

1 JUSTICE LAW CORPORATION  
2 Douglas Han, State Bar No. 232858  
3 dhan@justicelawcorp.com  
4 Shunt Tatavos-Gharajeh, State Bar No. 272164  
5 statavos@justicelawcorp.com  
6 Lizette Rodriguez, State Bar No. 335182  
7 lrodriguez@justicelawcorp.com  
8 751 N. Fair Oaks Avenue, Suite 101  
9 Pasadena, California 91103  
10 Telephone: (818) 230-7502

11 Attorneys for Plaintiffs  
12 NICOLE MENDOZA and TONY NUNLEY

13 ARTIANO & ASSOCIATES, APC  
14 Joanne K. Leighton, State Bar No. 165378  
15 JLeighton@artianolaw.com  
16 3828 Carson Street, Suite 102  
17 Torrance, California 90503  
18 Telephone: (310) 543-1240  
19 Facsimile: (310) 543-9850

20 Attorneys for Defendant  
21 ALLIED SALES AND DISTRUBUTION, INC.

22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

23 **FOR THE COUNTY OF LOS ANGELES**

24 NICOLE MENDOZA, individually, and on  
25 behalf of other members of the general public  
26 similarly situated;

27 Plaintiff,

28 v.

ALLIED SALES AND DISTRIBUTION,  
INC., a California corporation; and DOES 1  
through 100, inclusive;  
Defendants.

Case No. 20STCV31836

Assigned for All Purposes to:  
Judge: Elihu M. Berle  
Dept: SS-6

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

Action Filed: August 20, 2020

1 This Joint Stipulation of Settlement and Release of Class Action (“Agreement”) is made and  
2 entered into between Plaintiffs Nicole Mendoza and Tony Nunley (“Plaintiffs”), individually and on  
3 behalf of the proposed Settlement Class, (defined below), and Defendant Allied Sales and  
4 Distribution, Inc. (“Defendant”). This Agreement is subject to approval of the Court, pursuant to the  
5 California Rules of Court (“CRC”), Rule 3.769(c), (d) and (e), and made for the sole purpose of  
6 attempting to consummate settlement of the Action (as defined below) on a class-wide basis subject  
7 to the following terms and conditions. As detailed below, if the Court does not enter an order granting  
8 final approval of the Class Settlement (as defined below) and enter judgment, or the conditions  
9 precedent are not met for any reason, this Agreement is void and of no force or effect whatsoever.

10 **1. DEFINITIONS**

11 As used in this Agreement, the following terms shall have the meanings specified below. To  
12 the extent terms or phrases used in this Agreement are not specifically defined below, but are defined  
13 elsewhere in this Agreement, they are incorporated by reference into this definition section.

14 1.1 **Action.** “Action” shall mean the lawsuit titled *Nicole Mendoza v. Allied Sales*  
15 *and Distribution, Inc.*, Case No. 20STCV31836 pending in the Superior Court of California, County  
16 of Los Angeles, which includes the notice letter sent to the Labor and Workforce Development  
17 Agency (“LWDA”).

18 1.2 **Administrator.** “Administrator” shall mean Phoenix, the neutral entity the  
19 Parties have agree to appoint to administer the Settlement

20 1.3 **Administration Expenses.** “Administration Expenses” shall mean the  
21 amount that will be paid from the Gross Settlement Amount to the Settlement Administrator for the  
22 administration of this Settlement in an amount not to exceed \$8,500.00

23 1.4 **Claims.** “Claims” shall mean the claims asserted and causes of action alleged  
24 in the Action, or that could have been alleged or otherwise raised based on the factual allegations set  
25 forth in the operative pleadings in the Action, including claims under Labor Code sections 201-204,  
26 210, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1994, 1197, 1197.1, 1198, 2800  
27 and 2802 and the IWC Wage Orders for: (a) failure to pay overtime wages; (b) failure to provide rest  
28 and meal periods and/or pay premiums; (c) failure to pay minimum wages; (d) failure to timely pay

1 wages; (e) non-compliant wage statements; (f) unreimbursed business expenses; (g) violation of Bus.  
2 & Prof. Code sections 17200, *et seq.*; (h) and violation of Private Attorneys General Act (Lab. Code  
3 sections 2698, *et seq.* (“PAGA”).

4 1.5 **Class Counsel.** “Class Counsel” shall mean Douglas Han, Shunt Tatavos-  
5 Gharajeh and Lizette Rodriguez of Justice Law Corporation, 751 N. Fair Oaks Avenue, Suite 101,  
6 Pasadena, CA 91103.

7 1.6 **Class Counsel’s Attorneys’ Fees and Expenses.** “Class Counsel’s  
8 Attorneys’ Fees and Expenses” shall mean Class Counsel’s attorneys’ fees and expenses to be  
9 requested and subject to approval by the Court at the time of the Final Approval and Fairness Hearing  
10 (as defined below).

11 1.7 **Class List and Data.** “Class List and Data” shall mean the information for  
12 each Settlement Class Member which Defendant shall compile from its business records and provide  
13 to the Administrator for purposes of providing notice of the Settlement to the Settlement Class. The  
14 Class List and Data shall be in a readable, ready to use, Microsoft Excel spreadsheet, which will  
15 provide the following information for each Settlement Class Member: (a) full name; (b) last-known  
16 mailing address; (c) telephone numbers; (d) Social Security Number; (e) dates of employment; (f)  
17 number of Weeks Worked during the Class Period; and (g) number of Pay Periods employed as a  
18 PAGA Member during the PAGA Period.

19 1.8 **Class Period.** “Class Period” shall mean the period from April 6, 2016,  
20 through February 28, 2022.

21 1.9 **Class Representative.** “Class Representatives” shall mean Plaintiffs.

22 1.10 **Court.** “Court” shall mean the Superior Court of California, County of Los  
23 Angeles.

24 1.11 **Defendant.** “Defendant” shall mean Allied Sales and Distribution, Inc.

25 1.12 **Defense Counsel.** “Defense Counsel” shall mean Joanne K. Leighton of  
26 Artiano & Associates, APC, 3828 Carson Street, Suite 102, Torrance, CA 90503

27 1.13 **Effective Date.** “Effective Date” shall be the later of the time when: (a) the  
28 date of final affirmance of the Judgment on an appeal of the Judgment, the expiration of the time for,

1 or the denial of, a petition to review the Judgment, or if review is granted, the date of final affirmance  
2 of the Judgment following review pursuant to that grant; (b) the date of final dismissal of any appeal  
3 from the Judgment or the final dismissal of any proceeding to review the Judgment, provided that  
4 the Judgment is affirmed and/or not reversed in any part; (c) the final resolution (or withdrawal) of  
5 any filed appeal in a way that affirms the Final Approval Order and Judgment in a form substantially  
6 identical to the form of the Final Approval Order entered by the Court, and the time to petition for  
7 review with respect to any appellate decision affirming the Final Approval Order has expired; or (d)  
8 if no appeal is filed, the sixty-first (61st) day after the Court enters final approval of the settlement  
9 and the Judgment approving this Agreement.

10           1.14    **Employee’s Taxes and Required Withholding.** “Employee’s Taxes and  
11 Required Withholding” shall mean the Participating Settlement Class Member’s share of any and all  
12 applicable federal, state, or local payroll taxes, including those collected under authority of the  
13 Federal Insurance Contributions Act (“FICA”), FUTA and/or SUTA on the portion of the  
14 Participating Settlement Class Member’s Individual Settlement Payment that constitutes wages.

15           1.15    **Employer’s Taxes.** “Employer’s Taxes” shall mean and refer to Defendant’s  
16 share of corporate, federal, state, and/or local payroll taxes that is owed on the portion of the  
17 Participating Settlement Class Member’s Individual Settlement Payment that constitutes wages. The  
18 Employer’s Taxes shall be separately paid by Defendant in addition to the Gross Settlement Amount.

19           1.16    **Final Approval and Fairness Hearing.** “Final Approval and Fairness  
20 Hearing” shall mean the final hearing held to consider the Class reaction to notice of the Settlement,  
21 and to ascertain the fairness, reasonableness, and adequacy of the Class Settlement. At this hearing,  
22 the Court will consider Class Counsel’s application for the Class Counsel’s Attorneys’ Fees and  
23 Expenses, the Incentive Award, the Administration Expenses, and approval of the PAGA Payment.

24           1.17    **Final Approval Date.** “Final Approval Date” shall mean the date upon which  
25 the Court enters an order granting final approval of the Class Action Settlement and enters Judgment.

26           1.18    **Gross Settlement Amount.** “Gross Settlement Amount” means the agreed  
27 upon settlement amount totaling Four Hundred Thousand Dollars (\$400,000.00), to be paid by  
28 Defendant in full settlement of the Released Claims asserted in this case, which includes the

1 Administration Expenses to the Settlement Administrator, Employee's Taxes and Required  
2 Withholdings, Class Counsel's Attorneys' Fees and Expenses, PAGA Payment to the LWDA and  
3 PAGA Members, and Incentive Award to Plaintiffs. The Gross Settlement Amount is non-  
4 reversionary, meaning no amount will revert to Defendant. In no event shall Defendant be required  
5 to pay more than the Gross Settlement Amount (excluding the employer's share of payroll taxes on  
6 the "wages" portion of the settlement for Participating Settlement Class Members). The Parties agree  
7 that Code of Civil Procedure section 384 does not apply to this Settlement and any uncashed checks  
8 will be sent to the Controller of the State of California to be held pursuant to the Unclaimed Property  
9 Law, California Civil Code sections 1500, *et seq.*, for the benefit of those Participating Settlement  
10 Class Members who did not cash their checks until such time that they claim their property.

11           1.19    **Incentive Award.** "Incentive Award" shall mean the monetary payment to  
12 the Class Representatives of an amount up to Ten Thousand Dollars (\$10,000.00) each, for their  
13 efforts in initiating this Action, the risks undertaken on behalf of the Settlement Class, and for the  
14 substantial benefits to be received by Participating Settlement Class Members. The Incentive Award  
15 payment shall be reported on an IRS 1099 basis and shall be paid in addition to the Plaintiffs'  
16 Individual Settlement Payment they are entitled as a member of the Class under the terms of this  
17 Settlement.

18           1.20    **Individual Settlement Payment.** "Individual Settlement Payment" means  
19 the proportionate share of the Net Settlement Amount to be distributed to each Participating Class  
20 Member based on the number of his or her Weeks Worked during the Class Period in relation to the  
21 aggregate number of Weeks Worked by all Participating Settlement Class Members, less any  
22 Employee's Taxes and Required Withholdings.

23           1.21    **Net Settlement Amount.** "Net Settlement Amount" or "NSA" shall mean the  
24 Gross Settlement Amount, minus the Court-approved amounts awarded for the Class Counsel's  
25 Attorneys' Fees and Expenses, Incentive Award, Administration Expenses, and PAGA Payment.

26           1.22    **Notice Packet.** "Notice Packet" means the Notice of Class Action Settlement  
27 advising Class Members of the Settlement and their options under the Settlement. Attached hereto  
28 as **Exhibit A** is a true and correct copy of the Notice Packet.

1           1.23    **Opt-Out.** “Opt-Out(s)” shall mean a Class Member’s timely and valid request  
2 for exclusion from the Settlement Class portion of the Settlement in accordance with the terms of  
3 this Agreement and as set forth in the Notice Packet. If a Settlement Class Member validly and timely  
4 opts out of the Class portion of the Settlement, to the extent the Settlement Class Member is eligible  
5 as a PAGA Member, they will still receive a portion of the PAGA penalty payment allocated to the  
6 PAGA Members based on the number of Pay Periods employed during the PAGA Period and will  
7 release the claims alleged under PAGA.

8           1.24    **PAGA.** PAGA refers to the Labor Code Private Attorneys General Act of  
9 2004, Labor Code sections 2698, *et seq.*

10          1.25    **PAGA Member(s):** “PAGA Member(s)” means all current and former non-  
11 exempt California employees of Defendant who were employed by Defendant during the PAGA  
12 Period.

13          1.26    **PAGA Payment:** “PAGA Payment” shall mean allocation of Forty Thousand  
14 Dollars (\$40,000.00) to be paid from the Gross Settlement Amount, designated by the Parties as  
15 PAGA civil penalties, seventy-five percent (75%) of which (\$30,000.00) shall be remitted to the  
16 LWDA for its statutorily set portion of the PAGA penalties (“LWDA Payment”) and the remaining  
17 twenty-five percent (25%) of which (\$10,000.00) shall be distributed to the PAGA Members on a  
18 proportionate basis based on the number of Pay Periods employed during the PAGA Period.

19          1.27    **PAGA Period.** “PAGA Period” means the period from April 6, 2019 through  
20 February 28, 2022.

21          1.28    **PAGA Released Claims.** “PAGA Released Claims” shall mean all claims,  
22 theories, and causes of action alleged or that could have been alleged or otherwise raised based on  
23 the factual allegations set forth in Plaintiff’s letter to the LWDA that was sent on January 29, 2021.  
24 This includes claims under Labor Code sections 201-204, 210, 218.5, 221, 226(a), 226.3, 226.7, 510,  
25 512(a), 558, 1174(d), 1994, 1197, 1197.1, 1198, 2800 and 2802 and the IWC Wage Orders for: (a)  
26 failure to pay minimum and overtime wages; (b) failure to provide meal and rest breaks; (c) failure  
27 to timely pay wages during employment; (d) failure to timely pay wages upon termination; (e) failure  
28 to provide complete and accurate wage statements; (f) failure to provide paid sick days; and (g)

1 failure to reimburse business expenses. The PAGA Released Claims will bind the PAGA Members  
2 even if they timely and validly opt out of the Settlement Class. The scope of the PAGA Released  
3 Claims is limited to claims arising during the PAGA Period.

4           1.29    **Participating Settlement Class Member(s).** “Participating Settlement Class  
5 Members” shall mean Settlement Class Members who do not timely and validly opt-out of the  
6 Settlement Class in the manner set forth in this Agreement and described in the Notice Packet.

7           1.30    **Parties.** “Parties” shall mean Plaintiffs (as defined below) and Defendant.

8           1.31    **Pay Periods.** “Pay Periods” means the number of pay periods a PAGA  
9 Member was employed during the PAGA Period.

10          1.32    **Plaintiffs.** “Plaintiffs” shall mean Plaintiff Nicole Mendoza and Plaintiff  
11 Tony Nunley.

12          1.33    **Preliminary Approval Date.** “Preliminary Approval Date” shall mean the  
13 date upon which the Court enters an order preliminarily approving this Agreement, conditionally  
14 certifying the Class, approving the Notice Packet, appointing Plaintiff as the Class Representative,  
15 Plaintiff’s Counsel as Class Counsel, and Phoenix as the Settlement Administrator, and setting a  
16 Final Approval Hearing date.

17          1.34    **Released Claims.** “Released Claims” shall mean all claims, theories, and  
18 causes of action alleged in the Action or that could have been alleged or otherwise raised based on  
19 the factual allegations set forth in the operative pleadings in the Action during the Class Period,  
20 including claims for: (a) failure to pay overtime wages; (b) failure to provide rest and meal periods  
21 and/or pay premiums; (c) failure to pay minimum wages; (d) failure to timely pay wages; (e) non-  
22 compliant wage statements; (f) unreimbursed business expenses; and (g) violation of California Bus.  
23 & Prof. Code sections 17200, *et seq.*

24 ///  
25 ///  
26 ///

27  
28

1           1.35    **Released Parties.** “Released Parties” shall mean Defendant and its officers,  
2 directors, managers, owners, executives, partners, employees, shareholders, agents, attorneys, and  
3 any other successors, assigns, or legal representatives and any of Allied Sales and Distribution, Inc.’s  
4 former and present parents, subsidiaries, successors, and affiliates, and their officers, directors,  
5 managers, owners, executives, partners, employees, shareholders, agents, attorneys, and any other  
6 successors, assigns, or legal representatives.

7           1.36    **Response Deadline.** “Response Deadline” shall mean forty-five (45) days  
8 following the date on which the Settlement Administrator first mails the Notice Packet to all  
9 Settlement Class Members. Settlement Class Members who receive a remailed Notice Packet fifteen  
10 (15) days or less before the Response Deadline shall have fifteen (15) days from the date the Notice  
11 Packet is remailed to postmark an Opt-Out request, object to the Agreement, or dispute the  
12 information on which their Individual Settlement Payment is calculated.

13           1.37    **Settlement.** “Settlement” shall mean the settlement between Parties, which is  
14 memorialized in this Agreement, including any attached exhibits, and subject to Court approval.

15           1.38    **Settlement Administrator.** “Settlement Administrator” shall mean Phoenix,  
16 the third-party settlement administrator selected by the Parties and to be approved by the Court,  
17 which the Parties have agreed will be responsible for administration of the Settlement and related  
18 matters. The qualifications and experience of the Settlement Administrator will be provided pursuant  
19 to a declaration submitted by the Settlement Administrator that will be filed concurrently with  
20 Plaintiff’s motion for preliminary approval. The Administration Expenses are estimated to not exceed  
21 \$8,500.00

22           1.39    **Settlement Class.** “Settlement Class” shall mean all current and former non-  
23 exempt California employees of Defendant who were employed by Defendant during the Class  
24 Period.

25           1.40    **Settlement Class Member.** “Settlement Class Member” means a member of  
26 the Settlement Class. If the Class Member is incompetent or deceased, the individual’s legal  
27 guardian, executor, heir, or successor-in-interest, may submit the proper documentation to the  
28 Administrator to claim such Settlement Class Member’s Individual Settlement Payment.



1           1.41    **Weeks Worked.** “Weeks Worked” means any week during the Class Period  
2 in which a Settlement Class Member worked at least one day in that week.

3           **2.    RECITALS**

4           2.1    On August 20, 2020, Plaintiff Nicole Mendoza filed the Action entitled *Nicole*  
5 *Mendoza v. Allied Sales and Distribution, Inc.*, Case No. 20STCV31836, in the Superior Court of  
6 California, County of Los Angeles, on behalf of herself and all others similarly situated. The  
7 operative complaint in this Action alleges claims including: (a) failure to pay overtime wages; (b)  
8 failure to provide rest and meal periods and/or pay premiums; (c) failure to pay minimum wages; (d)  
9 failure to timely pay wages; (e) non-compliant wage statements; (f) unreimbursed business expenses;  
10 (g) violation of California Bus. & Prof. Code sections 17200, *et seq.*

11           2.2    Pursuant to Labor Code section 2699.3, subd.(a), on January 29, 2021,  
12 Plaintiff Tony Nunley provided written notice to the LWDA and Defendant of the specific provisions  
13 of the Labor Code he contends were violated and the theories supporting his contentions. On  
14 September 2, 2021, Plaintiff Nicole Mendoza filed a First Amended Complaint against Defendant in  
15 the Los Angeles County Superior Court, adding Plaintiff Tony Nunley and a cause of action for  
16 violation of Labor Code sections 2698, *et seq.* (PAGA) seeking civil penalties (“FAC”). The First  
17 Amended Complaint is the operative complaint in the Action (“Operative Complaint”). Defendant  
18 denies the allegations in the Operative Complaint, denies any failure to comply with the laws  
19 identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

20           2.3    The Parties agreed to explore the possibility of a mediation on a class wide  
21 and PAGA basis. Upon agreement to attend mediation and to prepare for a meaningful and informed  
22 session, Class Counsel requested, and Defense Counsel produced, time and payroll records, relevant  
23 policies, and information regarding the class and the potentially aggrieved employees.

24           2.4    On April 14, 2022, the Parties participated in an all-day mediation with  
25 Deborah C. Saxe, Esq., an experienced and respected mediator of wage and hour class and PAGA  
26 actions. Following a “mediator’s proposal,” the Parties agreed to settle the Action.

27           2.5    Prior to mediation, Plaintiff obtained through, informal discovery,  
28 Defendant’s handbook and relevant wage and hour policies, and a representative sample of time and

1 pay data. Plaintiff's counsel also spoke with a numerous amount of class members as part of its  
2 investigation. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth  
3 in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker*  
4 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

5           2.6     The Parties and their respective counsel believe this Agreement reflects a fair,  
6 adequate, and reasonable settlement of the Action and have arrived at this Agreement because of  
7 arm's-length negotiations, facilitated by an experienced and neutral mediator, considering all  
8 relevant factors, present and potential.

9           2.7     The Court has not granted class certification

10           2.8     The Parties, Class Counsel and Defense Counsel represent that they are not  
11 aware of any other pending matter or action asserting claims that will be extinguished or affected by  
12 the Settlement.

13           **3. ALLEGATIONS OF THE CLASS REPRESENTATIVE AND BENEFITS OF**  
14 **CLASS SETTLEMENT**

15           3.1     The investigation and extensive exchange of information in this matter, as well  
16 as discussions between counsel have been adequate to give and Class Counsel an understanding of  
17 the merits of the Parties' respective positions and to evaluate the worth of the claims of the Settlement  
18 Class. The information and data exchanged by the Parties prior to and during mediation and  
19 settlement negotiations are sufficient to reliably assess the merits of the Parties' respective positions  
20 and to compromise the issues on a fair and equitable basis.

21           3.2     The Parties recognize and acknowledge the expense and delay of continued  
22 lengthy proceedings necessary to prosecute the Action against Defendant through trial and through  
23 appeals. Class Counsel have considered the uncertain outcome of the litigation, the risk of continued  
24 litigation in complex actions such as this, as well as difficulties and delays inherent in such litigation,  
25 the potential difficulty of obtaining certification of the Action, as well as trying the claims of the  
26 Settlement Class. Class Counsel believe that the Settlement set forth in this Agreement confers  
27 substantial benefits upon Plaintiff and the Settlement Class Members and that an independent review  
28 of this Agreement by the Court in the approval process will confirm this conclusion. Based on their

1 own independent investigation and evaluation, Class Counsel have determined that the Settlement  
2 set forth in the Agreement is in the best interests of Plaintiff and the Settlement Class Members.

3 **4. NO ADMISSION OF ANY LIABILITY AND CONDITIONAL**  
4 **CERTIFICATION.**

5 4.1 This Agreement represents a compromise and settlement of highly disputed  
6 claims. This Agreement does not constitute, is not intended to constitute, and will not be deemed to  
7 constitute, an admission of liability by Defendant as to the merits, validity, or accuracy of any of the  
8 allegations or claims made against Defendant in the Action or the appropriateness of class or  
9 conditional certification. Defendant denies each and all of Plaintiff's allegations in their entirety and  
10 alleges that Plaintiff and all other Settlement Class Members were paid all wages owed, including  
11 minimum wages and overtime wages, were properly paid all for hours worked, received proper rest  
12 and meal breaks, received accurate itemized wage statements, were timely paid all wages due, were  
13 reimbursed for any necessary business expenses, and Defendant did not engage in unfair competition.

14 4.2 Nothing in this Agreement nor any action taken or made in implementation  
15 thereof, nor any statements, discussions, or communications, nor any materials prepared, exchanged,  
16 issued, or used during the course of the negotiations leading to the Agreement, is intended by the  
17 Parties to, nor will any of the foregoing constitute, be introduced, be used, or be admissible in any  
18 way in this case or any other judicial, arbitral, administrative, investigative or other forum or  
19 proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,  
20 regulation, rule, or executive order, or any obligation or duty at law or in equity. The Agreement may  
21 be used in any proceeding in the Court for the interpretation, implementation, or enforcement of the  
22 Agreement or any orders or judgments of the Court entered in connection therewith.

23 4.3 The Parties agree that Plaintiff's motion for preliminary approval of the  
24 Settlement seeking certification of a class action and Defendant's agreement thereto is for purposes  
25 of the Settlement only. Solely for the purpose of this Agreement, including effectuating its terms, the  
26 Parties stipulate to conditional certification of the Settlement Class. If, for any reason, the Settlement  
27 is not approved, the stipulation for certification will have no force or effect. The Parties agree that  
28 certification for purposes of the Settlement is in no way an admission that class certification or

1 conditional certification of a collective action is proper under the standard applied to contested  
2 certification motions and that this Agreement will not be admissible in this or any other proceeding  
3 as evidence that: (a) a class or representative action should be certified as Plaintiff proposed; or (b)  
4 Defendant is liable to Plaintiff or the Settlement Class Members as Plaintiff alleged. Further, neither  
5 this Agreement nor the Court's actions regarding this Agreement will be admissible in any court or  
6 other tribunal regarding the propriety of class certification for purposes other than the settlement of  
7 this Action. If this Agreement is not approved by the Court or any appellate court, is terminated, or  
8 otherwise fails to be enforceable, Defendant will not be deemed to have waived, limited, or affected  
9 in any way any of their objections or defenses in the Action, including, but not limited to, its ability  
10 to move to compel arbitration, raise defenses in opposition to certification, contest the merits of the  
11 claims and theories alleged, etc. The Parties agree that the discovery previously propounded by  
12 Plaintiff is withdrawn and that Defendant is not required to respond to Plaintiff's Complaint.

13 **5. MONETARY TERMS**

14 5.1 **Gross Settlement and Net Settlement Amounts and Distribution.** Subject  
15 to terms and conditions of this Agreement, and subject to Court approval, the claims of all Settlement  
16 Class Members are settled for a Gross Settlement Amount of Four Hundred Thousand Dollars  
17 (\$400,000.00), no portion of which will revert to Defendant under any circumstances. The Gross  
18 Settlement Amount and other actions and forbearances taken by Defendant shall constitute adequate  
19 consideration for the Settlement and will be made in full and final settlement of: (a) the Released  
20 Claims, (b) Class Counsel's Attorneys' Fees and Expenses, (c) Administration Expenses, (d) the  
21 Incentive Awards, (e) PAGA Payment, and (f) the Individual Settlement Payments to Participating  
22 Settlement Class Members, and any other obligation of Defendant under this Agreement (other than  
23 the Employer's Taxes).

24 5.2 **Incentive Award for Class Representatives.** The Class Representatives may  
25 petition the Court for an Incentive Award of Twenty Thousand Dollars (\$20,000.00), Ten Thousand  
26 Dollars (\$10,000) each, in consideration of initiation and prosecution of the Action, efforts taken on  
27 behalf of the Class, which included assisting in the investigation of the claims alleged and searching  
28 for and providing crucial documents to Class Counsel, for the risk of paying costs in the event this

1 Action had been lost, and for the potential loss of job opportunities because they filed this Action  
2 against a former employer. Defendant shall not oppose any request by Plaintiffs for an Incentive  
3 Award up to such an amount. Any Incentive Award approved by the Court shall be paid to Plaintiffs  
4 from the Gross Settlement Amount and shall be in addition to any distribution or Individual  
5 Settlement Payment to which she may otherwise be entitled as a Settlement Class Member. The  
6 Incentive Award shall not be considered wages, and the Settlement Administrator shall issue Plaintiff  
7 an IRS Form 1099 reflecting such payment. Plaintiffs shall be solely responsible for the payment of  
8 any and all taxes with respect to their Incentive Award. Any reduction in the Incentive Award shall  
9 be added to the Net Settlement Amount.

10           5.3     **Payments to Participating Settlement Class Members.** Each Participating  
11 Settlement Class Member shall be eligible to receive an Individual Settlement Payment based on  
12 their tenure, *i.e.*, the number of Weeks Worked during the Class Period, in relation to the number of  
13 Weeks Worked by all Participating Class Members. The Individual Settlement Payment will be  
14 subject to the Employee Taxes and Required Withholdings. Plaintiff and Participating Settlement  
15 Class Members who receive an Individual Settlement Payment pursuant to this Agreement shall be  
16 solely responsible for any and all other individual tax obligations associated the payment.

17           5.4     **Allocation of Individual Settlement Payment.** The Parties agreement that  
18 the Individual Settlement Payment shall be allocated as follows: (a) twenty percent (20%) to wages  
19 and reported on an IRS W-2 basis; (b) thirty percent (30%) to interest to be reported on an IRS form  
20 1099; and (c) fifty percent (50%) to penalties to be reported on an IRS form 1099. PAGA Members'  
21 portion of the PAGA Payment will be allocated one hundred percent (100%) penalties to be reported  
22 on an IRS form 1099. Defendant agrees to pay the Employer's Taxes on that portion of Individual  
23 Settlement Payment allocated to W-2 wages, which will be computed and paid by the Administrator,  
24 but funded separately and in addition to the Gross Settlement Amount.

25           5.5     **No Effect on Employee Benefits.** Neither the Settlement nor any amounts  
26 paid under the Settlement will modify any previously credited hours, days, or weeks or service under  
27 any employee benefit plan, policy or bonus program sponsored by Defendant (or its affiliates). Such  
28 amounts will not form the basis for additional contributions to, benefit under, or any other monetary

1 entitlement under Defendant's sponsored benefit plans, policies, or bonus programs, if any. The  
2 payments made under the terms of this Settlement shall not be applied retroactively, currently, or on  
3 a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes  
4 of any of Defendant's benefit plans, policies or bonus programs, if any. Defendant retains the right  
5 to modify the language of its benefits plans, policies and bonus programs to effect this intent and to  
6 make clear that any amounts paid pursuant to this Agreement are not for "weeks worked," "weeks  
7 paid," "weeks of service," or any similar measuring term as defined by applicable plans, policies and  
8 bonus programs for purpose of eligibility, vesting, benefit accrual, or any other purpose, and that  
9 additional contributions or benefits are not required by this Agreement. Defendant does not consider  
10 the Individual Settlement Payments "compensation" for purposes of determining eligibility for, or  
11 benefit accrual within, any benefits plan, policy, or bonus program, or any other plan or program  
12 sponsored by Defendant (or its affiliates), if any.

13           5.6     **Class Counsel Attorneys' Fees and Expenses.** As part of the motion for  
14 final approval of the Settlement, Class Counsel may submit an application for an award of Class  
15 Counsel's Attorneys' Fees and Expenses with the fee portion not to exceed one-third (1/3) of the  
16 Gross Settlement Amount, or One Hundred Thirty-Three Thousand and Three Hundred Thirty-Three  
17 Dollars (\$133,333.33), and the award of actual documented costs or expenses not to exceed Twenty  
18 Thousand Dollars (\$20,000). Defendant agrees not to object to any such fee, cost, or expense  
19 application up to those amounts. As a condition of this Settlement, Class Counsel has agreed to  
20 pursue fees only in the manner reflected by this Section. Any Class Counsel Attorneys' Fee and  
21 Expenses awarded by the Court shall be paid from the Gross Settlement Amount. If the Class Counsel  
22 voluntarily reduces the request for Class Counsel's Attorneys' Fees and Expenses or the Court's  
23 award is less than set forth above, the difference shall remain with the Net Settlement Amount.

24           The Class Counsel's Attorneys' Fees and Expenses approved by the Court shall  
25 encompass: (a) all work performed and costs and expenses incurred by, or at the direction of, any  
26 attorney purporting to represent the Settlement Class through the date of this Agreement; (b) all work  
27 to be performed and costs to be incurred in connection with approval by the Court of the Settlement  
28 set forth in this Agreement; (c) all work to be performed and costs and expenses, if any, incurred in

1 connection with administering the Class Settlement through the Effective Date; and (d) may be based  
2 on the Catalyst Theory and/or Common Fund Doctrine.

3           5.7     **Payment of Class Counsel’s Attorneys’ Fees and Expenses.**   Class  
4 Counsel’s Attorneys’ Fees and Expenses as awarded by the Court shall be paid by the Settlement  
5 Administrator from the Gross Settlement Amount within ten (10) calendar days of the Effective Date.

6           5.8     **The Settlement Administrator’s Costs and Expenses.**   All costs and  
7 expenses due to the Settlement Administrator in connection with its administration of the Settlement  
8 described in the Agreement, including, but not limited to: (a) translating, formatting, and mailing the  
9 Notice Packet by first class U.S. Mail; (b) performing a National Change of Address Database  
10 (“NCOA”) search to update Settlement Class Members’ addresses prior to the initial mailing of the  
11 Notice Packets; (c) performing skip-traces to locate and update Settlement Class Members’ address  
12 on the return of undelivered Notice Packets; (d) establishing a toll-free number and post office box  
13 for the receipt of Class Member communications; (e) processing Opt-Out requests (and sending those  
14 to counsel for Defendant), objections, and disputes; (f) calculating and distributing Individual  
15 Settlement Payments to Participating Settlement Class Members and the portion of the PAGA  
16 Payment to PAGA Members; (g) tax reporting; (h) providing the Parties’ counsel weekly status  
17 reports and declarations as needed and requested by the Parties or by the Court; (i) updating Class  
18 Members of any change to the time and/or location of the final approval hearing via postcards; (j)  
19 providing notice of final judgment to Class Members via postcards; and (k) performing other tasks  
20 as reflected within this Agreement. The Settlement Administrator, upon request, will send any Opt-  
21 Out forms received to Defense Counsel only. The Administration Expenses shall be paid by the  
22 Settlement Administrator to the Settlement Administrator from the Gross Settlement Amount within  
23 ten (10) calendar days of the Effective Date.

24 ///

25 ///

26 ///

27

28

1           **6. SETTLEMENT ADMINISTRATION**

2           6.1   **Selection of Administrator.** The Parties have jointly selected Phoenix to  
3 serve as the Administrator and verified that, as a condition of appointment, Phoenix agrees to be  
4 bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in  
5 exchange for payment of Administration Expenses. The Parties and their Counsel represent that they  
6 have no interest or relationship, financial or otherwise, with the Administrator other than a  
7 professional relationship arising out of prior experiences administering settlements

8           6.2   **Employer Identification Number.** The Administrator shall have and use its  
9 own Employer Identification Number for purposes of calculating payroll tax withholdings and  
10 providing reports state and federal tax authorities.

11           6.3   **Qualified Settlement Fund.** The Administrator shall establish a settlement  
12 fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury  
13 Regulation section 468B-1.

14           6.4   **Notice to Class Members.** Within fifteen (15) calendar days of Preliminary  
15 Approval of the Settlement, Defendant shall electronically transmit the Class List and Data to the  
16 Settlement Administrator. This information will not be shared with and/or provided to Class Counsel  
17 in any way. This confidentiality provision is in the best interest of the Settlement Class because it  
18 will reduce the likelihood of Settlement Class Members’ personal information being leaked, thereby  
19 exposing them to identity theft. This confidentiality provision will not impede Class Counsel’s ability  
20 to discharge their fiduciary duties.

21                   Within ten (10) calendar days of receipt of the Class List and Data from Defendant  
22 and after the Settlement Administrator performs an NCOA search to update Settlement Class  
23 Members’ addresses, the Settlement Administrator will mail by first-class U.S. Mail the Notice  
24 Packet. The exterior of the mailing envelope shall include the words below the Administrator’s  
25 address, the following:

26                                   **IMPORTANT LEGAL DOCUMENT:**  
27                                   **You may get Money from a Class Action**  
28                                   **Settlement; your prompt reply to correct a**  
   **outdated address may be required.**



1           The Notice Packet will inform Settlement Class Members of the nature of the Action,  
2 the allegations made, the claims being settled, and releases to be given, the employment information  
3 on which their Individual Settlement Payment will be calculated, of the estimated amount of their  
4 Individual Settlement Payment, and of their right to request exclusion, to object, and to dispute the  
5 information on which their payments will be paid and the deadline for doing any of these acts. The  
6 Notice Packet will also inform Settlement Class Members of the date, time, and place set for the  
7 Final Approval and Fairness Hearing and will advise them that they may appear at the Final Approval  
8 and Fairness Hearing without first submitting a written objection.

9           **6.5    Returned Notice Packet.** If a Notice Packet is returned to the Settlement  
10 Administrator with a forwarding address affixed to the front, the Settlement Administrator will  
11 resend the Notice Packet to the forwarding address affixed thereto. If a Notice Packet is returned  
12 because of an incorrect mailing address, without a forwarding address affixed, the Settlement  
13 Administrator will promptly, and not longer than three (3) days of receipt of the returned Notice  
14 Packet, search for a more current address by way of skip-trace using the Settlement Class Member's  
15 Social Security Number, and remail the Notice Packet to the Settlement Class Member if an updated  
16 address is located. The Settlement Administrator will be responsible for taking reasonable steps,  
17 consistent with its agreed-upon job parameters, Court orders, and fee, as agreed to with the Parties  
18 to trace the mailing address of any Settlement Class Member for whom a Notice Packet is returned  
19 by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum: (a)  
20 the tracking of all undelivered mail; (b) performing address searches for all mail returned without a  
21 forwarding address; and (c) promptly remailing to Settlement Class Members for whom new  
22 addresses are found. If the Notice Packet is remailed, the Administrator will note for its own records  
23 and notify to Counsel for the Parties of the date of each such re-mailing as part of a weekly status  
24 report provided to the Parties. Settlement Class Members who receive a remailed Notice Packet  
25 fifteen (15) days or less before the Response Deadline shall have fifteen (15) days from the date the  
26 Notice Packet is remailed to postmark an Opt-Out request, object to the Agreement, or dispute the  
27 information on which their Individual Settlement Payment is calculated.

28           **6.6    Disputing Information.** Settlement Class Members may dispute the

1 information on which their Individual Settlement Payment are calculated by returning a written  
2 statement to the Settlement Administrator postmarked by the Response Deadline in the manner  
3 described in the Notice Packet. The Settlement Class Member must provide information, documents,  
4 or other evidence supporting his or her position.

5           Upon the timely receipt of a dispute, the Settlement Administrator will notify Defense  
6 Counsel in writing (email constitutes a writing for this purpose) of the dispute. Defendant's records  
7 will be presumed determinative, absent information, documents, or other evidence to rebut  
8 Defendant's records, but the Settlement Administrator will evaluate the information submitted by the  
9 Class Member and decide as to the validity of such evidence.

10           6.7    **Opt-Out Requests.** The Notice Packet will provide that Settlement Class  
11 Members who wish to exclude themselves from the Settlement Class and Settlement must mail to  
12 the Settlement Administrator a written request for exclusion postmarked by the Response Deadline  
13 (and pursuant to the terms of the Response Deadline). The date of mailing on the envelope shall be  
14 deemed the exclusive means for determining if a request for exclusion was timely received.

15           (i)       To be valid, a request for exclusion must be timely and must comply  
16 with the instructions detailed in the Notice Packet, including providing: (1) the name and address of  
17 the Settlement Class Member; (2) a statement expressing that the Settlement Class Member elects to  
18 be excluded from the Settlement; (3) the last four (4) digits of their Social Security Number [for  
19 identity verification purposes only]; and (4) a signature by the Settlement Class Member. If a question  
20 is raised about the authenticity of a signed request for exclusion, the Settlement Administrator will  
21 have the right to demand additional proof of the Settlement Class Member's identity.

22           (ii)      A Settlement Class Member who submits a valid and timely Opt-Out  
23 request will not participate in or be bound by the Released Claims and the Judgment. However,  
24 should this individual be a PAGA Member, they will still receive a portion of the PAGA Payment  
25 allocated to the PAGA Members (*i.e.*, 25% of the \$40,000.00, which is \$10,000.00) and will still be  
26 bound by the PAGA Released Claims. The Settlement Administrator will determine the individual  
27 PAGA payment by comparing the number of Pay Periods the PAGA Member was employed during  
28 the PAGA Period to the total number of Pay Periods all PAGA Members were employed during the

1 PAGA Period. In this instance, any Class Member who submits a valid and timely Opt-Out request  
2 and who is also a PAGA Member will only be bound by the PAGA Released Claims.

3 (iii) A Settlement Class Member who does not complete and mail a timely  
4 Opt-Out request in the manner and by the Response Deadline will become a Participating Settlement  
5 Class Member, will receive an Individual Settlement Payment, and will be bound by all terms and  
6 conditions of the Settlement, including the Released Claims, if the Settlement is approved by the  
7 Court, and by the Judgment, regardless of whether they have objected to the Settlement.

8 6.8 **Objections to Settlement.** The Notice Packet will provide instructions and  
9 the manner for submitting written objections to the Settlement and will indicate that only  
10 Participating Settlement Class Members may object to the Settlement. If a Settlement Class Member  
11 returns both a written objection and an Opt-Out request, the Opt-Out request will be invalidated, and  
12 the written objection will be accepted.

13 Written objections must be postmarked and returned to the Settlement Administrator  
14 no later than the Response Deadline. The date of mailing on the envelope shall be deemed the  
15 exclusive means for determining if the written objection was timely. Written objections must be  
16 signed by the Settlement Class Member, state the last four (4) digits of their Social Security Number  
17 [for identity verification purposes only] and should set forth: (a) the full name and address of the  
18 objecting Settlement Class Member; (b) the grounds for each objection made; and (c) whether the  
19 Settlement Class Member intends to appear at the Final Approval Hearing. Either or both Parties  
20 may file a response to any objection before the Final Approval Hearing. Any attorney who will  
21 represent an individual objecting to this Settlement who has not filed a written objection must file a  
22 notice of appearance with the Court and serve Class Counsel and Defense Counsel with this notice  
23 by the Response Deadline. Any Settlement Class Member who fails to submit a timely written  
24 objection or to present an objection at the Final Approval Hearing shall be deemed to have waived  
25 any objections and shall be foreclosed from making any objection to the Settlement whether by  
26 appeal or otherwise. Settlement Class Members are not required to submit written objections to be  
27 heard at the Final Approval Hearing.

28 6.9 **Report.** No later than five (5) business days after the deadline for submission

1 of Opt-Out / Objection requests, the Administrator will provide Class Counsel and Defense Counsel  
2 with a complete and accurate count of Participating Settlement Class Members and Opt-Outs in a  
3 signed declaration.

4       **7.     ESCALATOR CLAUSE.** Based on its records, Defendant estimates that, as of the  
5 date of the settlement, (1) there were 279 Class Members and 11,000 Total Workweeks during the  
6 Class Period. If it is determined that the number of workweeks in the Class Period exceeds 12,100  
7 (11,000, plus 10% of 11,000), then, at its option, Defendant may elect to (A) end the Class Period  
8 on the date the number of pay periods reaches 12,100, or (B) increase the Gross Settlement Amount  
9 in proportion to the increased percentage – for example, if the increase is 12% over 11,000, the  
10 Gross Settlement Amount will increase by 2%.

11       **8.     SETTLEMENT FUNDING AND PAYMENTS**

12           **8.1     Class Data.** No later than twenty-one (21) calendar days of Preliminary  
13 Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the  
14 Administrator, in the form of a Microsoft Excel spreadsheet. To protect class Members’ privacy  
15 rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for  
16 purposes of this Settlement and for no other purpose, and restrict access to the Class Data to  
17 Administrator employees who need access to the Class Data to effect and perform under this  
18 Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that  
19 the Class Data omitted class member identifying information and to provide corrected or updated  
20 Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant  
21 must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use  
22 best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted  
23 Class Data.

24           **8.2     Funding of the Gross Settlement Amount and the Employer’s Taxes.** The  
25 Settlement Administrator will calculate the Employer’s Taxes and inform Defendant of the total  
26 amount of the Employer’s Taxes due. The Administrator shall also provide Defendant with its bank  
27 wire instructions to establish the Qualified Settlement Fund (“QSF”).

28           Within five calendar (5) days of the Effective Date, Defendant shall transmit the Gross

1 Settlement Amount of Four Hundred Thousand Dollars (\$400,000.00) and the Employer's Taxes to  
2 the Settlement Administrator to pay: (a) the Class Counsel's Attorneys' Fees and Expenses, as  
3 approved by the Court; (b) the Incentive Awards, as approved by the Court; (c) the Administrative  
4 Expenses, as approved by the Court; (4) the PAGA Payment, as approved by the Court; and (5) the  
5 remaining Net Settlement Amount to be distributed entirely to Participating Class Members on a  
6 proportionate basis. To the extent Participating Settlement Class Members worked during the PAGA  
7 Period, they will receive a proportionate share of the PAGA Payment available to PAGA Members  
8 (\$10,000.00). Defendant shall not be obligated to pay more than Four Hundred Thousand Dollars  
9 (\$400,000.00) plus the Employer's Taxes in connection with this Settlement.

10           8.3     **Distribution of the Gross Settlement Amount.** Within ten (10) calendar  
11 days of the Effective Date, the Administrator will calculate and pay to Participating Settlement Class  
12 Members their Individual Settlement Payments via first-class regular U.S. Mail, postage prepaid.  
13 The face of each check shall prominently state the date (not less than 180 days after the date of  
14 mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the  
15 void date. The Administrator will send checks for Individual Settlement Payments to all Participating  
16 Class Members (including those for whom Class Notice was returned undelivered). Within ten (10)  
17 calendar days of the Effective Date, the Administrator will pay to Plaintiff the Court-awarded Class  
18 Representative Incentive Award; to Class Counsel the Court-awarded Class Counsel's Attorneys'  
19 Fees and Expenses; to the PAGA Members and LWDA the Court-approved PAGA Payment; and to  
20 the Administrator the Court-awarded Administration Expenses.

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

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

5 8.4 **Non-Cashed Settlement Checks.** Participating Settlement Class Member  
6 shall have one hundred eighty days (180) to cash their checks. Any funds associated with uncashed  
7 checks after one hundred eighty (180) days will be sent to the Controller of the State of California to  
8 be held pursuant to the Unclaimed Property Law, California Civil Code sections 1500, *et seq.*, for  
9 the benefit of those Settlement Class Members whose checks were voided.

10 8.5 **Calculation of the Individual Settlement Payments.** Participating Class  
11 Members will receive a pro-rated share of the NSA based on the total number of Weeks Worked as  
12 a Settlement Class Member any time during the Class Period, in relation to the aggregate number of  
13 Weeks Worked by all Participating Settlement Class Members, based on the following formula:

14 **Individual Settlement Payment = NSA x (Individual's Number of Weeks Worked ÷**  
15 **Aggregate Weeks Worked by all Participating Settlement Class Members During the**  
16 **Class Period)**

17 The estimated amount of the Settlement Class Member's Individual Settlement  
18 Payment will be calculated by the Settlement Administrator and inserted in the Settlement Class  
19 Member's individual Notice Packet, together with their aggregate number of Weeks Worked during  
20 the Class Period and the number of pay periods employed during the PAGA Period. If a Settlement  
21 Class Member is also a PAGA Member, they will also receive a proportionate share of Ten Thousand  
22 Dollars (\$10,000.00) (25% of the PAGA Payment), in addition to the Individual Settlement Payment,  
23 based on the following formula:

24 **individual PAGA payment = \$12,500 x (Individual's Number of Pay Periods**  
25 **Worked ÷ Aggregate Pay Periods Worked by all PAGA Members During the**  
26 **PAGA Period)**

27 Defendant shall have no responsibility for deciding the accuracy of the Individual  
28 Settlement Payments or any other payments made pursuant to this Agreement. Furthermore, as the  
Settlement Administrator shall calculate the Employer's Taxes and Required Withholdings, and  
reporting such amounts to the appropriate governmental authorities, Defendant shall have no

1 responsibility for the determination or payment of Employee's Taxes and Required Withholdings.  
2 The Notice Packet will inform Settlement Class Members that they will be solely responsible for any  
3 and all tax obligation associated with their respective Individual Settlement Payments.

4           8.6    **Time for Payment of Taxes and Required Withholding and Individual**  
5 **Settlement Payments.** The Settlement Administrator shall make every effort to pay the Employee's  
6 Taxes and the Required Withholding associated with each Participating Settlement Class Member's  
7 Individual Settlement Payment as required by law upon the mailing of the Participating Settlement  
8 Class Member's Individual Settlement Payments. If the Settlement Administrator is not able to do so  
9 within the time period set forth above, it shall so inform Class Counsel and Defense Counsel and  
10 provide an approximate date by which Employee's Taxes and Required Withholding shall be paid.

11           8.7    **Time for Payment of PAGA Payment to the LWDA.** The Settlement  
12 Administrator shall distribute to the LWDA the PAGA Payment approved by the Court no later than  
13 ten (10) calendar days after the Effective Date.

14           **9.    NULLIFICATION OF THIS AGREEMENT**

15           9.1    **Non-Approval of the Agreement.** If (a) the Court should for any reason fail  
16 to approve this Agreement in the form agreed to by the Parties, or (b) the Court should for any reason  
17 fail to enter a judgment on this Action, or (c) the approval of the Settlement and judgment is reversed,  
18 modified or declared or rendered void, then the Settlement and conditional class certification shall  
19 be considered null and void, and neither the Settlement, conditional class certification, nor any of the  
20 related negotiations or proceedings shall be of any force or effect, and all Parties to the Settlement  
21 shall stand in the same position, without prejudice, as if the Settlement has been neither entered into  
22 nor filed with the Court. Notwithstanding the foregoing, the Parties may attempt in good faith to cure  
23 any perceived defects in the Agreement to facilitate approval. If the Court awards less than the  
24 requested amounts for Administration Expenses, Class Counsel's Attorneys' Fees and Expenses,  
25 Incentive Award, or PAGA Payment, the difference shall become part of the Net Settlement Amount.

26           9.2    **Parties' Right to Void Class Settlement.** If ten percent (10%) or more of the  
27 Settlement Class Members opt out, Defendant may, at its election, rescind the Settlement and all  
28 actions taken in its furtherance of it will be thereby null and void. Defendant must exercise this right

1 of rescission, in writing, to Class Counsel, within fourteen (14) business days after the Administrator  
2 notifies the Parties of the total number of opt-outs. If the option to rescind is exercised, Defendant  
3 shall be responsible for all costs of the administration accrued to that point.

4 Defendant also has the right to withdraw from the Settlement if the Court: (1) does  
5 not approve the material terms set forth in this Agreement after efforts to satisfy the Court's concerns  
6 are made by the Parties; (2) does not conditionally certify the Settlement Class; (3) does not  
7 conditionally certify a class releasing the Released Claims; or (4) does not grant final approval of the  
8 Settlement or enter Judgment. If this occurs, the Parties will be restored to their positions as of the  
9 date prior to the Agreement being fully executed, and they shall be equally responsible for all costs  
10 of Administration accrued to that point.

11 9.3 **Invalidation.** Invalidation of any material portion of the Settlement shall  
12 invalidate the Settlement in its entirety, unless the Parties shall subsequently agree in writing that the  
13 remaining provisions of the Settlement are to remain in full force and effect.

14 9.4 **Stay Upon Appeal.** In the event of a timely appeal from the approval of the  
15 Class Settlement and Judgment, the Judgment shall be stayed, and Defendant shall not be obligated  
16 to fund the Gross Settlement Amount or take any other actions required by this Agreement until all  
17 appeal rights have been exhausted by operation of law.

18 **10. MOTION FOR COURT APPROVAL**

19 10.1 **Defendant's Declaration in Support of Preliminary Approval.** Within 10  
20 days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a  
21 signed Declaration from Defendant and Defendant's Counsel disclosing all facts relevant to any  
22 actual or potential conflicts of interest with the Administrator. In their Declarations, Defendant's  
23 Counsel and Defendant shall aver that they are not aware of any other pending matter or action  
24 asserting claims that will be extinguished or adversely affected by the Settlement.

25 10.2 **Plaintiff's Responsibilities.** Plaintiff will prepare and deliver to Defense  
26 Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the  
27 notice, and memorandum in support, of the Motion for Preliminary Approval that includes an  
28 analysis of the Settlement under Dunk/Kullar and a request for approval of the PAGA Settlement



1 under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary  
2 Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed  
3 declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement  
4 and attesting to its willingness to serve; competency; operative procedures for protecting the security  
5 of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other  
6 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;  
7 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense  
8 Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and  
9 disclosing all facts relevant to any actual or potential conflicts of interest with Class Members,  
10 [and/or] the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its  
11 competency to represent the Class Members; its timely transmission to the LWDA of all necessary  
12 PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative  
13 Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd.  
14 (l)(2)); and (vii) all facts relevant to any actual or potential conflict of interest with Class Members,  
15 the Administrator. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they  
16 are not aware of any other pending matter or action asserting claims that will be extinguished or  
17 adversely affected by the Settlement.

18           10.3    **Responsibilities of Counsel.** Class Counsel and Defendant’s Counsel are  
19 jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no  
20 later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the  
21 Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for  
22 Preliminary Approval. Class counsel is responsible for delivering the Court’s Preliminary Approval  
23 to the Administrator.

24           10.4    **Duty to Cooperate.** If the Parties disagree on any aspect of the proposed  
25 Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel  
26 and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person  
27 or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant  
28 Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement,

1 Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by  
2 meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy  
3 the Court's concerns.

4           10.5 **Final Approval.** Following the close of the Response Deadline, and upon a  
5 date set by the Court as set forth in the Order Granting Preliminary Approval, Plaintiff shall move  
6 the Court for the entry of the final order certifying the Class for settlement purposes only and  
7 approving the Settlement as being fair, reasonable and adequate to the Participating Settlement Class  
8 Members within the meaning of California Rules of Court, Rule 3.769(c), (d) and (e) and for the  
9 entry of a final judgment of the Action consistent with the terms of the Class Settlement and  
10 California Rule of Court 3.769(h). Class Counsel and Defense Counsel shall submit to the Court such  
11 pleadings and/or evidence as may be required for the Court's consideration in ruling on the motion.

12           **11. RELEASES AND WAIVERS**

13           11.1 **Release of Claims by Plaintiff and the Participating Class Members.**

14           Upon the funding of the Gross Settlement Amount, each Settlement Class Member who has  
15 not submitted a timely request to Opt-Out and Plaintiff will be bound by the Judgment entered and  
16 will release the Released Parties, and each of them, of and from any and all Released Claims for the  
17 Class Period. It is the desire of the Parties and the Settlement Class Members to fully, finally, and  
18 forever settle, compromise, and discharge the Released Claims during the Class Period. Each  
19 Settlement Class Member, except those who timely Opt-Out, will be bound to the release of Released  
20 Claims as a result of the Class Settlement and to the terms of the final judgment and the satisfaction  
21 of such judgment.

22           Settlement Class Members who do not opt out will be deemed to have acknowledged and  
23 agreed that their claims for wages and/or penalties in the Action are disputed, and that their Individual  
24 Settlement Payment constitutes payment of all sums allegedly due to them. Class Members will be  
25 deemed to have acknowledged and agreed that Labor Code Section 206.5 is not applicable to the  
26 Individual Settlement Payment. That section provides in pertinent part as follows:

27                           **“An employer shall not require the execution of a release of a claim**  
28                           **or right on account of wages due, or to become due, or made as an**

1                   **advance on wages to be earned, unless payment of those wages has**  
2                   **been made.”**

3                   11.2    **Release by the LWDA, Plaintiff, and PAGA Members.** Upon the funding  
4 of the Gross Settlement Amount, the LWDA, Plaintiff, and the PAGA Members shall be deemed to  
5 have released the Released Parties, and each of them, of and from any and all PAGA Released Claims  
6 during the PAGA Period.

7                   11.3    **Release of Claims by Plaintiffs.** Plaintiffs, on behalf of themselves and their  
8 heirs, executors, administrators, and representatives, shall and does forever release, discharge and  
9 agrees to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities,  
10 obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights,  
11 demands, costs, losses, debt and expenses (including attorney fees and costs), known or unknown, at  
12 law or in equity, which they may now have or may have after the signing of this Stipulation, arising  
13 out of or in any way connected with their employment with or assignment at Defendant including,  
14 the Released Claims, claims that were asserted or could have been asserted in the Complaint, Action,  
15 and any and all transactions, occurrences, or matters between the Parties. Without limiting the  
16 generality of the foregoing, this release shall include, but not be limited to, any and all claims under  
17 the (a) Americans with Disabilities Act, as amended; (b) Title VII of the Civil Rights Act of 1964,  
18 as amended; (c) the Civil Rights Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e) the Age  
19 Discrimination in Employment Act, as amended; (f) the Fair Standards Act, as amended; (g) the  
20 Equal Pay Act; (h) the Employee Retirement Income Security Act, as amended; (i) the Consolidated  
21 Omnibus Budget Reconciliation Act; (j) the Rehabilitation Act of 1973; (k) the Family and Medical  
22 Leave Act; (l) the Civil Rights Act of 1966; (m) the California Fair Employment and Housing Act;  
23 (n) the California Constitution; (o) the California Labor Code; (p) the California Government Code;  
24 (q) the California Civil Code; and (r) any and all other federal, state and local statutes, ordinances,  
25 regulations, rules and other laws, and any and all claims based on constitutional, statutory, common  
26 law or regulatory grounds as well as any other claims based on the theories of wrongful or  
27 constructive discharge, breach of contract or implied contract, fraud, misrepresentation, promissory  
28 estoppel or intentional and/or negligent infliction of emotional distress, or damages under any other

1 federal, state or local statutes, ordinances, regulations, rules or laws. This release is for any and all  
2 relief, no matter how denominated, including, but not limited to, overtime, wages, back pay, front  
3 pay, vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive  
4 damages, damages for pain and suffering, and attorneys' fees and costs, and Plaintiffs hereby forever  
5 release, discharge and agree to hold harmless Defendant and the Released Parties from any and all  
6 claims for attorney fees and costs arising out of the matters released in this Stipulation.

7 Plaintiffs acknowledge that they are aware and familiar with the provisions of section  
8 1542 of the Civil Code, or any other similar provision under federal or state law, which provides:

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

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

## 23 **12. DUTIES OF THE PARTIES**

24 12.1 **Mutual Full Cooperation.** The Parties agree to cooperate fully with one  
25 another to accomplish and implement the terms of this Agreement. Such cooperation shall include,  
26 but not be limited to, execution of such other documents and the taking of such other actions as may  
27 reasonably be necessary to fulfill the terms of this Settlement. The Parties shall use their best efforts,  
28 including all effects contemplated by this Agreement and any other efforts that may become  
necessary by Court order or otherwise, to effectuate the terms of this Agreement. As soon as  
practicable after execution of this Agreement, Class Counsel, with the cooperation of Defendant and

1 Defense Counsel, shall take all necessary and reasonable steps to secure the Court’s final approval  
2 of this Agreement.

3           12.2    **Duty to Support and Defend the Settlement.** The Parties agree to abide by  
4 all the terms of the Settlement in good faith and to support the Class Settlement fully and to use their  
5 best efforts to defend this Settlement from any legal challenge, whether by appeal or collateral attack.

6           **13. MISCELLANEOUS PROVISIONS**

7           13.1    **Different Facts.** The Parties hereto, and each of them, acknowledge that,  
8 except for matters expressly represented herein, the facts in relation to the dispute and all claims  
9 released by the terms of this Agreement may turn out to be other than or different from the facts now  
10 known by each party and/or its counsel, or believed by such Party or counsel to be true, and each  
11 Party therefore expressly assumes the risk of the existence of different or presently unknown facts,  
12 and agrees that this Agreement shall be in all respects effective and binding despite such difference.

13           13.2    **No Prior Assignments.** The Parties represent, covenant, and warrant that  
14 they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,  
15 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,  
16 cause of action, or right herein released and discharged except as set forth herein.

17           13.3    **Non-Admission.** Nothing in this Agreement shall be construed as or deemed  
18 to be an admission by any Party of any liability, culpability, negligence, or wrongdoing toward any  
19 other Party, or any other person, and the Parties specifically disclaim any culpability, negligence, or  
20 wrongdoing toward each other or any other person. Each of the Parties has entered into this  
21 Agreement with the intention to avoid further disputes and litigation with the attendant  
22 inconvenience, expenses, and contingencies. Nothing herein shall constitute any admissions by  
23 Defendant of wrongdoing or liability, or of the truth of any factual allegations in the Action. Nothing  
24 herein shall constitute any admission by Defendant regarding the merits of the Claims in this Action,  
25 including but not limited to claims for unpaid wages under California and/or federal law. Nothing  
26 herein shall constitute an admission by Defendant that the Action was properly brought as a class or  
27 representative action other than for settlement purposes. To the contrary, Defendant has denied and  
28 continues to deny each and every material factual allegation and all Claims. To this end, the

1 Settlement of the Action, the negotiation and execution of this Agreement, and all acts performed or  
2 documents executed pursuant to or in furtherance of this Agreement or the Settlement are not, shall  
3 not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability  
4 on the part of Defendant or of the truth of any of the factual allegations in the Complaint in the  
5 Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence of  
6 any fault or omission on the part of Defendant in any civil, criminal or administrative proceeding in  
7 any court, administrative agency or other tribunal.

8           13.4 **Media or Press.** Plaintiffs and Defendant, and their respective counsel, agree  
9 to limit public comment on this Class Settlement, the Action, and claims in the Action, stating that  
10 the matter has been resolved to the satisfaction of the Parties. Neither Plaintiffs or Defendant shall  
11 initiate public comment and/or discuss with or present to the media or press.

12           13.5 **Non-Retaliation.** Defendant understands and acknowledges that it has a legal  
13 obligation not to retaliate against any Settlement Class Member who elects to participate in the  
14 Settlement or elects to Opt-Out of the Class. Defendant will refer any inquiries regarding this  
15 Settlement to the Administrator or to Class Counsel and will not discourage, directly or indirectly,  
16 Class Members from opting out or objecting to the Settlement.

17           13.6 **Construction.** The Parties hereto agree that the terms and conditions of this  
18 Agreement are the result of lengthy, intensive, arms-length non-collusive negotiations between the  
19 Parties and that this Agreement is not to be construed in favor of or against any party by reason of  
20 the extent to which any Party or their counsel participated in the drafting of this Agreement. If any  
21 of the dates in the Agreement fall on a weekend, bank or court holiday, the time to act shall be  
22 extended to the next business day.

23           13.7 **Governing Law.** This Agreement is intended to and shall be governed by the  
24 laws of the State of California, without regard to conflict of law principles, in all respects, including  
25 execution, interpretation, performance, and enforcement.

26           13.8 **Notices.** Except for the mailing of the Notice Packet to Settlement Class  
27 Members by the Administrator, any and all notices or other communications required or permitted  
28 under this Agreement shall be in writing and shall be sufficiently given if delivered in person to the

1 Party or their counsel by U.S. certified mail, postage pre-paid, e-mail, facsimile, or overnight delivery  
2 addressed to the address of the Party appearing in this Agreement.

3           13.9 **Captions and Interpretations.** Section titles or captions contained herein are  
4 inserted as a matter of convenience and for reference only and in no way define, limit, extend, or  
5 describe the scope of this Agreement or any provision thereof.

6           13.10 **Modification.** This Agreement may not be changed, altered, or modified,  
7 except in writing signed by the Parties and approved by the Court. This Agreement may not be  
8 discharged except by performance in accordance with its terms or by a writing signed by the Parties.

9           13.11 **Integration Clause.** This Agreement contains the entire agreement between  
10 the Parties relating to the Settlement of the Action and the transactions contemplated thereby, and all  
11 prior or contemporaneous agreements, understandings, representations, and statements, whether oral  
12 or written, and whether by a party or such party's legal counsel, are hereby superseded. No rights  
13 under this Agreement may be waived except in writing as provided above.

14           13.12 **Successors and Assigns.** This Agreement shall be binding upon and inure to  
15 the benefit of the Parties and Settlement Class Members (excluding only persons who timely opt-  
16 out) and their respective present and former heirs, trustees, executors, administrators, representatives,  
17 officers, directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors,  
18 advisors, consultants, pension and welfare benefit plans, fiduciaries, parent companies, subsidiaries,  
19 affiliates, related companies, joint ventures, predecessors, successors, and assigns.

20           13.13 **Corporate Signatories.** Any person executing this Agreement or any such  
21 related document on behalf of a corporate signatory or on behalf of a partnership hereby warrants and  
22 promises, for the benefit of all Parties hereto, that such person has been duly authorized by such  
23 corporation or partnership to execute this Agreement or any such related document.

24           13.14 **Execution in Counterparts.** This Agreement shall become effective upon its  
25 execution by all the undersigned. The Parties may execute this Agreement in counterparts, and  
26 execution of counterparts shall have the same force and effect as if all Parties had signed the same  
27 instrument.

28 ///

1           13.15 **Stay of Litigation.** The Parties agree that upon the execution of this  
2 Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties  
3 further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend  
4 the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement  
5 process

6           13.16 **Attorneys' Fees, Costs and Expenses.** Except as otherwise specifically  
7 provided for herein, each Party shall bear their or its own attorneys' fees, costs, and expenses, taxable  
8 or otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement  
9 thereof from any other Party to this Agreement.

10           IN WITNESS WHEREOF, the Parties and their counsel have executed this Agreement on  
11 the date below their signatures of their representatives. The date of the Agreement shall be the date  
12 of the latest signature.

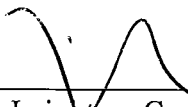
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



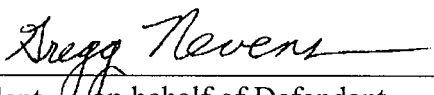
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

July 25 2022

ARTIANO & ASSOCIATES, APC

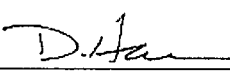
By:   
Joanne K. Leighton, Counsel for Defendant  
ALLIED SALES AND DISTRIBUTION,  
INC.

July 22, 2022

By:   
President, on behalf of Defendant  
ALLIED SALES AND DISTRIBUTION,  
INC.

July 21, 2022

JUSTICE LAW CORPORATION

By:   
Douglas Han  
Counsel for Plaintiffs NICOLE MENDOZA  
AND TONY NUNLEY


07/19/2022

July \_\_, 2022

By:   
Nicole Mendoza, Plaintiff

07/20/2022

July \_\_, 2022

By:   
Tony Nunley, Plaintiff