and
3 Defendant, collectively.

4 21. "Preliminary Approval Date" means the date the Court approves the Settlement
5 Agreement, and any exhibits thereto, and enters the Preliminary Approval Order.

6 22. "Preliminary Approval Order" means the judicial order to be entered by the Court,
7 upon the application or motion of the Plaintiff, preliminarily approving this Settlement and
8 providing for the issuance of the Notice Packet to the Settlement Class, an opportunity to opt out
9 of the Settlement, an opportunity to submit timely objections to the Settlement, and setting a
10 hearing on the fairness of the terms of Settlement, including approval of attorneys' fees and costs.
11 Defendant will not object to Plaintiff's motion for preliminary approval but will be provided with
12 an opportunity to review and comment upon the motion before it is filed.

13 23. "QSF" means the Qualified Settlement Fund set up by the Settlement Administrator
14 for the benefit of the Final Settlement Class.

15 24. "Released Claims" by the Participating Class Members upon Final Approval of the
16 Settlement will include, but are not limited to, all claims, obligations, demands, actions, rights,
17 causes of action and liabilities which were pled in the operative Complaint or that could have been
18 pled based on the facts alleged therein, including but not limited to claims for: (a) failure to pay
19 overtime wages; (b) failure to provide rest breaks, (c) failure to provide meal periods; (d) failure to
20 provide accurate itemized wage statements, (e) failure to timely pay wages, including failure to
21 timely pay final wages, (f) failure to reimburse business expenses, (g) failure to timely pay wages,
22 (h) unfair and unlawful competition pursuant to Business and Professions Code §17200 *et seq.*,
23 and (i) all other civil and statutory penalties, including those recoverable under the Private
24 Attorneys General Act, Labor Code § 2698 *et seq.*, based on the facts or claims alleged in the
25 Complaint, including but not limited to statutory, constitutional, or contractual damages; unpaid
26 costs; penalties; punitive damages; interest; attorneys' fees; litigation costs; restitution; and
27 equitable relief.

28

1 25. “Released Parties” means Defendant and its present and former divisions, d/b/a’s,
2 officers, directors, owners, members, managers, shareholders, employees, principal heirs,
3 representative accountants, auditors, consultants, agents, parent entities, subsidiaries, insurers,
4 reinsurers, operators, partners, and its respective successors and predecessors in interest, assignees,
5 subsidiaries, affiliates, parent companies and attorneys, and/or any individual or entity which
6 could be jointly liable with Defendant for the claims alleged in the Complaint.

7 26. “Release Period” shall be the time period governing the Released Claims, which
8 shall be from May 29, 2016 through May 29, 2020 (which is identical to the Class Period).

9 27. “Release” shall mean the release and discharge of the Released Claims by Plaintiff
10 and all of the Participating Class Members, and their assignees, as set forth in Sections D and E
11 below.

12 28. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 64(a)
13 below.

14 29. “Service Payment” or “Service Award” means the amount approved by the Court
15 to be paid to the Class Representative, Martha Cuevas, in addition to her Individual Settlement
16 Amount as a Participating Class Member.

17 30. “Settlement Administrator” means and refers to Phoenix Settlement
18 Administrators, who will provide the Notice Packet to the Class Members and distribute the
19 Settlement Amounts as described in this Settlement Agreement.

20 31. “Settlement Administration Costs” means the costs payable from the Settlement
21 Amount to the Settlement Administrator for administering this Settlement, including, but not
22 limited to, printing, distributing, and tracking documents for this Settlement, tax reporting,
23 distributing the Settlement Amount, and providing necessary reports and declarations, as requested
24 by the Parties. The Settlement Administration Costs shall be paid from the Settlement Amount,
25 including, if necessary, any such costs more than the amount represented by the Settlement
26 Administrator as being the maximum costs necessary to administer the Settlement.

27 32. “Settlement Amount” shall have the meaning ascribed to it in Paragraph 43(a)
28 below.

1 33. “Settlement Class” is defined as all hourly non-exempt employees employed by
2 Defendant from May 29, 2016 through May 29, 2020.

3 34. “Settlement Class Member” or “Class Member(s)” refers to individual members of
4 the Settlement Class.

5 35. “Weeks Worked” for each Settlement Class Member means the number of weeks
6 during the Class Period in which the Settlement Class Member worked at least one (1) shift.

7 **B. General Terms**

8 36. Plaintiff filed a class action complaint in the Court against Defendant Action
9 Embroidery Corp. on May 29, 2020, which alleged claims for: (a) failure to pay overtime wages;
10 (b) failure to provide rest breaks, (c) failure to provide meal periods; (d) failure to reimburse
11 business expenses, (e) failure to provide accurate itemized wage statements, (f) failure to timely
12 pay final wages, (g) failure to pay timely wages, (h) unfair and unlawful competition, and (i) civil
13 and statutory penalties, including those recoverable under the Private Attorneys General Act,
14 Labor Code § 2698 *et seq.*

15 37. Defendant denies that it has engaged in any unlawful activity, that it has failed to
16 comply with the law in any respect, and that it has any liability to anyone under the claims
17 asserted in the Action.

18 38. The Class Representative believes she can proceed with her representative and
19 class claims, that the Action is meritorious, and that class certification is appropriate.

20 39. The Parties have conducted a thorough investigation into the facts of the Action.
21 This includes conducting an extensive exchange of informal discovery, including Defendant’s
22 written policies and practices and the production of a sampling of payroll and timekeeping records
23 for Settlement Class Members. Class Counsel is both knowledgeable about and has done
24 extensive research with respect to the applicable law and potential defenses to the claims of the
25 Settlement Class Members. Class Counsel has diligently pursued an investigation of the
26 Settlement Class Members’ claims against Defendant. Based on the foregoing data and on their
27 own independent investigation and evaluation, Class Counsel is of the opinion that the settlement
28 with Defendant for the consideration and on the terms set forth in this Settlement Agreement is

1 fair, reasonable, and adequate and is in the best interest of the Settlement Class Members in light
2 of all known facts and circumstances, including the risk of significant delay and uncertainty
3 associated with litigation, various defenses asserted by Defendant, and numerous potential
4 appellate issues.

5 40. On December 3, 2020, Plaintiff and Defendant participated in a mediation before
6 Steven Serratore, Esq, a highly experienced wage and hour class actions mediator.

7 41. The Parties agree that the Parties' Settlement, this Settlement Agreement, and any
8 acts to be performed or judgments to be entered pursuant to the terms of the Settlement and
9 Settlement Agreement shall not be construed as an admission by Defendant of any wrongdoing,
10 violation of any statute or law, or liability on the claims or allegations in the Action.

11 42. Stipulation for Class Certification. For settlement purposes only, Defendant will
12 stipulate that the Settlement Class Members described herein who do not request exclusion from
13 the Settlement Class may be conditionally certified as a settlement class. This stipulation to
14 certification is in no way an admission that class action certification is proper and shall not be
15 admissible in this or in any other action except for the sole purposes of enforcing this Agreement.
16 Should the Court fail to issue Final Approval for any reason, the Parties' stipulation to class
17 certification as part of the Settlement Agreement shall become null and void *ab initio* and shall
18 have no bearing on, but remains protected by California Evidence Code Section 1152 and shall not
19 be admissible in connection with, the issue of whether certification would be appropriate in a non-
20 settlement context. Defendant expressly reserves its rights and declares that it will continue to
21 oppose class certification and contest the substantive merits of the case should the Court fail to
22 issue Final Approval. Plaintiff expressly reserves her rights and declares that she will continue to
23 pursue class certification and a trial should the Court fail to issue Final Approval.

24 **C. Terms of Settlement**

25 43. The financial terms of the Settlement are as follows:

26 (a) Gross Settlement Amount: The Parties agree to settle this Action for Two
27 Hundred Thousand Dollars (\$200,000) ("the Settlement Amount"). The Settlement Amount is the
28 maximum amount that will be paid, and includes Individual Settlement Amounts, attorneys' fees

1 of Class Counsel, costs and expenses, the Service Payment to the Class Representative, all
2 Settlement Administration Costs, and payment to the California Labor & Workforce Development
3 Agency (“LWDA”) for PAGA penalties. However, Defendant shall be required to separately pay
4 the employer’s share of payroll taxes due on the Individual Settlement Amounts.

5 (b) Net Settlement Amount: The “Net Settlement Amount” is defined as the
6 Settlement Amount less attorneys’ fees and litigation costs as approved and awarded by the Court,
7 the Service Payment to the Class Representative as awarded by the Court, the Settlement
8 Administration Costs, and payment to the LWDA for PAGA penalties. In the event that the Court
9 reduces the attorneys’ fees, costs, expenses or Service Award, the amount of any such reduction
10 shall be placed in the Net Settlement Amount and allocated to the Settlement Class.

11 (c) Individual Settlement Amounts for the Settlement Class: The Individual
12 Settlement Amount for each Settlement Class Member will be calculated by the Settlement
13 Administrator using the Class Data provided by Defendant as follows. Compensable workweeks
14 will be all Weeks Worked by the Settlement Class Members during the Class Period. The dollars
15 per compensable workweek will be calculated by dividing the total Weeks Worked by Settlement
16 Class Members into the Net Settlement Amount to determine a per workweek value (“Workweek
17 Value”). The Workweek Value will be multiplied by each Class Member’s Weeks Worked to
18 determine the distribution, prior to legal deductions, for that Class Member. If there are any
19 timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately
20 increase the Individual Settlement Amount for each Participating Class Member so that the
21 amount distributed to Participating Class Members equals 100% of the Net Settlement Amount.

22 (d) Allocation of Individual Settlement Amounts: The Individual Settlement
23 Amounts will be allocated based on the allegations in the Action as follows: twenty five percent
24 (25%) will be paid as wages subject to withholding of all applicable local, state and federal taxes;
25 and seventy five percent (75%) will be paid as interest and other payments from which no taxes
26 will be withheld. To the extent required, the Settlement Administrator will issue to each
27 Settlement Class Member an Internal Revenue Service Form W-2 and comparable state forms
28 with respect to the wage allocation and a Form 1099 with respect to the penalties and interest

1 allocations.

2 (e) Service Payment to Class Representative: The amount, if any, awarded to
3 the Class Representative as a Service Payment will be set by the Court in its discretion, not to
4 exceed \$5,000. Defendant agrees not to oppose this request. The Service Payment to Plaintiff
5 will be paid out of the Settlement Amount. The Class Representative will be bound by the Release
6 as well as a General Release, set forth below, in exchange for the Service Payment and will be
7 issued an IRS Form 1099 in connection with this payment. Plaintiff shall be solely and legally
8 responsible to pay any and all applicable taxes on the Service Payment. The Parties agree that any
9 amount less than the requested amount awarded as the Service Payment to Plaintiff shall not be a
10 basis for Class Counsel to void this Settlement Agreement. Should the Court approve a lesser
11 amount for the Service Payment, the difference shall be added to the Net Settlement Amount to be
12 distributed to the Participating Class Members.

13 (f) Attorneys' Fees and Costs: Defendant agrees to not oppose a request by
14 Class Counsel to the Court for an award of attorneys' fees of thirty (30%) (i.e., up to \$60,000) of
15 the Settlement Amount, plus reasonable litigation costs not to exceed \$5,000. Defendant agrees
16 not to oppose any contention by Class Counsel that attorneys' fees should be based on the
17 common fund theory. Defendant agrees to reimburse Class Counsel for the costs of mediation
18 before February 22, 2021 so as to increase the Net Settlement Amount for Participating Class
19 Members. Should the Court approve a lesser amount than what is sought by Class Counsel, the
20 difference shall be added to the Net Settlement Amount to be distributed to the Participating Class
21 Members. Any Court order awarding less than the amount sought by Class Counsel shall not be
22 grounds to rescind the Settlement Agreement or otherwise void the Settlement Agreement. The
23 Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of
24 attorneys' fees and costs awarded by the Court. In the event that the Court does not issue Final
25 Approval, Class Counsel will return the mediation costs paid by Defendant to Class Counsel
26 within fourteen days of the Court's denial of Final Approval.

27 (g) Settlement Administration Costs: The fees and other charges of the
28 Settlement Administrator will be paid from the Settlement Amount. The Parties agree that

1 reasonable settlement administration costs of no more than \$5,000 will be deducted from the
2 Settlement Amount.

3 (h) PAGA Penalties: The Parties agree that \$1,000 is allocated to PAGA
4 Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this
5 amount, \$750 (75%) shall be paid to the LWDA in satisfaction of Plaintiff’s claims for penalties
6 under PAGA and \$250 (25%) will be included in the Net Settlement Amount, payable to the
7 Settlement Class Members.

8 (i) Tax Liability: Class Counsel and Defendant make no representation as to
9 the tax treatment or legal effect of payments called for hereunder, and Plaintiff and the Settlement
10 Class Members are not relying on any statement or representation by Class Counsel or Defendant
11 in this regard. Plaintiff and Participating Class Members understand and agree that they will be
12 solely responsible for the payment of any taxes and penalties assessed on their respective
13 payments described herein. The amount of federal income tax withholding will be based upon a
14 flat withholding rate for supplemental wage payments in accordance with Treas. Reg. §
15 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made
16 pursuant to applicable state and/or local withholding codes or regulations. Forms W-2 and/or
17 Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code
18 of 1986 (the “Code”) and consistent with this Settlement Agreement. If the Code, the regulations
19 promulgated thereunder, or other applicable tax law, is changed after the date of this Settlement
20 Agreement, the processes set forth in this Section may be modified in a manner to bring Defendant
21 into compliance with any such changes.

22 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
23 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
24 AND EACH PARTY TO THIS SETTLEMENT AGREEMENT OTHER THAN THE
25 ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES
26 THAT (1) NO PROVISION OF THIS SETTLEMENT AGREEMENT, AND NO WRITTEN
27 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
28 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY

1 SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
2 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
3 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
4 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
5 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
6 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
7 THIS SETTLEMENT AGREEMENT BASED UPON THE RECOMMENDATION OF ANY
8 OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS
9 NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
10 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
11 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY
12 OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
13 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX
14 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING)
15 UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT
16 OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
17 CONTEMPLATED BY THIS AGREEMENT.

18 44. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
19 no circumstances will any portion of the Settlement Amount revert to Defendant. Participating
20 Class Members will not have to make a claim in order to receive an Individual Settlement
21 Amount. Distributions, in the form of Individual Settlement Amounts, will be made directly to
22 each Participating Class Member. Any unclaimed funds in the Settlement Administrator's account
23 as a result of a failure to timely cash a settlement check shall be held by the Settlement
24 Administrator as detailed in Paragraph 68 of this Settlement Agreement.

25 45. Increase in Class Size. Defendant represented prior to mediation that there were
26 approximately 192 individuals who worked a total of approximately 30,000 workweeks during the
27 Class Period. In the event that the actual workweek total exceeds this amount by more than 10%,
28 Defendant shall increase the Gross Settlement Amount by the percentage difference between the

1 10% increase and the actual number of workweeks (i.e., if the workweeks increase by 11%,
2 Defendant shall increase the Gross Settlement Amount by 1%).

3 46. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable and
4 will so represent same to the Court.

5 **D. Release by the Settlement Class**

6 47. Upon entry of the Final Approval Order and funding of the Gross Settlement
7 Amount, all Participating Class Members will forever completely release and discharge the
8 Released Parties from the Released Claims for the Release Period.

9 48. Plaintiff and Defendant intend that the Settlement described in this Settlement
10 Agreement will release and preclude any further claim, whether by lawsuit, administrative claim
11 or action, arbitration, demand, or other action of any kind, by each and all of the Participating
12 Class Members to obtain a recovery based on, arising out of, and/or related to any and all of the
13 Released Claims.

14 49. The Class Representative, on behalf of herself and the Settlement Class,
15 acknowledges and agrees that the claims asserted in the Action, including, but not limited to
16 claims for unpaid wages and untimely payment of wages, are highly disputed, and that the
17 payments set forth herein constitute payment of all sums allegedly due to her and the Settlement
18 Class. The Class Representative, on behalf of herself and the Settlement Class, acknowledges and
19 agrees that California Labor Code Section 206.5 is not applicable to the Parties hereto in light of
20 the disputed nature of the claims. Section 206.5 provides in pertinent part as follows:

21 An employer shall not require the execution of any release of any
22 claim or right on account of wages due, or to become due, or made
23 as an advance on wages to be earned, unless payment of those
24 wages has been made.

25 **E. Release by Class Representative**

26 50. As a material inducement to Defendant to enter into this Settlement Agreement, the
27 Class Representative does hereby, for herself and for her respective spouses, heirs, successors,
28 beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians,

1 personal representatives, and assigns, forever and completely release and discharge the Released
2 Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements,
3 controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and
4 expenses (including back wages, statutory penalties, civil penalties, liquidated damages,
5 exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever, from the
6 beginning of time through the execution of this Settlement Agreement, whether known or
7 unknown, suspected or unsuspected, including but not limited to all claims arising out of, based
8 upon, or relating to the Class Representative's employment with or work for Defendant or the
9 remuneration for or termination of such employment (collectively, the "Class Representative's
10 Claims").

11 51. Without limiting the generality of the foregoing, the Class Representative expressly
12 releases all claims or rights against Released Parties arising out of or relating to alleged violations
13 of any contracts, express or implied (including but not limited to any contract of employment);
14 any contract or covenant of good faith and fair dealing (express or implied); any tort, including
15 any claim for improper or unauthorized wage deductions, failure to pay the applicable wage,
16 unpaid wages, unpaid vacation benefits, penalties, liquidated damages, other damages, overtime,
17 and alleged "off the clock" work under federal and state law, including California Labor Code
18 Sections 204 and 558, waiting time penalties pursuant to California Labor Section 203, damages
19 or penalties pursuant to California Labor Code Section 226, meal period and rest break payments
20 and penalties pursuant to California Labor Code Sections 226.7 and 512, failure to provide
21 itemized wage statements pursuant to California Labor Code Section 226, statutory or civil
22 penalties pursuant to California Labor Code Sections 210, failure to indemnify for business
23 expenses pursuant to Labor Code section 2802, unfair competition and unfair business practices
24 pursuant to Business and Professions Code Section 17200 *et seq.*, interest and costs pursuant to
25 California Civil Code Section 3287 and California Labor Code Section 218.6, statutory or
26 common law rights to attorneys' fees and costs, including those pursuant to California Labor Code
27 Section 1194 *et seq.*; claims under the Private Attorneys General Act of 2004, Labor Code section
28 2699 *et seq.*, and the alleged violation or breach of any other state or federal statute, rule and or

1 regulation; including all applicable Industrial Welfare Commission Wage Orders, and all similar
2 causes of action, including but not limited to, any claim for restitution, equitable relief, interest,
3 penalties, costs or attorneys' fees in connection with any of the foregoing, negligent infliction of
4 emotional distress, intentional infliction of emotional distress, and defamation; any "wrongful
5 discharge," "constructive discharge," and "retaliation" claims; any claims relating to any breach of
6 public policy; any legal restrictions on Defendant's right to discharge employees; and any federal,
7 state, or other governmental statute, regulation, or ordinance, including, without limitation: (1)
8 Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, and national origin
9 discrimination or harassment, including retaliation for reporting discrimination or harassment); (2)
10 42 U.S.C. § 1981 (discrimination); (3) Equal Pay Act, 29 U.S.C. § 209(d)(1) (equal pay); (4)
11 Americans with Disabilities Act, 42 U.S.C. § 12100 *et seq.* (disability discrimination); (5) Family
12 and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (family/medical leave); (6) California Fair
13 Employment and Housing Act, Cal. Government Code § 12900 *et seq.* (discrimination or
14 harassment in employment and/or housing, including discrimination or harassment based on race,
15 religious creed, color, national origin, ancestry, disability, marital status, sex (including
16 pregnancy), or age, including retaliation for reporting discrimination or harassment); (7) California
17 Family Rights Act, Cal. Government Code § 12945.1 *et seq.* (family/medical leave); (8) California
18 Labor Code, including Section 1720 *et seq.*, or any Industrial Welfare Commission Wage Order;
19 (9) Executive Order 11246 (race, color, religion, sex, and national origin discrimination or
20 harassment); (10) Executive Order 11141 (age discrimination); (11) Sections 503 and 504 of the
21 Rehabilitation Act of 1973 (handicap discrimination); (12) the Fair Labor Standards Act; and (13)
22 Employee Retirement Income Security Act, 29 U.S.C. § 1000 *et seq.* (employee benefits). Class
23 This Agreement and its related releases shall carve out and exclude Class Representative's
24 workers' compensation claim.

25 52. Class Representative expressly waives and relinquishes all rights and benefits
26 afforded by Section 1542 of the Civil Code of the State of California and does so understanding
27 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil
28 Code of the State of California states:

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
2 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
3 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
4 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR
5 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
6 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

7 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
8 full and complete release and discharge of all parties, the Class Representative and Class Counsel
9 expressly acknowledge that this Settlement Agreement is intended to include in its effect, without
10 limitation, all claims that the Class Representative knew of, as well as all claims that she does not
11 know or suspect to exist in her favor against the Released Parties, or any of them, for the time
12 period from the beginning of time to the execution of this Settlement Agreement, and that this
13 Settlement Agreement contemplates the extinguishment of any such claims.

14 **F. Interim Stay of Proceedings**

15 53. Pending completion of all of the prerequisites necessary to effectuate this
16 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
17 except such as are necessary to effectuate the Settlement.

18 **G. Notice Process**

19 54. Appointment of Settlement Administrator. The Parties have agreed to the
20 appointment of Phoenix Settlement Administrators to perform the duties of the Settlement
21 Administrator, including mailing the Notice Packet, using standard devices to obtain forwarding
22 addresses, independently reviewing and verifying documentation associated with any claims or
23 opt-out requests, resolving any disputes regarding the calculation or application of the formula for
24 determining the Individual Settlement Amounts, drafting and mailing the settlement checks to
25 Participating Class Members, issuing W-2 and 1099 Tax Forms, and performing such other tasks
26 as set forth herein or as the Parties mutually agree or that the Court orders.

27 55. Disputes Regarding Settlement Administration. The Settlement Administrator shall
28 have the initial responsibility of resolving all disputes that arise during the settlement

1 administration process, including, without limitation, disputes (if any) regarding the calculation of
2 Individual Settlement Shares, the allocation of W-2 wages, and the number of Weeks Worked.
3 Where the information submitted by Defendant from their records differs from the information
4 submitted by the Settlement Class Member, the Settlement Administrator shall communicate with
5 the Settlement Class Member, Class Counsel, and Defense Counsel to discuss and resolve the
6 dispute, including providing all available relevant information to all counsel. The Parties will
7 resolve all disputes jointly, which shall be final and binding on any Settlement Class Member
8 disputes and shall thereafter instruct the Settlement Administrator how to proceed in processing
9 the disputed claim. If the Parties cannot reach an agreement, disputes shall be referred to the
10 Settlement Administrator for a final determination and the Settlement Administrator's
11 determination shall be binding upon the Settlement Class Member and the Parties. The Settlement
12 Administrator shall also be responsible for issuing to Plaintiff, Settlement Class Members, and
13 Class Counsel any W-2, 1099, or other Tax Forms as may be required by law for all amounts paid
14 pursuant to this Agreement. The Settlement Administrator shall also be responsible for
15 establishing a Qualified Settlement Fund, establishing all necessary tax accounts, and forwarding
16 all payroll taxes and penalties to the appropriate government authorities. If the Settlement
17 Administrator cannot resolve the dispute, it shall be referred to the Court, if necessary, which will
18 have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until
19 Plaintiff and Defendant notify the Court that all payments and obligations contemplated by this
20 Settlement Agreement have been fully carried out.

21 56. Class Data. Within fourteen (14) days after entry of the Preliminary Approval
22 Order, Defendant shall provide to the Settlement Administrator on one spreadsheet a list of all
23 Settlement Class Members, including the Settlement Class Members' full names, last known
24 addresses, telephone numbers, Social Security numbers, and the total Weeks Worked by each
25 Class Member during the Class Period, to the extent Defendant has such information. The
26 Settlement Administrator will run a check of the Class Members' addresses against those on file
27 with the U.S. Postal Service's National Change of Address List. A search of this database
28 provides updated addresses for any individual who has moved in the previous (4) years and

1 notified the U.S. Postal Service. The Class Data provided to the Settlement Administrator is
2 highly confidential and will not be used or disclosed to anyone, except as required by applicable
3 tax authorities, pursuant to Defendant's express written consent, or by order of the Court.

4 57. Notice Packet. The Notice Packet, as approved by the Court, shall be sent by the
5 Settlement Administrator to the Settlement Class Members, by first class mail, in English and
6 Spanish, within seven (7) calendar days following the Settlement Administrator's receipt of the
7 Class Data. The Settlement Administrator shall use standard devices, including a skip trace, to
8 obtain forwarding addresses of Settlement Class Members if any envelopes are returned.

9 58. Returned Notice Packets. Any Notice Packets returned to the Settlement
10 Administrator as non-delivered on or before the Notice Response Deadline as defined at Paragraph
11 17 of this Settlement Agreement shall be re-mailed to the forwarding addresses affixed thereto. If
12 no forwarding address is provided, the Settlement Administrator will take steps to ensure that the
13 Notice Packet is received by all Settlement Class Members, including the utilization of the
14 National Change of Address Database maintained by the U.S. Postal Service and shall make
15 reasonable efforts, conducting a "skip-trace" to obtain an updated mailing address for a Settlement
16 Class Member and, if applicable to update the mailing addresses within five (5) business days of
17 receiving the returned Notice Packet. If the Settlement Administrator learns of a failed mailing
18 and obtains a forwarding or updated address for that Class Member, the Notice Packet will be re-
19 mailed to that Class Member within three (3) business days of receipt of the updated address. The
20 address identified by the Settlement Administrator as the current mailing address shall be
21 presumed to be the best mailing address for each Settlement Class Member. The re-mailed Notice
22 Packet shall be identical to the original Notice Packet, except that it shall notify the Class Member
23 that the exclusion (opt-out) request or objection must be returned by the Notice Response
24 Deadline or fifteen (15) days after the postmark date of the re-mailed Notice Packet, whichever is
25 later. The Settlement Administrator shall maintain records concerning all returned Notice Packets
26 with forwarding addresses; re-mailed Notice Packets (including the dates and updated addresses
27 utilized); any and all adjusted Notice Response Deadlines; all forwarding addresses obtained
28 identifying how the updated address was obtained; and all skip-traces performed.

1 59. Presumption Regarding Receipt of Notice Packet. It will be conclusively presumed
2 that if an envelope has not been returned within forty-five (45) days of the mailing, the Settlement
3 Class Member received the Notice Packet.

4 60. Disputes Regarding Class Data. Settlement Class Members are deemed to
5 participate in the Settlement unless they opt-out. The Notice Packet will inform each Class
6 Member of his/her estimated Individual Settlement Amount and the number of weeks he/she
7 worked during the Class Period. Class Members may dispute their Weeks Worked if they feel
8 they worked more weeks for Defendant during the Class Period than the Defendant's records show
9 by submitting evidence to the Settlement Administrator within the forty-five (45) day Notice
10 Response Period. Defendant's records will be presumed determinative absent reliable
11 documentary evidence to rebut the records, but the Settlement Administrator will evaluate any
12 evidence submitted by a Class Member and provide the evidence submitted to Class Counsel and
13 Defense Counsel who agree to meet and confer in good faith about the evidence to determine the
14 Class Member's actual number of Weeks Worked and estimated Individual Settlement Amount.
15 If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the
16 Settlement Administrator to render a final decision. Class Members will have until the Notice
17 Response Deadline to dispute Weeks Worked, object, or opt out, unless that deadline is extended
18 by the Court.

19 61. Declaration of Due Diligence. The Settlement Administrator shall provide counsel
20 for the Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of
21 due diligence and proof of mailing with regard to the mailing of the Notice Packet.

22 62. Settlement Class Members' Rights. Settlement Class Members will be advised of
23 the Settlement, the ability to object to the Settlement, and the ability to opt-out or request
24 exclusion from the Settlement Class in the Notice Packet. The Notice Packet will inform the
25 Settlement Class Members of the Court-established deadlines for filing objections or requesting
26 exclusion from the Settlement Class in accordance with the following guidelines:

27 (a) Requests for Exclusion from Settlement Class. Any Settlement Class
28 Member, other than Plaintiff, may request to be excluded from the Settlement Class by submitting

1 a “Request for Exclusion” to the Settlement Administrator, postmarked on or before the Notice
2 Response Deadline. The Request for Exclusion should state:

3 “I WISH TO BE EXCLUDED FROM THE SETTLEMENT
4 CLASS IN THE CUEVAS V. ACTION EMBROIDERY
5 LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE
6 EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT
7 RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS
8 LAWSUIT.”

9 Any Request for Exclusion must include the full name, address, telephone number, last
10 four digits of the social security number or date of birth, and signature of the Settlement Class
11 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
12 Settlement Administrator at the specified address. Any such Request for Exclusion must be made
13 in accordance with the terms set forth in the Notice Packet. A Request for Exclusion will be
14 timely only if postmarked by the Notice Response Deadline, unless the Parties otherwise agree in
15 writing. Any Settlement Class Member who timely requests exclusion in compliance with these
16 requirements: (i) will not have any rights under this Settlement Agreement, including the right to
17 object, appeal or comment on the Settlement; (ii) will not be entitled to receive any payments
18 under this Settlement Agreement; and (iii) will not be bound by this Settlement Agreement, or the
19 Judgment. The Parties to this Settlement Agreement agree that they will not solicit or encourage
20 Class Members to opt-out or object to this Settlement Agreement. If greater than fifteen (15)
21 percent of the Class Members opt out or object to this Settlement Agreement or a number of Class
22 Members whose share of the Net Settlement Amount is 5% or more, Defendant will have the right
23 to rescind and terminate the Settlement without prejudice to its pre-settlement positions and
24 defenses in the litigation. Notwithstanding the rights of any Class Member to opt-out of the
25 Settlement, this opt-out decision shall not affect the resolution of any claims for penalties under
26 PAGA, shall be settled and extinguished upon Final Approval by the Court pursuant to *Robinson*
27 *v. S. Ctys. Oil Co.* (2020) 53 Cal.App.5th 476, 482.

28

1 (b) Binding Effect on Participating Settlement Class Members. Except for
2 those Settlement Class Members who exclude themselves in compliance with the Request for
3 Exclusion procedures set forth above, all Settlement Class Members will: (i) be deemed to be
4 Participating Class Members for all purposes under this Settlement Agreement; (ii) will be bound
5 by the terms and conditions of this Settlement Agreement, the Judgment, and the releases set forth
6 herein; and (iii) except as otherwise provided herein, will be deemed to have waived all objections
7 and oppositions to the fairness, reasonableness, and adequacy of the Settlement.

8 (c) Objections to Settlement. Any Settlement Class Member, other than
9 Plaintiff, may object to the terms of this Settlement Agreement. To object, a Settlement Class
10 Member shall inform the Settlement Administrator, in writing, of his or her objection which must
11 be postmarked by the Notice Response Deadline at the address set forth in the Notice Packet.
12 Such objection shall include the full name, address, telephone number, and dates of employment
13 with Defendant of the Objecting Settlement Class Member; the case name and number; the basis
14 for the objection, including any legal support and each specific reason in support of the objection,
15 as well as any documentation or evidence in support thereof; and, if the Objecting Settlement
16 Class Member is represented by counsel, the name and address of her or his counsel. The
17 Settlement Administrator shall provide objections, if any, to Class Counsel and Defense Counsel
18 via email within three (3) days of receipt, and the Settlement Administrator shall attach any
19 objections to its declaration of due diligence, which is to be filed with the Court prior to the Final
20 Approval Hearing. Any Participating Class Member who files an objection remains eligible to
21 receive monetary compensation from the settlement. Plaintiff and Defendant shall not be
22 responsible for any fees, costs, or expenses incurred by any Class Member and/or his or her
23 counsel related to any objections to the Settlement. Submitting an objection does not preserve the
24 right to appeal a final judgment.

25 (d) Failure to Object. Any Settlement Class Member who desires to object but
26 fails to timely submit a written objection waives any right to object and will be foreclosed from
27 making any objection to the Settlement. Any Settlement Class Member who does not timely and
28 properly become a party of record by intervening or filing a motion to vacate the Judgment waives

1 any and all rights to appeal from the Judgment, including all rights to any post-judgment
2 proceeding and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a
3 motion under California Code of Civil Procedure section 473, and extraordinary writs.

4 (e) Responses to Objections. Counsel for the Parties may file a response to any
5 objections submitted by Objecting Settlement Class Members at least five (5) court days before
6 the date of the Final Approval Hearing.

7 63. Settlement Class Members will have until the Notice Response Deadline to object
8 or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement
9 Administrator shall disclose jointly to Class Counsel and Defendant’s counsel what objections or
10 Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class
11 Counsel or Defense Counsel.

12 64. Funding of the Settlement Amount. Defendant shall make a one-time deposit into
13 the QSF of the Settlement Amount, as described in Paragraph 43(a) that is necessary to make all
14 payments required under this Settlement Agreement, by November 1, 2021 or within sixty (60)
15 calendar days after the Final Effective Date, whichever is earlier, plus Defendants shall separately
16 pay its share of employer payroll taxes as calculated and directed by the Settlement Administrator.

17 Defendant shall also be solely responsible for the amount owed for the employer’s share of
18 payroll taxes due on the wage portion of the Individual Settlement Amounts (as calculated by the
19 Settlement Administrator). The Settlement Administrator shall deposit the payments into an
20 interest bearing qualified settlement account (“Qualified Settlement Fund”) with an FDIC insured
21 banking institution from which the Settlement Administrator will have authority to distribute
22 money in accordance with the terms of this Settlement Agreement. The interest accrued during
23 this time period will be distributed to Participating Class Members and Class Counsel
24 proportionately. In the event this Settlement Agreement becomes null and void, all monies
25 deposited by Defendant into the Qualified Settlement Fund including any interest accrued, shall be
26 returned to Defendant.

27 65. Distribution of Funds. No later than seven (7) calendar days after the deposit of
28 each payment into the Qualified Settlement Fund, the Settlement Administrator will mail the

1 payments to the Participating Class Members, the payment for the attorneys' fees and costs to
2 Class Counsel, any Service Payment to the Class Representative, the payment to the LWDA for
3 PAGA penalties, and will pay itself the Settlement Administration Costs. In the event that any
4 settlement check is returned to the Settlement Administrator within 180 days of mailing, the
5 Settlement Administrator will, within five (5) business days of receipt of the returned settlement
6 check, perform a skip trace to locate the individual, and notify Defense Counsel and Class Counsel
7 of the results. If a new address is located by these means, the Administrator will have ten (10)
8 business days to re-issue the check. Neither Defendant, Defense Counsel, Class Counsel,
9 Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen settlement
10 checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks.
11 Without limiting the foregoing, in the event a Participating Class Member notifies the Settlement
12 Administrator that he or she believes that a settlement check has been lost or stolen, the Settlement
13 Administrator shall immediately stop payment on such check. If the check in question has not
14 been negotiated prior to the stop payment order, the Settlement Administrator will issue a
15 replacement check.

16 66. No Additional Benefits Based on Settlement Payment. The receipt of funds under
17 the Settlement shall not entitle any Settlement Class Member to additional compensation or
18 benefits of any kind under any of Defendant's compensation or benefits plans, nor will it entitle
19 any Settlement Class Member to any increased retirement or 401(k) plan benefits of any kind.

20 67. Deadline for Cashing Settlement Checks. Participating Class Members shall have
21 180 calendar days after mailing by the Settlement Administrator to cash their settlement checks. If
22 any Participating Class Member's check is not cashed within that period, the check will be void
23 and the Settlement Administrator shall issue the unclaimed funds, plus any accrued interest that
24 has not otherwise been distributed will be paid to the California State Controller's Unclaimed
25 Property Fund in the name of the Participating Class Member such that the Participating Class
26 Member may claim the money until such time as the money escheats to the State pursuant to the
27 Unclaimed Property Law, California Civil Code section 15000 *et seq.* The Release will be
28 binding upon all Participating Class Members, including those who do not cash their checks

1 within the 180-day period. The Parties agree that this disposition results in no “unpaid cash
2 residue,” or “unclaimed or abandoned funds” under California Civil Procedure Code section 384,
3 as amended effective January 1, 2019, as the entire Net Settlement Amount will be paid out to the
4 Participating Class Members, whether or not they all cash their payment checks. Therefore,
5 Defendant will not be required to pay any interest on said amount.

6 **H. Duties of the Parties Prior to the Court’s Approval**

7 68. Promptly after execution of this Settlement Agreement, Plaintiff will move the
8 Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
9 accomplishing the following:

10 (a) Scheduling the Final Approval Hearing on the issue of whether this Settlement
11 should be finally approved as fair, reasonable and adequate as to the Class Members and a hearing
12 on fees, costs and the Service Payment;

13 (b) Approving as to form and content the proposed Notice Packet, attached hereto as
14 Exhibit A;

15 (c) Directing the mailing of the Notice Packet by first class mail to the Settlement
16 Class Members;

17 (d) Preliminarily approving this Settlement Agreement; and

18 (e) Preliminarily certifying the class for purposes of this Settlement.

19 **I. Duties of the Parties Following Court’s Final Approval**

20 69. In connection with the Final Approval Hearing provided for in this Settlement
21 Agreement, Class Counsel shall submit a proposed Final Approval Order:

22 (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and
23 adequate, and directing consummation of its terms and provisions as expressed in this Settlement
24 Agreement;

25 (b) Approving Class Counsel’s application for an award of attorneys’ fees and
26 reimbursement of litigation costs and expenses, the Service Payment to the Class Representative,
27 and the payment to the Settlement Administrator for costs of administering the settlement,
28 consistent with the terms and provisions herein; and

1 (c) Entering judgment approving the Settlement, thereby permanently barring all
2 Participating Class Members from prosecuting any Released Claims against any of the Released
3 Parties.

4 **J. Voiding the Settlement Agreement**

5 70. If the Court fails or refuses to issue the Final Approval Order or fails to approve
6 any material condition of this Settlement Agreement which effects a fundamental change of the
7 Settlement Agreement, the entire Settlement Agreement shall be rendered voidable and
8 unenforceable as to all Parties herein at the option of any Party but remains protected by California
9 Evidence Code Section 1152.

10 71. If the Settlement Agreement is voided or fails for any reason, Plaintiff and
11 Defendant will have no further obligations under the Settlement Agreement, including any
12 obligation by Defendant to pay the Settlement Amount, or any amounts that otherwise would have
13 been owed under this Settlement Agreement.

14 **K. Other Terms**

15 72. Waiver. The waiver by one Party of any breach of this Settlement Agreement by
16 another Party shall not be deemed a waiver of any other prior or subsequent breach of this
17 Settlement Agreement by any Party.

18 73. Parties' Authority. The signatories hereto represent that they are fully authorized to
19 enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
20 hereof.

21 74. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
22 accomplish the terms of this Settlement Agreement, including but not limited to execution of such
23 documents and taking such other actions as may reasonably be necessary to implement the terms
24 of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best
25 efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that
26 may become necessary by order of the Court or otherwise, to effectuate this Settlement Agreement
27 and the terms set forth herein. As soon as practicable after execution of this Settlement
28 Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and

1 Defendant's counsel, take all necessary steps to secure the Court's preliminary and final approval
2 of the Settlement, and the final entry of judgment.

3 75. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
4 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
5 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
6 cause of action or rights released and discharged by this Settlement Agreement.

7 76. No Admission. Defendant denies any and all liability to Plaintiff and/or any
8 Settlement Class Member in this Action, as to any and all causes of action that were asserted or
9 that might have been asserted in this Action. Nonetheless, Defendant wishes to settle and
10 compromise the matters at issue in the Complaint to avoid further substantial expense and the
11 inconvenience and distraction of protracted and burdensome litigation. Defendant also has taken
12 into account the uncertainty and risks inherent in litigation, and without conceding any infirmity in
13 the defenses that they have asserted or could assert against Plaintiff and/or any Settlement Class
14 Member, have determined that it is desirable and beneficial that the claims of Plaintiff and the
15 Settlement Class be settled in the manner and upon the terms and conditions set forth in this
16 Settlement Agreement.

17 77. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
18 Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be
19 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
20 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
21 Settlement Agreement with the intention of avoiding further disputes and litigation with the
22 attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and
23 it, along with all related documents such as the notices, and motions for preliminary and final
24 approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of
25 Evidence 408, be inadmissible as evidence in any proceeding, except an action or proceeding to
26 approve the Settlement, and/or interpret or enforce this Settlement Agreement. The stipulation for
27 class certification as part of this Settlement Agreement is for settlement purposes only and if for
28 any reason the Settlement is not approved, the stipulation will be of no force or effect.

1 78. Notices. Unless otherwise specifically provided herein, all notices, demands or
2 other communications given hereunder shall be in writing and shall be deemed to have been duly
3 given as of the third business day after (i) emailing and (ii) mailing by United States registered or
4 certified mail, return receipt requested, addressed:

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6 To the Settlement Class:

7 Mehrdad Bokhour, Esq.
8 *mehrdad@bokhourlaw.com*
9 Bokhour Law Group, P.C.
10 1901 Avenue of the Stars, Suite 450
11 Los Angeles, CA 90067
12 Tel: (310) 975-1493; Fax: (310) 675-0861

13 Jonathan Melmed, Esq.
14 *jm@melmedlaw.com*
15 Melmed Law Group PC
16 1801 Century Park East, Suite 850
17 Los Angeles, CA 90067
18 Tel.: (310) 824-3828; Fax: (310) 862-6851

19 To Defendant:

20 Tristan Mullis, Esq.
21 *tmullis@pettitkohn.com*
22 Mihret Getabicha
23 *mgetabicha@pettitkohn.com*
24 Pettit Kohn Ingrassia Lutz & Dolin PC
25 5901 W. Century Blvd., Suite 1100
26 Los Angeles, CA 90045
27 Tel.: (310) 649-5772

28 79. Construction. The Parties hereto agree that the terms and conditions of this
Settlement Agreement are the result of lengthy, intensive arms' length negotiations among the
Parties and that this Settlement Agreement shall not be construed in favor of or against any Party
based on the extent to which any Party or her or its counsel participated in the drafting of this
Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory
rule of construction that ambiguities should be construed against the drafter of an agreement and
further agree, covenant, and represent that the language in all parts of this Settlement Agreement
shall be in all cases construed as a whole, according to its fair meaning.

1 80. Captions and Interpretations. Paragraph titles or captions contained herein are
2 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
3 describe the scope of this Settlement Agreement or any provision hereof. Each term of this
4 Settlement Agreement is contractual and not merely a recital.

5 81. Modification. This Settlement Agreement may not be changed, altered, or
6 modified, except in writing and signed by all Parties hereto, and approved by the Court. This
7 Settlement Agreement may not be discharged except by performance in accordance with its terms
8 or by a writing signed by all of the Parties hereto.

9 82. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
10 this Settlement Agreement or to declare rights and/or obligations under this Settlement
11 Agreement, a Party shall provide written notice to all other Parties pursuant to the notice
12 provisions of paragraph 81 and allow an opportunity to cure the alleged deficiencies, and Plaintiff
13 and Defendant agree to seek the help of the Mediator to resolve any dispute they are unable to
14 resolve informally. During this period, the Parties shall bear their own attorneys' fees and costs.
15 This provision shall not apply to any legal action or other proceeding instituted by any person or
16 entity other than Plaintiff or Defendant.

17 83. Choice of Law. This Settlement Agreement shall be governed by and construed,
18 enforced, and administered in accordance with the laws of the State of California, without regard
19 to its conflicts-of-law rules.

20 84. Integration Clause. This Settlement Agreement contains the entire agreement
21 among the Parties relating to the Complaint, the Action, the Released Claims, and the Settlement,
22 and all prior or contemporaneous agreements, understandings, representations, and statements,
23 whether oral or written and whether by a Party or such Party's legal counsel, are merged herein.
24 No rights hereunder may be waived except in a writing signed by the Party purporting to waive
25 such right or rights.

26 85. Binding On Assigns. This Settlement Agreement shall be binding upon and inure to
27 the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
28 successors and assigns.

1 86. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
2 because the members of the Settlement Class are numerous, it is impossible or impractical to have
3 each Settlement Class Member execute this Settlement Agreement. The Notice will advise all
4 Settlement Class Members of the binding nature of the release provided herein and such Release
5 shall have the same force and effect as if this Settlement Agreement were executed by each
6 Settlement Class Member.

7 87. Enforcement and Continuing Jurisdiction of the Court. To the extent consistent
8 with class action procedure, this Settlement Agreement shall be enforceable by the Court pursuant
9 to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction
10 over this Action and over all Parties and Settlement Class Members, to the fullest extent to enforce
11 and effectuate the terms and intent of this Settlement Agreement, and to adjudicate any claimed
12 breaches of this Settlement Agreement. The Court may award reasonable attorneys' fees and costs
13 to the prevailing party in any motion or action taken and based on an alleged violation of any
14 material term of the Settlement Agreement.

15 88. Voluntary Agreement. The Parties acknowledge that they have entered into this
16 Settlement Agreement voluntarily, on the basis of their own judgment and without coercion,
17 duress, or undue influence of any Party, and not in reliance on any promises, representations, or
18 statements made by the other Parties other than those contained in this Settlement Agreement.
19 Each of the Parties hereto expressly waves any right she/it might ever have to claim that this
20 Settlement Agreement was in any way induced by fraud.

21 89. Opportunity to Consult with Counsel. Prior to execution of this Settlement
22 Agreement, each Party has read this entire Settlement Agreement and has been given the
23 opportunity to consult with independent counsel of their choosing and to have such independent
24 counsel advise as to the meaning of this Settlement Agreement and its legal effect.

25 90. Counterparts. This Settlement Agreement may be executed in counterparts, and
26 when each Party has signed and delivered at least one such counterpart, each counterpart shall be
27 deemed an original, and, when taken together with other signed counterparts, shall constitute one
28 fully-signed Settlement Agreement, which shall be binding upon and effective as to all Parties.

1 Electronic signatures shall have the same force and effect as an original.

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3 Dated: February ²² __, 2021

CLASS REPRESENTATIVE:

DocuSigned by:
Martha Cuevas

A2AD6908C02E41E

Martha Cuevas

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7 Dated: March ⁶ __, 2021

ACTION EMBROIDERY CORP.

Ira J Newman

By:

Ira J Newman President

Name & Position

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1 APPROVED AS TO FORM:

2 Dated: February ²² __, 2021

CLASS COUNSEL:
MELMED LAW GROUP PC

DocuSigned by:

Jonathan Melmed

Jonathan Melmed
Attorneys for Plaintiff

6 Dated: February ²² __, 2021

CLASS COUNSEL:
BOKHOUR LAW, P.C.

DocuSigned by:

Mehrdad Bokhour

Mehrdad Bokhour
Attorneys for Plaintiff

10 Dated: ~~February~~ ^{March} 7, 2021

COUNSEL FOR ACTION EMBROIDERY CORP.
PETTIT KOHN INGRASSIA LUTZ & DOLIN PC

Tristan Mullis

Tristan A. Mullis, Esq.
Mihret Getabicha
Attorneys for Action Embroidery Corp.

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