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SUPERIOR COURT OF THE STATE OF CALIFORNIA
THE COUNTY OF ALAMEDA

ASHLI MORRIS, as an individual and on behalf all employees similarly situated

Plaintiff,

v.

KIDS OVERCOMING, LLC, a limited liability company, and DOES 1 through 50, inclusive,

Defendants.

Case No. HG20064207

CLASS ACTION

STIPULATION OF CLASS AND REPRESENTATIVE SETTLEMENT

Assigned for all purposes to:
Hon. Brad Seligman, Dept. 23

Complaint Filed: June 1, 2020
Trial Date: None Yet Set

STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

IT IS HEREBY STIPULATED, by and among Plaintiffs Ashli Morris on behalf of herself and the Settlement Class Members on the one hand, and Defendants Kadiant, LLC and Kids Overcoming, LLC, on the other hand; and subject to the approval of the Court, that the above-captioned action is hereby being compromised and settled pursuant to the terms and conditions set forth in this Joint Stipulation of Class and Representative Action Settlement (the "Settlement").

1. DEFINITIONS

Capitalized terms used in this Settlement shall have the meanings set forth below:

1 1.1. “Action” shall mean the lawsuit pending in the Superior Court of the State of
2 California, County of Alameda, entitled *Ashli Morris v. Kids Overcoming, LLC* Case No
3 HG20064207.

4 1.2. “Settlement Administrator” means Phoenix Settlement Administrators.

5 1.3. “Settlement Administration Costs” means the amount to be paid to the third-party
6 Settlement Administrator to administer the Settlement, not to exceed Ten Thousand Dollars and
7 Zero Cents (\$10,000.00).

8 1.4. “Class Counsel” means Justin Lo of Work Lawyers PC.

9 1.5. “Class Counsel Award” means reasonable attorneys’ fees for Class Counsel’s
10 litigation and resolution of this Action of up to one-third of the Gross Settlement Amount which,
11 unless escalated as set forth in this Agreement, shall be Ninety Thousand, Eight Hundred Thirty-
12 Three Dollars and Thirty-Three Cents (\$90,833.33). The Court shall determine the amount of the
13 Class Counsel Award, and it shall be paid from the Gross Settlement Amount.

14 1.6. “Class Counsel Costs” means expenses incurred by Class Counsel for Class
15 Counsel’s litigation and resolution of this Action, not to exceed Fifteen Thousand Dollars and
16 Zero Cents (\$15,000.00). The Court shall determine the amount of the Class Counsel Costs, and
17 it shall be paid from the Gross Settlement Amount.

18 1.7. “Class Information” means information regarding Settlement Class Members that
19 Defendants KADIANT, LLC and KIDS OVERCOMING, LLC will in good faith compile from
20 their records and provide to the Settlement Administrator. Class Information shall be provided
21 as a Microsoft Excel spreadsheet and shall include: each Settlement Class Member’s full name;
22 last known address; social security number; employee identification number; and the total number
23 of workweeks each Settlement Class Member worked for Defendants during the Class Period.

24 1.8. “Settlement Class Members” are composed of two different subclasses.

25 **1.8.1. Sub Class 1** includes all Schedulers working in California who are or were
26 employed by Kids Overcoming, LLC, and who were previously classified as exempt at
27 any time between June 1, 2016 to September 30, 2019 (“Sub Class 1 Period”).

28 **1.8.2. Sub Class 2** includes all exempt and non-exempt employees in California who

1 were required to work remotely at any time on or after March 15, 2020 to May 9, 2022
2 (“Sub Class 2 Period”) with the exception of Associate Behavior Technicians, Behavior
3 Technicians, Lead Behavior Technicians, and Senior Behavior Technicians who were, or
4 are employed by Kadiant, LLC within California.

5 1.9. “Settlement Class Period” includes both the Sub Class 1 & 2 Periods,.

6 1.10. The “PAGA Group” is comprised of two different subclasses:.

7 **1.9.1 PAGA Sub Class 1** that includes all Schedulers working in California who are or
8 were employed by Kids Overcoming, LLC, and who were previously classified as exempt
9 at any time between March 9, 2019 to September 30, 2019 (“PAGA Sub Class 1 Period”).

10 **1.9.2. PAGA Sub Class 2** includes all exempt and non-exempt employees in California
11 who were required to work remotely at any time on or after April 7, 2020 to May 9, 2022
12 (“PAGA Sub Class 2 Period”) with the exception of Associate Behavior Technicians,
13 Behavior Technicians, Lead Behavior Technicians, and Senior Behavior Technicians who
14 were, or are employed by Kadiant, LLC within California.

15 1.11. The “PAGA Period” includes both the PAGA Sub Class 1 & 2 Periods.

16 1.12. “Class Representative Enhancement Award” means the amount that the Court
17 authorizes to be paid to the Class Representative Ashli Morris, not to exceed Ten Thousand
18 Dollars (\$10,000.00), each, in addition to their Individual Settlement Payments and Individual
19 PAGA Payments (as applicable), for their service in connection with being the Class
20 Representatives. The Class Representative Enhancement Awards shall be paid from the Gross
21 Settlement Amount. Any portion of the requested Class Representative Enhancement Awards that
22 are not awarded to Plaintiffs shall be part of the Net Settlement Amount.

23 1.13. “Court” means the Superior Court of the State of California for the County of
24 Alameda.

25 1.14. “Defendants” means Kadiant, LLC and Kids Overcoming, LLC, and all of their
26 current and former parents, owners, subsidiaries, predecessors and successors, and each of their
27 respective officers, directors, partners, shareholders and agents, and any other successors,
28 assigns.

1 1.15. “Defendant’s Counsel” means Jennifer Duggan and Christina Bucci Hamilton of
2 Duggan McHugh Law Corporation.

3 1.16. “Effective Date” means the date that Defendants pay the full Gross Settlement
4 Amount and Employer’s Taxes to the Settlement Administrator as agreed upon herein.

5 1.17. “Plaintiffs” or “Class Representatives” means Plaintiff Ashli Morris.

6 1.18. “Employers” means Defendants Kadiant, LLC and Kids Overcoming, LLC, and
7 all of their current and former parents, owners, subsidiaries, predecessors and successors, and
8 each of their respective officers, directors, partners, shareholders and agents, and any other
9 successors, assigns, or legal representatives.

10 1.19. “Employee Taxes” means the employee’s share of any and all applicable federal,
11 state, and local payroll taxes on the portion of Participating Class Members’ Individual
12 Settlement Payment that constitutes wages. The Employee Taxes will be paid out of the Net
13 Settlement Amount.

14 1.20. “Employer Taxes” means the employer’s share of any and all applicable federal,
15 state, and local payroll taxes on the portion of Participating Class Members’ Individual
16 Settlement Payment that constitutes wages. The Employer Taxes will be paid separately by the
17 Defendant and shall not be paid out of the Gross Settlement Amount.

18 1.21. “Final Approval Hearing” means the hearing held by the Court, pursuant to class
19 action procedures and requirements, on the motion for final approval of the Settlement.

20 1.22. “Final Approval Date” means the date, which the Court grants final approval of
21 the Settlement.

22 1.23. “Final Judgment” means the Court’s entry of an order of judgment in this Action
23 following the Court’s final approval of the Settlement.

24 1.24. “Gross Settlement Amount” means the total amount Defendants shall have to pay
25 in connection with this Settlement, by way of a common fund, which shall be inclusive of all
26 Individual Settlement Amounts to Participating Class Members, Individual PAGA Payments to
27 Aggrieved Employees (as defined herein), Class Counsel Award, Class Counsel Costs,
28 Settlement Administrator Costs, Class Representative Enhancement Awards, Employee Taxes,

1 and the LWDA Payment (defined herein). Subject to Court approval and the terms of this
2 Settlement, the Gross Settlement Amount Defendants shall be required to pay is \$272,500.00,
3 unless the same is escalated pursuant to this Agreement. No portion of the Gross Settlement
4 Amount will revert to Defendants, and the Settlement does not require Participating Class
5 Members to submit claims as a prerequisite to receiving their Individual Settlement Payment.
6 This settlement sum is based on Defendants' representation at the time of mediation (March 9,
7 2022) that the class size was approximately 175 individuals and there are approximately 10,347
8 workweeks. Defendant shall not be required to pay more than the Gross Settlement Amount, as
9 long as the workweeks during the Settlement Class Period do not increase by more than fifteen
10 (15) percent (i.e, if the class size increases to sixteen (16) percent, the Settlement Agreement
11 shall increase proportionately to the overage, i.e., by one percent of the Gross Settlement
12 Amount), and so forth. Under no other circumstances shall Defendant be required to pay more
13 than the Gross Settlement Amount except as provided for in this provision of the Settlement..

14 1.25. "Individual Settlement Payment" means the amount payable to each Participating
15 Class Member, as calculated pursuant to Paragraph 3.23 of the Settlement, from the Net
16 Settlement Amount. Checks for Individual Settlement Payments will specifically indicate that
17 they are void if not negotiated within one hundred eight (180) days of their issuance.

18 1.26. "PAGA Allocation" refers to the allocation of \$22,500.00 from the Gross
19 Settlement Amount attributed to PAGA penalties. Of that amount, \$16,875 will be paid to the
20 Labor and Workforce Development Agency ("LWDA") representing seventy-five percent (75%)
21 of the PAGA Allocation ("LWDA Payment"), while \$5,625.00, representing twenty-five percent
22 (25%) of the PAGA Allocation, will be paid to Aggrieved Employees of the PAGA Group. The
23 PAGA Group shall comprise of **PAGA Sub Class 1** and **PAGA Sub Class 2** as defined in this
24 Stipulation.

25 1.27. "Net Settlement Amount" means the Gross Settlement Amount, less (i) the Class
26 Representative Payment approved by the Superior Court (not to exceed \$10,000.00) to Plaintiff ;
27 (ii) the Class Counsel Fees Payment approved by the Superior Court (not to exceed one-third of
28 the Gross Settlement Amount, which, unless escalated, shall be \$90,833.33; (iii) the Class

1 Counsel Litigation Expenses Payment approved by the Superior Court not to exceed \$15,000.00
2 (iv) the LWDA Payment; (v) the Settlement Administrator Payment (not to exceed Ten Thousand
3 Dollars (\$10,000), (vi) any other fees or expenses (other than Class Counsel Fees Payment and
4 Class Counsel Litigation Expenses Payment) incurred by implementing the terms and conditions
5 of this Agreement as approved by the Superior Court. The allocation of the Net Settlement
6 Amount shall be 20% toward Sub Class 1 and 80% toward Sub Class 2 as defined throughout this
7 Stipulation.

8 1.28. “Non-Participating Class Member” shall mean a Class Member who submits a
9 complete, valid and timely request to be excluded from the Settlement pursuant to the instructions
10 provided in the Class Notice and/or who has signed a release with Defendant to resolve any claims
11 as alleged in the Action.

12 1.29. “Notice of Objection” means a written statement of objection to the Settlement
13 made and signed by a Settlement Class Member and includes the following: (1) the full name of
14 the Settlement Class Member; (2) the dates of employment of the Settlement Class Member; (3)
15 the last four (4) digits of the Settlement Class Member’s Social Security number and/or the
16 Employee ID number; (4) the basis for the objection; and, (5) whether the Settlement Class
17 Member intends to appear at the Final Approval Hearing.

18 1.30. “Notice of Settlement” means the Notice of Proposed Class Action Settlement
19 (substantially in the form attached hereto as **Exhibit “A”**). This Notice shall be provided in both
20 English and Spanish.

21 1.31. “Participating Class Members” means all Settlement Class Members who do not
22 submit a valid and timely Request for Exclusion.

23 1.32. “Parties” means Plaintiff and Defendants collectively, and “Party” shall mean any
24 Plaintiff or any Defendant, individually.

25 1.33. “Plaintiffs’ General Released Claims” means, in addition to the releases made by
26 Participating Class Members, Plaintiffs, on behalf of themselves, their heirs, successors, assigns,
27 executors, trustees, and estates, in exchange for the terms and conditions of this Agreement,
28 including the Class Representative Enhancement Awards requested or as otherwise authorized by

1 the Court, shall also, as of the Effective Date, fully and forever release the Released Parties, to
2 the full extent permitted by law, of and from any and all claims arising from their employment
3 with Defendants, known and unknown, asserted and unasserted, which Plaintiffs had or may have
4 had against the Released Parties, whether sounding in tort, in contract, in law, in equity or
5 otherwise, and including but not limited to all claims for violation of any local, state, or federal
6 statute, rule, or regulation.

7 1.34. "Preliminary Approval Date" means the date the Court enters the Preliminary
8 Approval Order for the Settlement.

9 1.35. "Preliminary Approval Order" means the Order for preliminary approval of the
10 Settlement.

11 1.36. "Released Claims" means any and all claims against the Released Parties asserted
12 in the Action, and any and all claims that could have been asserted against the Released Parties
13 based on the factual allegations in the Action, as follows: For the duration of the Class Period,
14 the release includes, but is not limited to: (a) unpaid minimum and overtime wages, (b) non-
15 compliant meal and rest break and/or failure to pay premiums owed thereon, (c) unreimbursed
16 business expenses, (d) maintenance and issuance of inaccurate wage statements, (e) untimely
17 wages during employment and upon separation, and (f) violations of the Private Attorneys
18 General Act of 2004 and California Business and Professions Code.

19 1.37. "Released Parties" means Kadiant, LLC and Kids Overcoming, LLC, and current
20 and former parents, owners, subsidiaries, predecessors and successors, and each of their
21 respective officers, directors, partners, shareholders and agents, and any other successors,
22 assigns.

23 1.38. "Request for Exclusion" means a Settlement Class Member's completed Request
24 for Exclusion form to opt out of the Settlement.

25 1.39. "Response Deadline" means the date forty-five (45) days after the Settlement
26 Administrator mails Notice Packets to Settlement Class Members, and shall be the last date on
27 which Settlement Class Members may: (a) postmark Requests for Exclusion from the Settlement,
28 or (b) postmark Notices of Objection to the Settlement or (c) dispute their number of workweeks.

1 1.40. “Settlement” means the terms of this Stipulation of Class and Representative
2 Action Settlement.

3
4 **RECITALS**

5 2.1. Class Certification. The Parties stipulate and agree to the certification of this
6 Action for purposes of this Settlement only. Should the Settlement not become final and effective,
7 class certification shall immediately be set aside (subject to further proceedings on motion of any
8 party to certify or deny certification thereafter), the Settlement shall be deemed null and void, and
9 will be of no force or effect whatsoever, and will not be referred to or utilized for any purpose
10 whatsoever. The Parties’ willingness to stipulate to class certification as part of the Settlement
11 shall have no bearing on and shall not be admissible in or considered in connection with, the issue
12 of whether a class should be certified in a non-settlement context in the Actions, and shall have
13 no bearing on and shall not be admissible or considered in connection with the issue of whether
14 a class should be certified in any other lawsuit.

15 2.2. Procedural History. On March 9, 2020, Plaintiff Ashli Morris filed a notice with
16 the LWDA to seek civil penalties for various Labor Code violations. On June 1, 2020, Plaintiff
17 filed their Class Action complaint in Alameda Superior Court alleging: failure to pay overtime
18 and minimum wages; failure to provide meal breaks, rest breaks, or compensation in lieu thereof;
19 waiting time penalties; wage statement violations; failure to indemnify work expenses; unfair
20 competition and violation of PAGA. On April 7, 2021, an updated notice to the LWDA was
21 provided naming Kadiant LLC as Defendants. On or about September 21, 2022, Plaintiff’s filed
22 an Amended Complaint.

23 2.3. Settlement Negotiations. On March 9, 2022, the Parties participated in a private
24 mediation session with Justice Steven M. Vartabedian (RET.), an experienced mediator in the
25 field of wage and hour class actions. Prior to the mediation, Class Counsel conducted extensive
26 informal discovery and investigation during the prosecution of the Action. The informal
27 discovery and investigation included, among other things: (1) inspection and analysis of a
28 sampling of employee documents and data, including personnel files, time and payroll records,

1 employment policies and procedures, and other relevant documents; (2) evaluation of legal
2 positions taken by Defendants; (3) evaluation of potential class-wide damages and PAGA
3 penalties; and (4) review and research of applicable law with respect to the claims and potential
4 defenses brought by Defendants. Class Counsel has vigorously prosecuted this Class Action, and
5 Defendants have vigorously defended it. The Parties have engaged in sufficient discovery and
6 investigation to assess the relative merits of the claims and contentions of the Parties. Based on
7 this information and the settlement discussions during the mediation conducted at arm's length,
8 the Parties came to an agreement on March 9, 2022. The settlement is the result of an informed
9 and detailed evaluation of the potential liability of total exposure in relation to the costs and risks
10 associated with continued litigation of the Action.

11 2.4. Benefits of Settlement to Class Members. Plaintiffs and Class Counsel recognize
12 the length of continued proceedings necessary to litigate their disputes through certification, trial,
13 and any possible appeal. Plaintiffs and Class Counsel have also taken into account the uncertainty
14 and risk of the outcome of further litigation, the difficulties and delays inherent in such litigation,
15 including, but not limited to, the risks related to a contested motion for class certification, and the
16 risks related to liability raised by the issues in this case. Plaintiff and Class Counsel are also
17 aware of the burdens of proof necessary to establish liability for the claims asserted in the Action
18 and the difficulties in establishing damages for the Settlement Class Members. Plaintiffs and
19 Class Counsel have also taken into account Defendants' agreement to enter into a settlement that
20 confers substantial relief upon Settlement Class Members. Based on the foregoing, Plaintiffs and
21 Class Counsel have determined that this Settlement is a fair, adequate, and reasonable, and is in
22 the best interests of the Settlement Class Members.

23 2.5. Defendants' Denial of Wrongdoing and Liability and Reasons for Settlement.
24 Defendants contend that the Settlement Class Members were properly and timely paid all wages
25 owed, including, but not limited to, all straight time and overtime, were properly reimbursed, and
26 were provided meal and rest periods as required under California law. However, Defendants have
27 concluded that any further defense of this litigation would be protracted and expensive for all
28 Parties. Substantial amounts of time, energy and resources of Defendants have been and, unless

1 this Settlement is made, will continue to be devoted to the defense of the claims asserted by
2 Plaintiffs and Settlement Class Members. Defendants have also taken into account the risks of
3 further litigation in reaching their decision to enter into this Settlement. Defendants have
4 concluded that further proceedings in the Action would be protracted and expensive and that it is
5 desirable that the Action be fully and finally settled in the manner and upon the terms and
6 conditions set forth in this Settlement in order to dispose of burdensome and protracted litigation,
7 to permit the operation of Defendants' business without further expensive litigation and the
8 distraction and diversion of its personnel with respect to matters at issue in the Actions.
9 Defendants have also taken into account the uncertainty and risks inherent in any litigation,
10 especially in complex cases such as this Action. Defendants have therefore determined that it is
11 desirable and beneficial to them that the Action be settled in the manner and upon the terms and
12 conditions set forth in this Settlement.

13 2.6. No Admissions. The Parties understand and agree that this Settlement is the result
14 of a good faith compromise of disputed claims and allegations, and Defendants are entering into
15 this Settlement Agreement solely to resolve doubtful and disputed matters. No part of this
16 Settlement Agreement or any conduct or written or oral statements made in connection with this
17 Settlement, whether or not the Settlement Agreement is finally approved and/or consummated,
18 may be offered as or construed to be an admission or concession of any kind by either of the
19 Parties. In particular, but without limiting the generality of the foregoing, nothing about this
20 Settlement or Settlement Agreement shall be offered or construed as an admission that
21 Defendants have violated any of their obligations under the California Labor Code, or of liability
22 in general, or any wrongdoing, impropriety, responsibility, or fault whatsoever on the part of
23 Defendants and/or Released Parties. In addition, this Settlement Agreement shall not be offered
24 or be admissible in evidence against any of the Parties or any of the Released Parties, except in
25 any action or proceeding brought by or against Plaintiffs, the Class, Settlement Class Members,
26 or Defendants to enforce its terms, or by Defendants in defense of any claims brought by
27 Plaintiffs, the Class, and Settlement Class Members. The provision of this paragraph shall
28 become effective when this Settlement is signed and shall be binding on the Parties and their

1 counsel regardless of whether the Settlement Agreement is preliminarily and/or finally approved
2 or terminated for any reason, or rendered null and void.

3 2.7. Settlement Class Members' Claims. Plaintiffs claim that the Released Claims
4 have merit and give rise to liability on the part of Defendants. This Settlement is a compromise
5 of disputed claims. Nothing contained in this Settlement and no documents referred to herein,
6 nor any action taken to carry out this Settlement may be construed or used as an admission by
7 or against the Settlement Class Members or Class Counsel as to the merits or lack thereof of the
8 claims asserted.

9 2.8. Defendants' Defenses. Defendants have denied and continue to deny each and all
10 of the allegations, claims, and contentions alleged by Plaintiffs in the Action. Defendants have
11 expressly denied and continues to deny all charges of wrongdoing or liability against it arising
12 out of any of the conduct, statements, acts, or omissions alleged in the Action. Defendants
13 contend that it complied in good faith with California and federal wage-and-hour laws and has
14 dealt legally and fairly with Plaintiffs and Settlement Class Members and Aggrieved Employees.
15 Defendants further deny that, for any purpose other than settling the Action, these claims are
16 appropriate for class or representative treatment.

17 2.9. Gross Amount Payable by Defendants. Under the terms of this Settlement, the
18 gross amount payable by Defendants shall be \$272,500.00 unless that amount shall be escalated
19 as set forth in this Agreement, exclusive of Employer's Taxes attributable to the Individual
20 Settlement Payments allocated to wages payable to Participating Class Members, which shall
21 be paid separate and apart from the Gross Settlement Amount.

22 **3. TERMS OF SETTLEMENT**

23 The Parties agree as follows:

24 3.1. Binding Settlement. This Settlement shall bind the Parties, all Aggrieved
25 Employees and all Participating Class Members, subject to the terms and conditions hereof and
26 the Court's approval.

27 3.2. Release as To Plaintiff and All Settlement Class Members.

28 3.2.1. Release as All Settlement Class Members. Effective only upon the

1 entry of an Order granting Final Approval of the Settlement, entry of
2 Judgment, and payment by Defendant to the Settlement Administrator
3 of the full Gross Settlement Amount (as the same may be escalated
4 pursuant to this Agreement) and Employer’s Taxes necessary to
5 effectuate the Settlement, all Participating Class Members will be
6 deemed to have fully, finally and forever released, settled,
7 compromised, relinquished, and discharged the Released Parties from
8 the Released Claims for the Class Period.

9 3.2.2. Release as To Plaintiffs. Effective only upon the entry of an Order
10 granting Final Approval of the Settlement, entry of Judgment, and
11 payment by Defendant to the Settlement Administrator of the full Gross
12 Settlement Amount (as the same may be escalated pursuant to this
13 Agreement) and Employer’s Taxes necessary to effectuate the
14 Settlement, Plaintiffs will be deemed to have fully, finally and forever
15 released, settled, compromised, relinquished, and discharged any and
16 all of Plaintiffs’ General Released Claims against the Released Parties.
17 With respect to the Plaintiffs’ General Released Claims only, Plaintiffs
18 shall be deemed to have, and by operation of the Final Judgment shall
19 have, expressly waived and relinquished, to the fullest extent permitted
20 by law, the provisions, rights, and benefits of section 1542 of the
21 California Civil Code, or any other similar provision under federal or
22 state law, which section provides:

23
24 *A general release does not extend to claims that the creditor or*
25 *releasing party does not know or suspect to exist in his or her favor*
26 *at the time of executing the release and that, if known by him or*
27 *her, would have materially affected his or her settlement with the*
28 *debtor or released party.*

1 Plaintiffs may hereafter discover facts in addition to or different from those they now
2 know or believe to be true with respect to the subject matter of the Plaintiffs' General Released
3 Claims, but upon the Effective Date, shall be deemed to have, and by operation of the Final
4 Judgment shall have, fully, finally, and forever settled and released any and all of the Plaintiffs'
5 General Released Claims, whether known or unknown, suspected or unsuspected, contingent or
6 non-contingent, which now exist, or heretofore have existed, upon any theory of law or equity
7 now existing or coming into existence in the future.

8 3.3. Tax Liability. The Parties understand and agree that the Parties are not providing
9 tax or legal advice. Participating Class Members and Aggrieved Employees will remain
10 responsible for any Employee Taxes. Participating Class Members and Aggrieved Employees
11 will assume any employee tax obligations or consequences that may arise from this Settlement
12 and should consult with a tax expert if they have questions. However, Individual Settlement
13 Payments will be allocated as follows: for Sub Class 1: twenty percent (20%) as wages (a W-2
14 will be issued) and eighty percent (80%) as interest and penalties (a 1099 will be issued); for
15 Sub Class 2: one hundred percent (100%) reimbursable business expenses and interest (a 1099
16 will be issued). Individual PAGA Payments will be allocated as one hundred percent (100%)
17 penalties. Any required payroll deductions will be based on this apportionment. The Parties
18 agree that, in the event that any taxing body determines that additional employee taxes are due
19 from any Participating Class Member and/or Aggrieved Employee, such Participating Class
20 Member and/or Aggrieved Employee assumes all responsibility for the payment of such taxes.

21 3.4. Circular 230 Disclaimer. The Parties acknowledge and agree that (1) no provision
22 of this Settlement, and no written communication or disclosure between or among the Parties,
23 Class Counsel or Defense Counsel and other advisers, is or was intended to be, nor shall any
24 such communication or disclosure constitute or be construed or be relied upon as, tax advice
25 within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as
26 amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own,
27 independent legal and tax counsel for advice (including tax advice) in connection with this
28

1 Settlement, (b) has not entered into this Settlement based upon the recommendation of any other
2 party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
3 communication or disclosure by any attorney or advisor to any other party to avoid any tax
4 penalty that may be imposed on the acknowledging party; and (3) no attorney or advisor to any
5 other party has imposed any limitation that protects the confidentiality of any such attorney's or
6 adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure
7 by the acknowledging party of the tax treatment or tax structure of any transaction, including
8 any transaction contemplated by this Settlement.

9 3.5. Settlement Approval and Implementation Procedures. As part of this Settlement,
10 the Parties agree to the following procedures for obtaining the Court's preliminary approval of
11 the Settlement, certifying the Settlement Class, notifying Settlement Class Members and/or
12 Aggrieved Employees of the Settlement, obtaining the Court's final approval of the Settlement,
13 and processing the Individual Settlement Payments and Individual PAGA Payments.

14 3.6. Preliminary Approval and Certification. As soon as practicable after execution of
15 this Settlement, Plaintiffs will submit this Settlement to the Court for its preliminary approval.
16 Such submission will include this Settlement, the proposed Class Notice, the proposed
17 Preliminary Approval Order, and any memoranda and evidence as may be necessary for the
18 Court to determine that this Settlement is fair, adequate, and reasonable. Plaintiffs will request
19 the Court to enter an order conditionally certifying the Settlement Class after the preliminary
20 approval hearing, in accordance with California Rules of Court, Rule 3.769(c). Defendants shall
21 not oppose the motion and request.

22 3.7. Class Information. Within twenty-one (21) calendar days after the entry of the
23 Preliminary Approval Order, Defendant, shall provide the Settlement Administrator with the
24 Class Information for purposes of mailing Class Notices to Settlement Class Members,
25 including: 1. Class Member's full name; 2. Class Member's last known address; 3. Class
26 Member's social security number; 4. Class Member's employee identification number; and 5.
27 based on Defendant's payroll records, the Class Member's total number of workweeks, or
28

1 information sufficient for the Settlement Administrator to calculate the same. The Settlement
2 Administrator shall use commercially reasonable efforts to secure the data provided by
3 Defendant at all times so as to avoid inadvertent or unauthorized disclosure or use of such data
4 other than as permitted by the Settlement. The Settlement Administrator shall ensure that the
5 Class Notice and any other communications to Class Members shall not include the Class
6 Members' social security number, except for the last four (4) digits, if necessary.

7 3.8. Notice by First Class U.S. Mail. Upon receipt of the Class Information, the
8 Settlement Administrator will perform a search on the National Change of Address database to
9 update the Settlement Class Members' addresses. No more than ten (10) calendar days after
10 receiving the Class Information from Defendant, as provided herein, the Settlement
11 Administrator shall mail copies of the Class Notice to all Settlement Class Members by regular
12 First-Class U.S. Mail. The Settlement Administrator shall exercise its best judgment to
13 determine the current mailing address for each Settlement Class Member. The address identified
14 by the Settlement Administrator as the current mailing address shall be presumed to be the best
15 mailing address for each Settlement Class Member.

16 3.9. Undeliverable Notices. Any Notice Packets returned to the Settlement
17 Administrator as undeliverable on or before the sixty (60) day Response Deadline shall be re-
18 mailed to the forwarding address promptly.

19 3.10. For each Settlement Class Member whose Class Notice is returned, there will be
20 one (1) skip trace by the Settlement Administrator. If an updated mailing address is identified,
21 the Settlement Administrator shall resend the Class Notice to the Settlement Class Member. One
22 (1) supplemental Class Notice shall be mailed to each Settlement Class Member whose original
23 Class Notice is returned as undeliverable to the Settlement Administrator. Such re-mailing shall
24 be made within five (5) business days of the Settlement Administrator receiving notice that the
25 respective Class Notice was undeliverable. Any requests by the Settlement Administrator for
26 documents or information from Defendants must be responded to within a reasonable amount
27 of time by counsel for Defendants. It is the intent of the Parties that reasonable means be used
28

1 to locate the Settlement Class Members and apprise them of their rights.

2 3.11. Settlement Class Members to whom Class Notices are resent after having been
3 returned undeliverable to the Settlement Administrator, during the entire Response Deadline,
4 shall have an additional fourteen (14) calendar days from the date of re-mailing, or until the
5 forty-five (45) day Response Deadline has expired, whichever is later, to mail the Request for
6 Exclusion or a Notice of Objection. Class Notices that are resent shall inform the recipient of
7 this adjusted deadline. The date of the postmark on the return envelope shall be the exclusive
8 means used to determine whether a Settlement Class Member has returned his or her Request
9 for Exclusion on or before the adjusted deadline. If a Settlement Class Member's Class Notice
10 is returned to the Settlement Administrator more than once as undeliverable, then an additional
11 Class Notice shall not be re-mailed. Nothing further shall be required of, or done by, the Parties,
12 Class Counsel, or Defendants' Counsel to provide notice of the proposed Settlement.

13 3.12. Compliance with the procedures specified in paragraphs 3.9-3.12 of this
14 Settlement shall constitute due and sufficient notice to Settlement Class Members of this
15 Settlement and shall satisfy the requirement of due process. In the event the procedures set forth
16 herein are followed and the intended recipient of a Class Notice still does not receive the Class
17 Notice, the intended recipient will be a Participating Class Member and will be bound by all
18 terms of the Settlement and the Order Granting Final Approval entered by the Court. Nothing
19 else shall be required of, or done by, the Parties, Class Counsel, and Defendants' Counsel to
20 provide notice of the proposed Settlement.

21 3.13. Disputes. Settlement Class Members will have the opportunity during the sixty
22 (60) day response period, should they disagree with Defendants' records regarding their days
23 worked during the Class Period, to provide documentation and/or an explanation to show
24 contrary days worked. A space will be provided on the Notice of Settlement Payment for Class
25 Members to raise such disputes. For a Settlement Class Member's dispute to be considered, the
26 Settlement Class Member must fully complete the Notice and timely return it to the Settlement
27 Administrator. Settlement Class Members will have sixty (60) days after the date the Class
28

1 Notice is mailed by the Settlement Administrator to mail in a dispute, including any supporting
2 evidence the Settlement Class Member may have. If a Settlement Class Member's Class Notice
3 is re-mailed, the Settlement Class Members shall have an additional fourteen (14) calendar days
4 from the date of re-mailing or until the sixty (60) day Response Deadline has expired, whichever
5 is later to provide his/her dispute. The date of the postmark of the return mailing envelope shall
6 be the exclusive means used to determine whether a dispute has been timely submitted to the
7 Settlement Administrator. If there is a dispute, the Settlement Administrator will consult with
8 the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall
9 determine the eligibility for, and the amounts of, any Individual Settlement Payments under the
10 terms of this Settlement. The Settlement Administrator's determination of the eligibility for and
11 amount of any Individual Settlement Payment and/or Individual PAGA Payment shall be
12 binding upon the Settlement Class Member and the Parties.

13
14 3.14. Exclusions (Opt-Outs). The Class Notice shall state that Settlement Class
15 Members who wish to exclude themselves from the Settlement must submit a Request for
16 Exclusion by the Response Deadline. The Request for Exclusion: (1) must contain the name,
17 address, and the last four (4) digits of the Social Security number of the Settlement Class
18 Member requesting exclusion/ or an Employee Identification Number, (2) must be signed by the
19 Settlement Class Member; and (3) must be postmarked by the Response Deadline and returned
20 to the Settlement Administrator at the specified address. If the Request for Exclusion does not
21 contain the information listed in (1)-(2), it will not be deemed valid for exclusion from this
22 Settlement. If any Request for Exclusion is incomplete or deficient, the Settlement
23 Administrator shall send a letter informing the Settlement Class Member of the deficiency
24 within three (3) business days. If a Settlement Class Member's Class Notice is re-mailed, the
25 Settlement Class Member shall have an additional fourteen (14) calendar days from the date of
26 re-mailing or until the sixty (60) day Response Deadline has expired, whichever is later to
27 submit his/her Request for Exclusion. The date of the postmark on the return-mailing envelope
28 shall be the exclusive means used to determine whether a Request for Exclusion has been timely

1 submitted. Any Settlement Class Member who requests to be excluded from the Settlement will
2 not be entitled to any recovery under the Class Settlement allocation and will not be bound by
3 the terms of the class Settlement. However, if he or she is an Aggrieved Employee, he or she
4 will still receive an Individual PAGA Payment and be bound by the release of PAGA civil
5 penalties for the PAGA Period. Settlement Class Members who receive a Class Notice, but fail
6 to submit a valid and timely Request for Exclusion on or before the Response Deadline, shall
7 be bound by all terms of the Settlement and any Final Judgment entered in this Action if the
8 Settlement is approved by the Court. . At no time shall any of the Parties or their counsel seek
9 to solicit or otherwise encourage members of the Settlement Class to submit Requests for
10 Exclusion from the Settlement. Class Counsel shall not represent any Settlement Class Member
11 with respect to any such Requests for Exclusion. Settlement Class Members who submit a valid
12 Request for Exclusion may not also submit a Notice of Objection; if they do, the Notice of
13 Objection will be deemed invalid.

14
15 3.15. Objections. The Class Notice shall state that Settlement Class Members who wish
16 to remain Settlement Class Members, but desire to object to the Settlement must not submit a
17 Request for Exclusion. They must instead submit a written statement of objection (“Notice of
18 Objection”) by the Response Deadline to the Settlement Administrator by mail, fax or email.
19 The Notice of Objection must be signed by the Settlement Class Member or his or her legal
20 representative and state: (1) the full name of the Settlement Class Member; (2) the dates of
21 employment of the Settlement Class Member; (3) the last four (4) digits of the Settlement Class
22 Member’s Social Security number; (4) the basis for the objection; and (5) whether the Settlement
23 Class Member intends to appear at the Final Approval Hearing. The Notice of Objection must
24 be postmarked by the Response Deadline and returned to the Settlement Administrator at the
25 specified address to be considered. If a Settlement Class Member’s Class Notice is re-mailed,
26 the Settlement Class Member shall have an additional fourteen (14) calendar days from the date
27 of re-mailing or until the forty-five (45) day Response Deadline has expired, whichever is later
28 to submit his/her Notice of Objection. Within five (5) days of receiving a Notice of Objection

1 from a Settlement Class Member, the Settlement Administrator shall forward the notice of
2 objection to Class Counsel and Defendants' Counsel. Defendants will thereafter lodge the
3 Settlement Class Member's Notice of Objection with the Court. Settlement Class Members,
4 regardless of whether or not they submit a timely Notice of Objection, will have a right to appear
5 at the Final Approval Hearing, with or without an attorney, in order to have their objections
6 heard by the Court. The Settlement Class Members can obtain further information regarding
7 remote appearances at <http://www.alameda.courts.ca.gov/Pages.aspx/COVID-19>. At no time
8 shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class
9 Members to file or serve written objections to the Settlement or appeal from the Final Judgment.
10 Class Counsel shall not represent any Settlement Class Members with respect to any such
11 objections.

12 3.16. Plaintiffs' Participation. By executing this Settlement, Plaintiffs hereby stipulate
13 they will not object to or exclude themselves from the Settlement in anyway.
14

15 3.17. No Solicitation of Settlement Objections or Exclusions. The Parties and their
16 counsel agree to use their best efforts to carry out the terms of this Settlement. At no time shall
17 any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class
18 Members to submit either written objections to the Settlement or Requests for Exclusion from
19 the Settlement, or to appeal from the Court's Final Judgment.

20 3.18. Funding of the Gross Settlement. This is a non-reversionary Settlement in which
21 Defendants are required to pay the entire Gross Settlement Amount. No portion of the Gross
22 Settlement Amount will revert to Defendants. Defendants shall fully fund the Settlement within
23 seventy-five (75) calendar days after Notice of Entry of the Final Judgment is served, assuming
24 no appeal of the judgment has been noticed. See Section 3.35 below. No payments from the
25 Gross Settlement Amount shall be made before the Gross Settlement Amount is fully funded.
26 No release in this Settlement shall be effective until the Gross Settlement Amount is paid to the
27 Settlement Administrator. If Defendants default, Plaintiffs and all Participating Class Members
28 will be able to pursue all claims, and the Settlement becomes null and void.

1 3.19. No more than five (5) business days after the Gross Settlement Amount is fully
2 funded, the Settlement Administrator will provide the Parties with an accounting of all
3 anticipated payments from the Gross Settlement Amount. The Net Settlement Amount shall be
4 calculated by deducting from the Gross Settlement Amount payments for (1) Class
5 Representatives Enhancement Awards, as specified in this Settlement and approved by the
6 Court; (2) Class Counsel Award, as specified in this Settlement and approved by the Court; (3)
7 Class Counsel Costs, as specified in this Settlement and approved by the Court; (4) Settlement
8 Administration Costs, as specified in this Settlement and approved by the Court; and (5) the
9 LWDA Payment, as specified in this Settlement and approved by the Court. The Net Settlement
10 Amount shall be distributed in Individual Settlement Payments and Individual PAGA Payments
11 in accordance with this Settlement Agreement.

12 3.20. Individual Settlement Payments. Each Participating Class Member shall be
13 eligible to receive an Individual Settlement Payment, which is a share of the Net Settlement
14 Amount, based on the number of weeks worked by the Participating Class Member during the
15 Class Period, as a proportion of all weeks worked by all Participating Class Members during the
16 Class Period. Individual Class Settlement Payments shall be paid pursuant to the formula set
17 forth below. Individual Settlement Payments shall be mailed by regular First-Class U.S. Mail
18 to Participating Class Members' last known mailing address no later than fifteen (15) calendar
19 days after the Gross Settlement Amount is fully funded. Individual Settlement Payments will
20 specifically indicate that they are void if not negotiated within one hundred eight (180) days of
21 their issuance. Individual Class Settlement Payments reflect settlement of a dispute regarding
22 wages, interest, and penalties. Individual Settlement Payments will be allocated as follows: for
23 Sub Class 1: twenty percent (20%) as wages; and eighty percent (80%) as interest and penalties;
24 for Sub Class 2: one hundred percent (100%) as reimbursable business expenses and interest.
25 The "wage" portion of each Individual Settlement Payment will be reduced by Employee Taxes.
26 The Settlement Administrator shall calculate all taxes owed and shall issue the appropriate tax
27 documents associated with the Individual Settlement Payments, including an IRS Form W-2 for
28

1 the amounts allocated as “wages” and an IRS Form 1099 for the amounts allocated as
2 “reimbursable business expenses,” “interest” or “penalties.”

3 3.21. Individual PAGA Payments. Each Aggrieved Employee shall be eligible to
4 receive an Individual PAGA Payment, which is a share of the PAGA Allocation attributed to
5 Aggrieved Employees based on the number of weeks worked by the Participating Class Member
6 during the PAGA Period, as a proportion of all weeks worked by all Aggrieved Employees
7 during the PAGA Period. Individual PAGA Payments shall be paid pursuant to the formula set
8 forth below. Individual PAGA Payments shall be mailed by regular First-Class U.S. Mail to
9 Aggrieved Employees’ last known mailing addresses no later than fifteen (15) calendar days
10 after the Gross Settlement Amount and Employer’s Taxes are fully funded. Individual PAGA
11 Payments will specifically indicate that they are void if not negotiated within one hundred eight
12 (180) days of their issuance. Individual PAGA Payments reflect settlement of a dispute
13 regarding civil penalties and will be issued without withholdings and issued on a IRS Form 1099.
14

15 3.22. Individual Settlement Payment Formula. After deducting the Class Counsel
16 Award and Class Counsel Costs, the LWDA Payment, Class Representatives’ Enhancement
17 Awards, and Settlement Administration Costs, the remaining funds (the “Net Settlement
18 Amount”), will be distributed as follows:

19 3.22.1. The Settlement Administrator will determine the total number of
20 Workweeks worked by each Settlement Class Member during the
21 Settlement Class Period (“Settlement Class Member’s Workweeks”),
22 as well as the aggregate number of Workweeks worked by all
23 Settlement Class Members during the Settlement Class Period (“Class
24 Workweeks”). Additionally, the Settlement Administrator will
25 determine the total number of Workweeks worked by each Aggrieved
26 Employee during the PAGA Period (“Aggrieved Employee’s
27 Workweeks”), as well as the aggregate number of Workweeks worked
28 by all Aggrieved Employees during the PAGA Period (“PAGA

1 Workweeks”).

2 3.22.2. To determine each Participating Class Member’s Individual
3 Settlement Share, the Settlement Administrator will determine the
4 aggregate number of Workweeks worked by all Participating Class
5 Members during the Class Period (“Participating Class Workweeks”) and use the following formula: Individual Settlement Share =
6 (Participating Class Member’s Workweeks ÷ Participating Class
7 Workweeks) × Net Settlement Amount.

8
9 3.22.3. The net amount of the Individual Settlement Share is to be paid out
10 to Participating Class Members by way of check and is referred to as
11 “Individual Settlement Payment(s).”

12
13 3.22.4. To determine each Aggrieved Employee’s PAGA Payment, the
14 Settlement Administrator will use the following formula: Aggrieved
15 Employee’s PAGA Payment = (Aggrieved Employee’s Workweeks ÷
16 PAGA Workweeks) x \$5,625.00 (the portion of the PAGA Payment
17 paid to PAGA Aggrieved Employees). This amount is to be paid out to
18 Aggrieved Employees by way of check.

19 3.23. Settlement Class Members are not eligible to receive any compensation other than
20 the Individual Settlement Payment and Individual PAGA Payment, and they may only receive
21 an Individual Settlement Payment if they do not submit a valid and timely Request for Exclusion
22 to opt out of the Settlement. Even if a Settlement Class Member submits a valid and timely
23 Request for Exclusion, the Class Member shall still be entitled to receive an Individual PAGA
24 Payment. Plaintiffs, however, are each, also eligible to receive a Class Representative
25 Enhancement Award.

26 3.24. No benefit, including but not limited to pension benefits, shall increase or accrue
27 as a result of any payment made pursuant to this Settlement.

28 3.25. If a check for an Individual Settlement Payment is returned to the Settlement

1 Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a
2 valid mailing address by performing a skip trace search. If another address is identified, the
3 Settlement Administrator shall mail the check to the newly identified address. If an Individual
4 Settlement Payment check is returned to the Settlement Administrator a second time as
5 undeliverable, the Settlement Administrator shall not attempt any further re-mailing of that
6 check. Any settlement checks that remain uncashed one hundred eighty (180) or more calendar
7 days after issuance shall be forwarded to Legal Services of Northern California per CCP 384. .

8 3.26. Class Representatives Enhancement Award. Defendants agree not to oppose or
9 object to any application or motion by Plaintiffs for a Class Representatives Enhancement
10 Award, not to exceed Ten Thousand Dollars (\$10,000.00) for named Plaintiff, as consideration
11 for plaintiff's time and effort in bringing and prosecuting this matter. The Class Representatives
12 Enhancement Award shall be paid to each of the Named Plaintiffs from the Gross Settlement
13 Amount no later than fifteen (15) calendar days after the Gross Settlement Amount is fully
14 funded. The Settlement Administrator shall issue an IRS Form 1099 — MISC to Plaintiffs, and
15 each of them, for their Class Representative Enhancement Awards. Plaintiffs, and each of them,
16 shall be solely and legally responsible for payment of all applicable taxes on their Class
17 Representative Enhancement Award. The Class Representatives Enhancement Award shall be
18 in addition to Plaintiffs' Individual Payments as Participating Class Members, as well as their
19 Individual PAGA Payments, should they be entitled to one. In the event that the Court awards
20 lesser amounts than the Class Representative Enhancement Awards requested, then any portion
21 of the requested amounts not awarded to Plaintiffs shall be added to the Net Settlement Amount.
22 Plaintiffs shall not have the right to revoke their agreement to the Settlement on the grounds the
23 Court did not approve any or all of his request for a Class Representative Enhancement Award.

24 3.27. Class Counsel Award and Costs. Defendants agree not to oppose or object to any
25 application or motion by Class Counsel for a Class Counsel Award not to exceed one-third of
26 the Gross Settlement Amount which, unless escalated pursuant to this Agreement, shall equal
27 Ninety Thousand, Eight Hundred Thirty Three Dollars and Thirty Three Cents (\$90,833.33), as
28

1 well as Class Counsel Costs not to exceed Fifteen Thousand Dollars and Zero Cents
2 (\$15,000.00), all of which will be paid from the Gross Settlement Amount. The Class Counsel
3 Award and Class Counsel Costs shall be paid no later than fifteen (15) calendar days after the
4 Gross Settlement Amount is fully funded. Class Counsel shall be solely and legally responsible
5 to pay all applicable taxes on the payments made pursuant to this paragraph. The Settlement
6 Administrator shall issue an IRS Form 1099 — MISC to Class Counsel for the payments made
7 pursuant to this paragraph. This Settlement is not contingent upon the Court awarding Class
8 Counsel any particular amount in attorneys' fees and costs. Any amount requested by Class
9 Counsel for the Class Counsel Award and Class Counsel Costs and not granted by the Court
10 shall be part of the Net Settlement Amount.

11 3.28. PAGA Settlement Allocation. Subject to Court approval, the Parties shall allocate
12 a total of Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) from the Gross Settlement
13 Amount for the compromise of claims for civil penalties brought under the PAGA (the "PAGA
14 Allocation"). Per California Labor Code section 2699(i), Sixteen Thousand Eight Hundred
15 Seventy Five Dollars (\$16,875.00), representing seventy-five percent (75%) of the PAGA
16 Allocation, will be paid to California's Labor Workforce Development Agency. The remaining
17 Five Thousand Six Hundred Twenty-Five Dollars (\$5,625.00), representing twenty-five percent
18 (25%) of the PAGA Allocation, shall be distributed to Aggrieved Employees on a pro rata basis
19 based upon their respective Workweeks in the PAGA Period.

20 3.29. Defendants' Option to Terminate Settlement. If the number of Settlement Class
21 Members who opt out by submitting Requests for Exclusion exceeds ten percent (10.0%) of the
22 total number of Settlement Class Members, then Defendants may, in the exercise of their sole
23 discretion, abrogate this Agreement. Defendants' right expires seven (7) calendar days after the
24 Response Deadline. In the event Defendants exercise this option, the costs of administration
25 shall be borne by Defendants. If Defendant decide to void the Settlement, then the Settlement
26 and conditional class certification shall be considered void, and neither the Settlement,
27 conditional class certification, nor any of the related negotiations or proceedings, shall be of any
28

1 force or effect, and the Parties shall stand in the same position, without prejudice, as if this
2 Settlement had been neither entered into nor filed with the Court.

3 3.30. Settlement Administration Costs. The Settlement Administrator shall be paid for
4 the costs of administration of the Settlement from the Gross Settlement Amount. Such costs of
5 administration are not to exceed Ten Thousand Dollars (\$10,000.00), unless the court approves
6 a higher amount. No fewer than fourteen (14) calendar days prior to the Final Approval Hearing,
7 the Settlement Administrator shall provide the Parties with a statement detailing the costs of
8 administration. The Settlement Administrator, on Defendants' behalf, shall have the authority
9 and obligation to make payments, credits and disbursements, including payments and credits in
10 the manner set forth in this Settlement, to Participating Class Members and Aggrieved
11 Employees, calculated in accordance with the methodology set out in this Settlement and orders
12 of the Court. The Parties agree to cooperate in the administration of the Settlement and to make
13 all reasonable efforts to control and minimize the costs and expenses incurred in administration
14 of the Settlement. The Parties and their respective counsel each represent they do not have any
15 financial interest in the Settlement Administrator or otherwise have a relationship with the
16 Settlement Administrator that could create a conflict of interest. The Settlement Administrator
17 shall be responsible for: processing and mailing all court-approved payments to the Plaintiffs,
18 Class Counsel, Participating Class Members, Aggrieved Employees and the LWDA; printing
19 and mailing the Class Notices to the Settlement Class Members as called for in this Settlement
20 and ordered by the Court; receiving and reporting Notice of Objections and Requests for
21 Exclusion submitted by Settlement Class Members; providing declaration(s) as necessary in
22 support of preliminary and/or final approval of this Settlement; calculating and issuing payments
23 for all taxes associated with the Settlement, and other tasks as the Parties mutually agree or the
24 Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep
25 the Parties timely apprised of the performance of all Settlement Administrator responsibilities.
26 Any legally mandated tax reports, tax forms, tax filings, or other tax documents required by
27 administration of this Settlement shall be prepared by the Settlement Administrator. Any
28

1 expenses incurred in connection with such preparation shall be Settlement Administration Costs.
2 The Settlement Administrator shall be paid the Settlement Administration Costs from the Gross
3 Settlement Amount no later than fifteen (15) calendar days after the Gross Settlement Amount
4 is fully funded.

5 3.31. Final Approval Hearing. At a reasonable time following the Response Deadline,
6 the Court shall hold the Final Approval Hearing, where objections, if any, may be heard, and
7 the Court shall determine amounts properly payable for (i) the Class Counsel Award, (ii) the
8 Class Counsel Costs, (iii) the Class Representative Enhancement Awards, (iv) the LWDA
9 Payment; and (v) the Settlement Administration Costs. Settlement Class Members, may (though
10 they are not required to) appear at the Final Approval Hearing, either in person or through the
11 objector's own counsel, at his or her own expense, and orally object to the Settlement. Any
12 attorney who will represent an individual objecting to this Settlement must file a notice of
13 appearance with the Court and serve Class Counsel and Defendants' counsel no later than fifteen
14 (15) calendar days before the Final Approval Hearing. Any Settlement Class Member who
15 attends the Final Approval Hearing and asks to speak regarding his or her objection may be
16 heard by the Court. The Settlement Class Members may also appear remotely via other
17 acceptable remote or telephonic means.
18

19 3.32. Entry of Final Judgment. If the Court approves this Settlement at the Final
20 Approval Hearing, the Parties shall request that the Court enter the Final Judgment, with the
21 Court retaining jurisdiction over the Parties to enforce the terms of the judgment. If the Court
22 grants final approval to the Settlement, notice of Final Approval shall be posted on the
23 Settlement Administrator's website, at www.phoenixclassaction.com.

24 3.33. No Effect on Employee Benefits. Amounts paid to Plaintiffs or other Participating
25 Class Members and Aggrieved Employees pursuant to this Settlement will not count as earnings
26 or compensation for purposes of any benefits (e.g., pensions or retirement plans) sponsored by
27 Defendants. It is expressly understood and agreed that the receipt of the Individual Settlement
28 Payment and/or Individual PAGA Payment shall not entitle any Participating Class Member

1 and/or Aggrieved Employee to additional compensation or benefits under any collective
2 bargaining agreement or under any bonus, contest or other compensation or benefit plan or
3 agreement in place during the period covered by the Settlement, nor shall it entitle any
4 Participating Class Member and/or Aggrieved Employee to any increased pension and/or
5 retirement, or other deferred compensation benefits. It is the intent of the Parties that Individual
6 Settlement Payments and/or Individual PAGA Payments provided for in this Stipulation are the
7 sole payments to be made by Defendant to Participating Class Members and/or Aggrieved
8 Employees in connection with this Settlement, with the exception of Plaintiffs, and that the
9 Participating Class Members and/or Aggrieved Employees are not entitled to any new or
10 additional compensation or benefits as a result of having received the Individual Settlement
11 Payments and/or Individual PAGA Payments. Furthermore, the receipt of Individual Settlement
12 Payments by Participating Class Members and Individual PAGA Payments by Aggrieved
13 Employees shall not, and does not, by itself establish any general, special, or joint employment
14 relationship between and among the Participating Class Member(s) and/or Aggrieved
15 Employees, on the one hand, and Defendants, on the other hand.

17 3.34. Escalation of Gross Settlement Amount. This settlement sum is based on
18 Defendants' representation at the time of mediation (March 9, 2022) that the class size was
19 approximately 175 individuals and there are approximately 10,347 workweeks. Defendant shall
20 not be required to pay more than the Gross Settlement Amount, as long as the workweeks do
21 not increase by more than fifteen (15) percent (i.e, if the class size increases to sixteen (16)
22 percent, the Settlement Agreement shall increase proportionately to the overage, i.e., by one
23 percent of the Gross Settlement Amount), and so forth. Defendants represent that, as of March
24 9, 2022 (the date of mediation⁰ there were no more than 10,347 workweeks worked during the
25 Class Period. Defendant shall not be required to pay more than the Gross Settlement Amount,
26 as long as the workweeks do not increase by more than fifteen (15) percent (i.e, if the class size
27 increases to sixteen (16) percent, the Settlement Agreement shall increase proportionately to the
28 overage, i.e., by one percent of the Gross Settlement Amount), and so forth

1 3.35. Nullification of Settlement. In the event: (i) the Court does not enter the
2 Preliminary Approval Order as specified herein; (ii) the Court does not grant final approval of
3 the Settlement as provided herein; (iii) the Court does not enter a Final Judgment as provided
4 herein; or (iv) the Settlement does not become final for any other reason, and the Parties are not
5 able to achieve final approval through reasonable efforts that do not require change in material
6 terms of this Agreement, this Settlement shall be null and void and any order or judgment
7 entered by the Court in furtherance of this Settlement shall be treated as void from the beginning.
8 In such a case, the Parties and any funds to be awarded under this Settlement shall be returned
9 to their respective statuses as of the date and time immediately prior to the execution of this
10 Settlement, and the Parties shall proceed in all respects as if this Settlement had not been
11 executed, except that any costs and fees already incurred by the Settlement Administrator shall
12 be paid jointly by the Parties. In the event an appeal is filed from the Court's Final Judgment,
13 or any other appellate review is sought, administration of the Settlement shall be stayed pending
14 final resolution of the appeal or other appellate review, and any other payments required
15 hereunder by Defendants will not be paid pending the completion and final resolution of the
16 appeal, and any payment thereafter will: (1) occur only if the Order Granting Final Approval is
17 upheld after all appeals; and (2) be in a manner that is provided for in the Settlement and in the
18 Order Granting Final Approval.

20 3.36. No Admission by the Parties. Defendants deny any and all claims alleged in this
21 Action and deny all wrongdoing whatsoever. This Settlement is not a concession or admission,
22 and shall not be used against Defendants as an admission or indication, with respect to any
23 claim, of any fault, concession, or omission by Defendants. Neither this Settlement, nor any of
24 its terms and conditions, nor any of the negotiations connected with it, is a concession or
25 admission, and none shall be used against Defendants as an admission or indication with respect
26 to any claim of any fault, concession, or omission by Defendants or that class certification is
27 proper under the standard applied to contested certification motions. The Parties stipulate and
28 agree to the certification of the proposed class for settlement purposes only. The Parties further

1 agree that this Settlement will not be admissible in this or any other proceeding as evidence that
2 either: (i) a class action should be certified or (ii) Defendants or the Released Parties are liable
3 to Plaintiff or any Settlement Class Member, other than according to the terms of this Settlement.

4 3.37. Dispute Resolution. Except as otherwise set forth herein, all disputes concerning
5 the interpretation, calculation or payment of settlement claims, or other disputes regarding
6 compliance with this Settlement shall be resolved as follows:

7 3.38. If Plaintiffs or Class Counsel, on behalf of Plaintiffs or any Settlement Class
8 Members, or Defendants, at any time believe that the other Party or Parties have breached or
9 acted contrary to the Settlement, that Party shall notify the other Party or Parties in writing of
10 the alleged violation. Upon receiving notice of the alleged violation or dispute, the responding
11 Party shall have ten (10) days to correct the alleged violation and/or respond to the initiating
12 Party with the reasons why the Party disputes all or part of the allegation.

13 3.38.1. If the response does not address the alleged violation to the initiating
14 Party's satisfaction, the Parties shall negotiate in good faith for up to ten
15 (10) calendar days to resolve their differences.

16 3.38.2. If thereafter, the Parties still cannot resolve the dispute, the Parties shall
17 utilize the services of Steven Vartabedian, Esq. (the "Mediator") in a
18 good-faith attempt to mediate and resolve the dispute.

19 3.38.3. If the Parties are unable to resolve their differences after twenty (20)
20 calendar days after the involvement of the Mediator, either Party may
21 file an appropriate motion for enforcement with the Court.

22 3.39. Exhibits and Headings. The terms of this Settlement include the terms set forth in
23 Exhibit A and B, which are attached to this Settlement and incorporated by this reference as
24 though fully set forth in this paragraph. Any Exhibits to this Settlement are an integral part of
25 the Settlement. The descriptive headings of any paragraphs or sections of this Settlement are
26 inserted for convenience of reference only and do not constitute a part of this Settlement.
27

28 3.40. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the

1 Action and thereafter implement and complete the Settlement with the exception of actions by
2 the Parties intended to further approval of this Settlement.

3 3.41. Amendment or Modification. This Settlement may be amended or modified only
4 by a written instrument signed by counsel for all Parties.

5 3.42. Entire Settlement. This Settlement and any attached Exhibits constitute the entire
6 agreement among these Parties, and no oral or written representations, warranties or
7 inducements have been made to any Party concerning this Settlement or its exhibit, other than
8 the representations, warranties and covenants contained and memorialized in the Settlement and
9 its exhibit. No other prior or contemporaneous written or oral agreements may be deemed
10 binding on the Parties.

11 3.43. Authorization to Enter into Settlement. Counsel for all Parties warrant and
12 represent they are expressly authorized by the Parties whom they represent to negotiate this
13 Settlement and to take all appropriate actions required or permitted to be taken by such Parties
14 pursuant to this Settlement to effectuate its terms, and to execute any other documents required
15 to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each
16 other and use their best efforts to affect the implementation of the Settlement. In the event the
17 Parties are unable to reach agreement on the form or content of any document needed to
18 implement the Settlement, or on any supplemental provisions that may become necessary to
19 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
20 such disagreement. The person signing this Settlement on behalf of Defendants and each of
21 them represents and warrants that he or she is authorized to sign this Settlement on behalf of
22 Defendants, and each of them. Plaintiff Ashli Morris, each represent and warrant that they are
23 authorized to sign this Settlement and that they have not assigned any claim, or part of a claim,
24 covered by this Settlement to a third-party.

25 3.44. Binding on Successors and Assigns. This Settlement shall be binding upon, and
26 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

27 3.45. No Prior Assignments. The Parties and their counsel represent, covenant, and
28

1 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
2 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
3 demand, action, cause of action or right herein released and discharged.

4 3.46. California Law Governs. All terms of this Settlement and the exhibits hereto shall
5 be governed by and interpreted according to the laws of the State of California.

6 3.47. This Settlement is Fair, Adequate and Reasonable. The Parties believe this
7 Settlement is a fair, adequate, and reasonable settlement of the Action and have arrived at this
8 Settlement after extensive arms-length negotiations, taking into account all relevant factors,
9 present and potential.

10 3.48. Jurisdiction of the Court. In accordance with California Rule of Court 3.769(h),
11 the Parties agree that the Court shall retain jurisdiction with respect to the interpretation,
12 implementation, and enforcement of the terms of this Settlement and all orders and judgments
13 entered in connection therewith, and the Parties and their counsel hereto submit to the
14 jurisdiction of the Court for purposes of interpreting, implementing, and enforcing this
15 Settlement and all orders and judgments entered in connection therewith.

16 3.49. Invalidity of Any Provision. Before declaring any provision of this Settlement
17 invalid, the Court shall first attempt to construe the provision to be valid to the fullest extent
18 possible, consistent with applicable precedents.

19 3.50. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
20 class certification for purposes of this Settlement only.

21 3.51. Cooperation. The Parties agree to cooperate fully with one another to accomplish
22 and implement the terms of this Settlement. Such cooperation shall include, but not be limited
23 to, execution of such other documents and the taking of such other action as may be reasonably
24 necessary to fulfill the terms of this Settlement. The Parties to this Settlement shall use their
25 best efforts, including all efforts contemplated by this Settlement and any other efforts that may
26 become necessary by Court order, or otherwise, to effectuate this Settlement and its terms.

27 3.52. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
28

1 and conditions of this Settlement. Accordingly, this Settlement will not be construed more
2 strictly against one party than another merely by virtue of the fact that it may have been prepared
3 by counsel for one of the Parties, it being recognized that, because of the arm’s-length
4 negotiations between the Parties, all Parties have contributed to the preparation of this
5 Settlement.

6 3.53. Representation by Counsel. The Parties acknowledge that they have been
7 represented by counsel throughout all negotiations that preceded the execution of this
8 Settlement, and that this Settlement has been executed with the consent and advice of counsel,
9 and reviewed in full. Further, Plaintiffs and Class Counsel warrant and represent that there are
10 no liens on the Settlement Agreement.

11 3.54. All Terms Subject to Final Court Approval. All amounts and procedures described
12 in this Stipulation are subject to final Court approval.

13 3.55. Notices. Unless otherwise specifically provided, all notices, demands or other
14 communications in connection with this Settlement shall be: (1) in writing; (2) deemed given
15 on the third business day after mailing; and (3) sent via United States registered or certified mail,
16 return receipt requested, addressed as follows:

17 **To Plaintiffs:**

18 Justin Lo, Esq.
19 **WORK LAWYERS PC**
20 22939 Hawthorne Blvd., Suite 202
Torrance, CA 90505
21 Telephone: (424) 355-8335
22 Facsimile: (424) 248-2944

17 **To Defendants:**

Christina Bucci Hamilton, Esq.
Jennifer E. Duggan, Esq.
DUGGAN McHUGH LAW
CORPORATION
641 Fulton Ave. Suite 100
Sacramento, CA 95825
Telephone: (916) 550- 5309

23
24 3.56. Execution by Settlement Class Members. It is agreed that it is impossible or
25 impractical to have each Settlement Class Member execute this Settlement. The Notice of
26 Settlement will advise all Settlement Class Members of the binding nature of the release and
27 such shall have the same force and effect as if each Settlement Class Member executed this
28 Settlement.

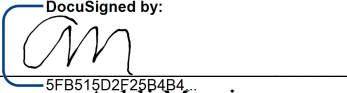
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3.57. Execution by Plaintiffs and Defendants. Plaintiffs and Defendants, by signing this Settlement, are bound by the terms herein.

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

3.59. Counterparts. This Settlement shall become effective upon its execution by all of the undersigned. Plaintiffs, Class Counsel, Defendants, and Defendants’ Counsel may execute this Settlement in counterparts, and execution of counterparts shall have the same force and effect as if each had signed the same instrument. Copies of the executed Settlement shall be effective for all purposes as though the signatures contained therein were original signatures.

Dated: 11/10/2022

By: 
5FB515D2F25B4B4
Ashli Morris

Dated: _____

By: _____
Defendants Kadiant, LLC and Kids Overcoming, LLC

1 3.57. Execution by Plaintiffs and Defendants. Plaintiffs and Defendants, by signing this
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9 the undersigned. Plaintiffs, Class Counsel, Defendants, and Defendants' Counsel may execute
10 this Settlement in counterparts, and execution of counterparts shall have the same force and
11 effect as if each had signed the same instrument. Copies of the executed Settlement shall be
12 effective for all purposes as though the signatures contained therein were original signatures.
13

14
15
16 Dated: _____

By: _____

Ashli Morris

17
18
19 Dated: _____

By: _____

Hindy Singer

Digitally signed by Hindy Singer
DN: cn=Hindy Singer, o, ou,
email=hindy@inv360.com, c=US
Date: 2022.11.15 15:57:53 -05'00'

Defendants Kadiant, LLC and Kids Overcoming, LLC