

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

RODNEY ALBERT JORDAN, an individual)
and on behalf of all others similarly situated,)

Plaintiffs,)

v.)

THE MARTIN-BROWER COMPANY, LLC,)
a Delaware limited liability company; JESUS)
FLORES, an individual; and DOES 1 through)
100, inclusive,)

Defendant.)

Case No. 21STCV41435

**CLASS AND REPRESENTATIVE
ACTION SETTLEMENT AGREEMENT**

This Class and Representative Action Settlement Agreement (“Settlement Agreement”) is made and entered into between Plaintiff Rodney Albert Jordan (“Plaintiff” or “Class Representative”) on the one hand, individually and on behalf of the Settlement Class and PAGA Members (as defined below), and Defendant The Martin-Brower Company, L.L.C. (“Defendant”) on the other hand, subject to the approval of the Court, as provided below. This Settlement Agreement is intended by Plaintiff and Defendant to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below), upon and subject to the terms and conditions herein, as follows:

1. **Definitions.**

As used herein, for the purposes of this Settlement Agreement only, the following terms shall be defined as set forth below:

- 1.1 “Action” refers to the civil action entitled: *Rodney Albert Jordan, an individual and on behalf of all others similarly situated v. The Martin-Brower Company, LLC, a Delaware limited liability company; Jesus Flores, an individual; and Does 1 through 100, inclusive*, Case No. 21STCV41435, in the Superior Court of California, County of Los Angeles.
- 1.2 “Class” or “Class Members” refers to all current and former non-exempt employees of Defendant in the State of California, except truck drivers, at Defendant’s City of Industry location from June 1, 2020 and at Defendant’s Stockton location from November 10, 2017, through February 15, 2023. It shall be an opt-out class.
- 1.3 “Class Counsel” refers to David D. Bibiyan, Jeffrey D. Klein, and Vedang J. Patel of Bibiyan Law Group, P.C.
- 1.4 “Class Counsel Fees and Costs Award” refers to costs incurred and attorneys’ fees sought by Class Counsel and agreed upon by the Parties for Class Counsel’s litigation and resolution of this Action, subject to Court approval.
- 1.5 “Class Settlement Notice” refers to the form of direct-mail notice to Class Members substantially in the form attached hereto as **Exhibit A**, as may be modified by the Court, entitled the Notice of Settlement of Class Action And Fairness Hearing.
- 1.6 “Class Member Payment” shall refer to the amount paid to a Settlement Class Member who does not submit a timely or valid request to opt out of the settlement, as set forth in Paragraph 16 below.
- 1.7 “Class Period” refers to June 1, 2020 through February 15, 2023, or the date of preliminary approval of this Settlement, whichever comes first, for Class Members at Defendant’s City of Industry location, and refers to November 10, 2017 through February 15, 2023, or the date of preliminary approval of this Settlement, whichever comes first, for Class Members at Defendant’s Stockton location. The Class Period shall be the Release Period.
- 1.8 “Class Representative” refers to the Plaintiff, Rodney Albert Jordan.
- 1.9 “Operative Complaint” refers to the First Amended Complaint to be filed by Plaintiff in the Action to add all potential claims under the Fair Credit Reporting Act (“FCRA”), the California Consumer Credit Reporting Agencies Act (“CCCRAA”), California Investigative Consumer Reporting Agencies Act (“ICRAA”) (collectively, the “FCRA Claims”), and to add a claim for PAGA civil penalties based on the violations alleged in the Complaint.

- 1.10 “Opt Out Deadline” or “Response Deadline” refers to a date that is forty-five (45) calendar days after the date that the Notice Packet is initially mailed to Class Members, and is the deadline by which Class Members’ requests to opt out or objections must be postmarked in order to be timely, unless a Class Member’s notice is re-mailed, in which case the Class Member shall have an additional fifteen (15) calendar days from re-mailing, or forty-five (45) calendar days from the initial mailing, whichever is later.
- 1.11 “Final Fairness Hearing” refers to the hearing at which the Court will make a final determination whether the terms of the Settlement Agreement are fair, reasonable, and adequate for the Class and meet all applicable requirements for approval.
- 1.12 “Final Approval Order” refers to the final order by the Court approving the Settlement following the Final Fairness Hearing.
- 1.13 “FCRA Claims” refers to claims under the FCRA, CCCRAA and ICRAA that Plaintiff will add to the First Amended Complaint as set forth in this Agreement.
- 1.14 “FCRA Payments” refers to the payment of \$200 per class member for release of all claims under the FCRA, CCCRAA and ICRAA.
- 1.15 “Effective Date” refers to the date the Court’s order approving the settlement and judgment thereon (“Judgment”) becomes final. For purposes of the Settlement Agreement, the Court’s Judgment “becomes final” upon the later of: (i) the Court’s final approval of the Settlement Agreement, if no objections have been filed, (ii) the time of appeal has expired if an objection has been filed, (iii) or the final resolution of any appeal that has been filed.
- 1.16 “Gross Settlement Amount” (also referred to herein as “GSA”) refers to the maximum settlement payment Defendant shall be obligated to make: Two Million Dollars And No Cents (\$2,000,000.00). The GSA shall include all Class Member Payments to be made to Settlement Class Members (including the FCRA Payments), the Court-approved Service Award to the Class Representative, the Court-approved Settlement Administration Costs, the Court-approved Class Counsel Fees and Costs Award, and the Court-Approved PAGA Amount. The GSA is non-reversionary. The GSA does not include employer side withholding taxes, which shall be paid separately by Defendant to the settlement administrator.
- 1.17 “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.18 “Net Settlement Amount” (also referred to herein as “NSA”) shall be defined as the GSA minus the Court-approved Service Award to the Class Representative, the Court-approved Settlement Administration Costs, the Court-approved Class Counsel Fees and Costs Award, and the PAGA Amount. The NSA is the amount that shall be available for distribution to and on behalf of Class Members for Class Member Payments and FCRA Payments.
- 1.19 “Notice Packet” refers to the Class Action and Representative Settlement Notice as set forth herein in the form substantially similar to the attached **Exhibit “A,”** and subject to approval by the Court.
- 1.20 “Objection Deadline” refers to a date that is forty-five (45) calendar days after the date that the Notice Packet is initially mailed to Class Members, and is the deadline by which any objections must be postmarked for service to the Settlement Administrator in order to be timely, unless a Class Members’ notice is re-mailed, in which case the Class Member shall

have an additional fifteen (15) calendar days from re-mailing, or forty-five (45) calendar days from the initial mailing, whichever is later.

- 1.21 “PAGA Action” refers to the civil action entitled: *Rodney Albert Jordan, as an aggrieved employee, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys’ General Act of 2004 v. The Martin-Brower Company, LLC, a Delaware limited liability company; Jesus Flores, an individual; and Does 1 through 100, inclusive*, Case No. 22STCV01052, in the Superior Court of California, County of Los Angeles.
- 1.22 “PAGA Period” refers to November 3, 2021 through the end of the Class Period.
- 1.23 “PAGA Amount” means the amount that the Parties have agreed to pay to the Labor and Workforce Development Agency (“LWDA”) and PAGA Members in connection with the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”). The Parties have agreed that One Hundred Thousand Dollars (\$100,000) of the Gross Settlement Amount will be allocated to the resolution of the State of California’s and any PAGA Members’ claims arising under PAGA. Pursuant to PAGA, 75%, or Seventy-Five Thousand Dollars (\$75,000), of the PAGA Amount will be paid to the LWDA (“LWDA Payment”) , and 25%, or Twenty-Five Thousand Dollars (\$25,000), of the PAGA Amount will be paid to PAGA Members (“PAGA Member Payment”). The pro rata portion of the PAGA Payment made to PAGA Members shall be determined by dividing the total number of workweeks worked during the PAGA Period into the PAGA Payment made to PAGA Members to arrive at a value per workweek for each eligible PAGA Member. The value per workweek shall be multiplied by the number of workweeks worked by each PAGA Member during the PAGA Period.
- 1.24 “PAGA Members” refers to all current and former non-exempt employees of Defendant in the State of California, except truck drivers, at any time between November 3, 2021 through the end of the Class Period.
- 1.25 “PAGA Notice” means Plaintiff’s letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a) dated November 3, 2021.
- 1.26 “Parties” refers to Plaintiff Rodney Albert Jordan and Defendant The Martin-Brower Company, L.L.C.
- 1.27 “Plaintiff’s Released Claims” are those claims defined in Paragraph 13.3 that are released solely by Plaintiff against the Released Parties.
- 1.28 “Preliminary Approval” refers to the date the Court grants preliminary approval of the Settlement.
- 1.29 “Preliminary Approval Order” refers to the Court’s Order granting Preliminary Approval of the Settlement.
- 1.30 “Released Claims” are those claims defined in Paragraph 13 that are released by Settlement Class Members, the State of California, and PAGA Members.
- 1.31 “Released Parties” means: Defendant The Martin-Brower Company, L.L.C. and each of its predecessors, successors, subsidiaries, parent companies, sister companies, other corporate affiliates, and assigns, and all of their owners, shareholders, members, officers, directors,

employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns, and any other persons acting by, through, under or in concert with any of them.

- 1.32 “Service Award” refers to the Court’s award of a monetary payment to Plaintiff for his services as Class Representative as described in Paragraph 7, to be paid from the Gross Settlement Amount, and in return for executing the claims released by Plaintiff as set forth in Paragraph 13.3.
- 1.33 “Settlement” refers to the settlement of the Action under the terms and conditions set forth in this Settlement Agreement.
- 1.34 “Settlement Administration Costs” refers to the costs that the Parties agree to pay the Settlement Administrator, subject to Court approval, for its fees and costs to perform the notice, claims administration, and distribution functions further described in this Settlement Agreement. The Parties anticipate that the Settlement Administration Costs will not exceed \$12,000.00.
- 1.35 “Settlement Administrator” refers to the third-party administrator mutually selected by the parties, subject to Court approval, to perform the notice, claims administration, and distribution functions further described in this Settlement Agreement. The Parties agree to use Phoenix Settlement Administrators as the settlement administrator, subject to Court approval. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Settlement Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 1.36 “Settlement Class,” “Settlement Class Member,” or “Participating Class Members” refers to all Class Members, or individual Class Members as defined in Paragraph 1.2 who do not request to opt out of the Settlement pursuant to Paragraph 16 of this Settlement Agreement.
- 1.37 “Workweek” means any calendar week during which a Class Member performed work for Defendant, as reflected by Defendant’s time records.

2. Procedural History and Recitals.

- 2.1 On or about November 3, 2021, Plaintiff sent the PAGA Notice thereby authorizing him to represent the State of California as a private attorney general for the purposes of PAGA after the expiration of the applicable 65-day exhaustion period.
- 2.2 Plaintiff filed the original Complaint in the Action on or about November 10, 2021. Plaintiff’s Complaint alleges causes of action for: (1) failure to pay overtime wages; (2) failure to pay minimum wage; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) waiting time penalties; (6) wage statement violations; (7) failure to indemnify; (8) failure to timely pay wages; and (9) unfair competition.
- 2.3 Thereafter, individual defendant Jesus Flores was dismissed without prejudice. As a result, the only remaining defendant in the Action was The Martin-Brower Company, L.L.C.
- 2.4 Plaintiff filed a separate Complaint in the PAGA Action on or about January 10, 2022.
- 2.5 On December 15, 2022, the Parties participated in a mediation session before mediator Mark Rudy, an experienced mediator who has mediated numerous wage-hour class actions. After

the mediation session, the Parties reached the basic terms of a settlement of the Action and the PAGA Action.

- 2.6 As a condition of the settlement, Plaintiff agrees to file, within fifteen (15) days of the date this Settlement Agreement is fully executed, a First Amended Complaint adding all potential claims under the FCRA, the CCCRAA, the ICRAA, and to add a claim for PAGA civil penalties based on the Labor Code violations alleged in the Complaint in the Action. Plaintiff further agreed to file all documents needed to effect dismissal without prejudice of the separately pending PAGA Action, thereby effectively consolidating the two (2) actions.
- 2.7 Defendant denies each of the claims in the Operative Complaint, and further denies that it is liable to Plaintiff or the Class, or the State of California, or the PAGA Members, and further denies that, for any purpose other than settling the Action, this Action is appropriate for class or representative action treatment.
- 2.8 Prior to mediation Plaintiff obtained, through informal discovery: (1) time and payroll records for 605 Class Members; (2) all wage statements for ten (10) Class Members who worked throughout the entire Class Period; (3) applicable collective bargaining agreements; (4) all relevant policy documents pertaining to meal and rest periods, timekeeping, and pay practices. The Parties agree that Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Ford Motor Co.*, (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*"). Class Counsel represent that they have thoroughly investigated the class and PAGA claims against Defendant. Class Counsel represent that they have conducted their own investigation into the underlying facts, events, and issues related to the subject matter of this Action. Class Counsel represent that they have further undertaken an extensive analysis of the legal principles applicable to the claims asserted against Defendant, and the potential defenses thereto. Both Class Representative and Defendant have had an opportunity to evaluate their respective positions on the merits of the claims asserted.
- 2.9 Class Counsel also have engaged in intensive arms-length negotiations with counsel for Defendant with a view toward achieving substantial benefits for the Class, the State of California, and the PAGA Members, while avoiding the cost, delay and uncertainty of further litigation, trial, and appellate review.
- 2.10 As a consequence of said negotiations, and of Class Counsel's investigation, analysis and discovery, Plaintiff and Class Counsel determined to enter into this Settlement Agreement on the terms and conditions hereinafter set forth, believing such Settlement to be fair, reasonable, and adequate and in the best interests of Class Members, the State of California, and the PAGA Members. Plaintiff and Class Counsel have determined to execute this Settlement Agreement and urge approval by the Court of the proposed Settlement after considering: (1) the substantial factual and legal defenses asserted by Defendant to the claims asserted in the Action; (2) the potential difficulties Plaintiff and Class Members would encounter in establishing the elements of their claims; (3) the substantial benefits that Class Members, the State of California and the PAGA Members shall receive pursuant to the proposed Settlement; (4) the fact that the proposed Settlement ensures that Class Members shall receive relief in the most expeditious and efficient manner practicable, and thus much sooner than would be possible were the claims to be litigated successfully through trial and appeal; and (5) the fact that the proposed Settlement allows persons who would otherwise fall within the definition of the Class, if they so desire, to opt out of the Settlement and individually pursue the claims alleged in the Action.

- 2.11 As set forth above, without admitting any wrongdoing or liability, Defendant is willing to agree to the terms of the proposed Settlement provided that all of the Released Claims (as defined below) are settled and compromised, in order to fully resolve all issues relating to the subject matter of the Action.
- 2.12 The Court has not granted class certification in this Action.

NOW THEREFORE, in consideration of the covenants and agreements set forth herein, and of the release and dismissal of all Released Claims, Plaintiff, on behalf of himself and as the Class Representative on behalf of the Class, and as a private attorney general, on behalf of the State of California and the PAGA Members, Class Counsel, and Defendant agree to the terms and provisions of this Settlement Agreement, subject to the approval of the Court.

3. Stipulation to Certification and Limitation on Effect of Settlement.

- 3.1 The Settlement shall not constitute, in this or any other proceeding, an admission of any kind by Defendant, including without limitation, that certification of a class is appropriate or proper or that Plaintiff could establish any of the requisite elements for class or representative action treatment of any of the claims in the Action. For purposes of this Settlement only, the Parties stipulate to the certification of the Class under California Code of Civil Procedure Section 382. In the event that the Settlement is not finally approved, or the Settlement is otherwise terminated, Defendant expressly reserves all rights to challenge certification of a class and the appropriateness of representative action treatment on all available grounds.

4. Establishment of the GSA.

- 4.1 This Settlement shall be made on a non-claims-made basis and will be non-reversionary. As to any Class Member who timely and validly submits a request to opt out, as set forth herein, his or her portion of the settlement will be allocated back into the net settlement fund for distribution to all Class Members that did not opt-out of the settlement. Defendant shall pay a total of no more than the GSA, except all applicable employer-side payroll tax payments (including but necessarily limited to FICA, FUTA, etc.) that shall be paid by Defendant separately in addition to the GSA, and except as provided in Paragraph 4.2, below.
- 4.2 At mediation, Defendant estimated that there are no more than 57,720 Workweeks worked by Class Members from June 1, 2020 through December 15, 2022. In the event the number of Workweeks worked during the Class Period increases by more than 10% of 57,720, (or an additional 5,772 Workweeks), then the Gross Settlement Amount shall be increased proportionally by the Workweeks worked in the Class Period in excess of 63,492 Workweeks multiplied by the Workweek Value. The Workweek Value shall be calculated by dividing the Gross Settlement Amount by 57,720 Workweeks. The Parties agree that the Workweek Value amounts to and the settlement amounts to \$34.65 per Workweek ($\$2,000,000 / 57,720$ Workweeks). Thus, for example, should there be 65,492 Workweeks worked by Class Members in the Class Period, then the Gross Settlement Amount shall be increased by \$69,300. $[(65,492 \text{ Workweeks} - 63,492 \text{ Workweeks}) \times \$34.65 \text{ per Workweek}]$.
- 4.3 Payment by Defendant pursuant to this Settlement Agreement shall settle for Settlement Class Members, the State of California, and PAGA Members, all Released Claims between the Released Parties and Settlement Class Members, the State of California, and the PAGA Members, including all Class Member Payments, all FCRA Payments, all PAGA penalty payments to the LWDA and PAGA Members, the Court-approved Service Award to the

Class Representative, the Court-approved Settlement Administration Costs, and the Court-approved Class Counsel Fees and Costs Award.

5. Calculation of the NSA and Distribution of Settlement Proceeds.

5.1 This Settlement shall be a “non-claims-made” settlement. Each Settlement Class Member will be entitled to a share of the NSA for the individual Class Member’s Payment in accordance with the formula set forth below. Payments will be made from the NSA only to Settlement Class Members, as set forth herein. Assuming the Court approves the maximum amounts sought to be deducted from the GSA, the NSA is estimated to be \$1,128,000.00.

5.1.1 Each Settlement Class Member will be paid a portion of the NSA in accordance with the following formula:

5.1.1.1 Each Settlement Class Member shall each receive a flat payment of \$200.00 in consideration for their release of FCRA, CCCRAA, and ICRAA claims (“FCRA Payment”).

5.1.1.2 The pro rata portion of the remainder of the NSA (after deduction of the FCRA Payments) will be distributed to each Settlement Class Member with each Settlement Class Member’s share determined by dividing the total number of workweeks worked during the Class Period by all Class Members into the remainder of the NSA to arrive at a value per workweek for each eligible Settlement Class Member. The value per workweek shall be multiplied by the number of total workweeks worked by each Settlement Class Member during the Class Period. Each Settlement Class Member’s check will include the following language on the back: “Signing or negotiating this check releases all claims made against Defendant in *Jordan v. The Martin-Brower Company*, LASC No. 21STCV41435”.

5.1.2 The amount distributed to Settlement Class Members in the form of Class Member Payments (including the FCRA Payments) will not exceed the NSA.

5.2 Payments to Class Members pursuant to this Settlement Agreement are not intended by the Parties to be compensation for purposes of determining eligibility, vesting, participation, or contributions with respect to any employee benefit plan. For purposes of this Agreement, the term “benefit plan” means every ERISA “employee benefit plan,” as defined in the Employee Retirement and Income Security Act of 1974 (“ERISA”), 29 U.S.C. section 1002(3). The term also includes any 401(k) plan, bonus, pension, stock option, stock purchase, stock appreciation, welfare, profit sharing, retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred compensation, or any other similar benefit plan, practice, program, or policy, regardless of whether any such plan is considered an ERISA employee benefit plan.

6. Class Counsel Fees and Costs Award.

Class Counsel shall move for Class Counsel Fees and Costs Award contemporaneous with the motion for the Final Approval Order requesting, and to which Defendant agrees to not oppose, Class Counsel Fees that is equal to or less than 35% of the GSA (i.e., \$700,000.00 unless escalated pursuant to paragraph 4.2 of this Agreement), plus actual costs incurred in connection with the Action, not to exceed \$50,000. If the Court awards a lower amount of Class Counsel Fees or Costs Award requested by Class Counsel, the other terms of this Agreement shall apply. Should the Court approve a Class Counsel Fees or Costs Award

in an amount less than that set forth herein, the unapproved portion or portions shall revert to the NSA and be apportioned to Settlement Class Members as described in Paragraph 5 of this Settlement Agreement. The awards of Class Counsel Fees or Costs Award in the amounts sought is not a material term of this Agreement and the award of any of these items at less than the amount requested by Class Counsel does not give rise to a basis to abrogate this Agreement. There will be no additional charge of any kind to either the Settlement Class Members or request for additional consideration from Defendant for such work unless, Defendant materially breach this Agreement, including any term regarding funding, and further efforts are necessary from Class Counsel to remedy said breach, including, without limitation, moving the Court to enforce the Agreement.

7. Service Award.

Class Counsel shall file a motion requesting a Service Award, to which Defendant agrees not to object, of up to \$10,000 to Plaintiff from the GSA in consideration for serving as Class Representative and in exchange for Plaintiff's Released Claims. If the Court awards a lower amount for the Service Award requested by Plaintiff's counsel, the other terms of this Agreement shall apply. Should the Court approve a Service Award in an amount less than that set forth herein, the unapproved portion or portions shall revert to the NSA and be apportioned to Settlement Class Members as described in Paragraph 5 of this Settlement Agreement. The award of a Service Award in the amount sought is not a material term of this Agreement and the award of an amount less than requested by Plaintiff does not give rise to a basis to abrogate this Agreement.

8. PAGA Amount.

8.1 Subject to Court approval, the Parties agree that the amount of One Hundred Thousand Dollars (\$100,000) of the GSA will be allocated to the resolution of any claims arising under PAGA. Pursuant to PAGA, 75%, or Seventy-Five Thousand Dollars (\$75,000), of the PAGA Amount will be paid to the LWDA ("LWDA Payment"), and 25%, or Twenty-Five Thousand Dollars (\$25,000), of the PAGA Amount will be paid to PAGA Members based on the number of workweeks worked by any individual PAGA Member in relation to the number of workweeks worked by all PAGA Members during the PAGA Period ("PAGA Payment"). If the PAGA Amount approved by the Court is less than the specified amount, this does not give rise to a basis to abrogate this Settlement Agreement. Any unapproved amount of the PAGA Amount shall be allocated to the NSA and be apportioned to Settlement Class Members as described in Paragraph 5 of this Settlement Agreement.

8.2 The pro rata portion of the PAGA Payment made to each PAGA Member shall be determined by dividing the total number of workweeks worked during the PAGA Period by all PAGA Members into the PAGA Payment made to PAGA Members to arrive at a value per workweek for each eligible PAGA Member. The value per workweek shall be multiplied by the number of total workweeks worked by each PAGA Member during the PAGA Period.

9. Costs of Settlement Administration.

The Parties agree to mutually select Phoenix Settlement Administrators as the Settlement Administrator in this Action. This administration duty shall include without limitation, setting up an escrow account for funding of the Settlement, obtaining tax identification number(s) for Defendant applicable to the Settlement, calculating the Class Member Payments, PAGA Payments, performing an initial National Change of Address ("NCOA") search upon receipt of the Class Member mailing addresses, mailing the Notice Packets, performing one skip trace on Notice Packets that are returned as undeliverable, establishing

a telephone number to communicate with Class Members about the Settlement, reviewing and processing requests to opt out of the settlement, reviewing and submitting to Class Counsel and Defendant's counsel any received objections, mailing the Class Member Payments and tax forms to the Settlement Class Members, and making all required distributions to Settlement Class Members, the State of California and PAGA Members. The Settlement Administrator will report payment of the individual Class Member Payments and PAGA Members to all required taxing and other authorities, and requisite reporting documentation to the applicable taxing agencies, and issue Internal Revenue Service Forms 1099. The Settlement Administrator will establish a Qualified Settlement Fund ("QSF"), pursuant to U.S. Treasury Regulation Section 468B(g) of the Internal Revenue Service for the purposes of administering the Settlement. All Settlement Administration Costs shall be taken from the GSA. The Parties expect Settlement Administration Costs to not exceed \$12,000.00. Any unapproved amount of Settlement Administration Costs shall be allocated to the NSA and apportioned to the Class Members as described in Paragraph 5 of this Settlement Agreement. The award of Settlement Administrator Costs in the amount sought is not a material term of this Agreement and the award of an amount less than requested by Plaintiff does not give rise to a basis to abrogate this Agreement. Any unapproved amount of the Settlement Administration Costs shall be allocated to the NSA and be apportioned to Class Members as described in Paragraph 5 of this Settlement Agreement.

The Settlement Administrator will maintain, and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees and Costs Award and Service Award, the Final Approval and the Judgment. The Settlement Administrator will also monitor an email address and a toll-free telephone number to receive Class Member calls and emails.

10. **Payment Procedure.**

- 10.1 Funding the Settlement. Within 14 (fourteen) calendar days after the Effective Date, Defendant will deposit money into an account, through the Settlement Administrator, in an amount equal to the GSA. Defendant shall also deposit any employer-side payroll taxes owed on the wages portion of the settlement separate and apart from the GSA.
- 10.2 Employer Identification Number. The Settlement Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.
- 10.3 Qualified Settlement Fund. The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 10.4 Payments to Class Members, Class Counsel, Class Representative, and Taxing Authorities. Within 14 (fourteen) calendar days after Defendant transfers the GSA and employer side taxes to the Settlement Administrator, the Settlement Administrator will pay: (1) the NSA to the Settlement Class Members per the terms of this Settlement Agreement and the Final Approval Order; (2) the Court-approved Class Counsel Fees and Costs Award; (3) the Court-approved Settlement Administration Costs; (4) the Court-approved Service Award to the Class Representative; and (5) the Court-approved PAGA Amount to the proper State authority and the PAGA Members. The Settlement Administrator shall also, within the time periods prescribed by law and/or regulations, remit all applicable tax withholdings (if any) to the appropriate taxing authorities. Before mailing any checks, the Settlement

Administrator must update the recipients' mailing addresses using the National Change of Address Database.

- 10.5 Uncashed Class Payments. In the event that a Class Member Payment check as calculated set forth in Paragraph 5 is not cashed within 180 calendar days from the date initially mailed by the Settlement Administrator, such funds shall escheat to the State and shall be sent by the Settlement Administrator to the State Controller's Office, Unclaimed Property Fund, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). In such event, release of Released Claims will remain binding upon the affected Settlement Class Member. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Settlement Administrator will cancel all checks not cashed by the void date.
- 10.6 Returned Checks. With respect to those Settlement Class Members whose checks are undelivered without a USPS forwarding address, the Settlement Administrator must investigate and search for their mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact with Settlement Class Members. Within 7 days of receiving a returned check, the Settlement Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the steps provided above. The Settlement Administrator need not take further steps to deliver checks to Class Settlement Members whose re-mailed checks are returned as undelivered. The Settlement Administrator shall promptly send a replacement check to any Settlement Class Member whose original check was lost or misplaced, requested by the Settlement Class Member prior to the void date, unless the Settlement Class Member's check has already been cashed.

11. **Tax Treatment.**

- 11.1 Tax Treatment of Claimed Portion of Settlement Payments. After deduction of the FCRA Payments, 25 percent of the NSA attributable to the Settlement Class Member claims will be allocated to the settlement of disputed claims for wages, 70 percent shall be attributable to the settlement of disputed non-wage claims – i.e. penalties and interest, and 5 percent shall be attributable to the settlement of reimbursement of employee business expenses. The Settlement Administrator will issue to Settlement Class Members a form W-2 for all amounts attributable to disputed wages and a form 1099 for all amounts attributable to disputed non-wage claims. The form 1099 shall also include all amounts attributable to PAGA Payments. Settlement Class Members and PAGA Members shall assume full responsibility and liability for the payment of taxes due on such amounts. All FCRA Payments shall be attributed to non-wage claims and reported on a form 1099.
- 11.2 Tax Treatment of Class Representative Service Award. Plaintiff will receive an IRS Form 1099 for his individual Service Award, and will be responsible for payment of any taxes owing on said amount. Plaintiff shall assume full responsibility and liability for the payment of taxes due on such Service Award
- 11.3 Tax Treatment of Attorneys' Fees And Cost Award. Class Counsel will receive an IRS Form 1099 for any amount awarded to Class Counsel in the Class Counsel Fees or Costs Awards and will be responsible for payment of any taxes owing on said amounts. Class Counsel shall assume full responsibility and liability for the payment of taxes due on such amounts.

- 11.4 No Tax Advice. Defendant is not giving any tax advice in connection with the Settlement or any payments to be made pursuant to this Settlement. Each Settlement Class Member and PAGA Member agrees to indemnify, and hold harmless Defendant from any liability for taxes, fees, costs, or assessments resulting from his or her failure to timely pay his or her share of taxes, interest, fees, or penalties owed.

12. Resolution of Disputes Relating to Amounts Owed to a Settlement Class Member.

If a Settlement Class Member timely disputes the number of workweeks worked listed on the Class Settlement Notice, the Settlement Administrator will review any documentation provided by the Settlement Class Member, as well as records for the Settlement Class Member provided by Defendant, to determine whether there was an error in the number of workweeks worked calculated, and adjust any payment to be allocated if necessary. In the absence of definitive documentation provided by the Settlement Class Member, Defendant's time and pay records shall be determinative for purposes of calculating the number of workweeks worked during the Class Period, and number of workweeks worked during the PAGA Period. Class Members shall have until the response deadline to dispute the number of workweeks allocated to him or her.

13. Releases.

Upon full payment by Defendant of the GSA and employer side taxes to the Settlement Administrator, and in exchange for the consideration set forth in this Settlement Agreement, Plaintiff, the Settlement Class Members, and PAGA Members agree to release those claims set forth herein as applicable.

- 13.1 Release by Settlement Class Members: Except as to the right to enforce the terms and conditions of the Settlement, all Settlement Class Members fully release the Released Parties from all claims that were alleged, or could have been asserted based on the factual allegations, in the Operative Complaint filed in the Action, including but not limited to any municipal, state, or federal law during the Class Period ("Released Class Claims"). This release includes, without limitation, release of all claims under the Fair Credit Reporting Act ("FCRA"), the California Consumer Credit Reporting Agencies Act ("CCCRAA"), the California Investigative Consumer Reporting Agencies Act ("ICRAA"), and all claims for alleged failure to pay wages of any form, including failure to pay minimum wage, overtime, vacation, sick pay, or any other wage, claims for failure to provide accurate itemized wage statements, claims for failure to timely pay wages, claims for failure to pay meal or rest period premiums, claims for failure to timely pay wages due at the end of employment, failure to provide meal and rest breaks, failure to reimburse expenses, failure to maintain employment records, claims for unfair competition based upon any of the foregoing, failure to pay wages in form negotiable and payable in cash, and claims under California Business and Professions Code sections 17200 *et seq.* This release includes all claims for failure to pay wages (including overtime) under the FLSA. The Parties stipulate that except as set forth in this Agreement, Defendant shall not owe any further monies to the Settlement Class based upon any claim made in the Action or in any complaint filed therein, as well as claims under Labor Code section 2698 *et seq.* This Agreement is conditioned upon the release by all Settlement Class Members of any claim under Labor Code section 2698 *et seq.*, as to the released claims set forth above, and upon covenants by all members that they will not participate in any proceeding seeking penalties as to the released claims set forth above. The Parties stipulate that beyond the Gross Settlement Amount, and employer's share of payroll taxes, Defendant shall not owe any further monies to the Settlement Class or to the State of California based upon any claim made in the Lawsuit or in any complaint filed therein.

13.2 Release by PAGA Members: Except as to the right to enforce the terms and conditions of the Settlement, all PAGA Members fully release and discharge the Released Parties from any and all claims under the PAGA that were alleged, or could have been asserted based on the factual allegations, in the Operative Complaint filed in the Action that arose during the PAGA Period (the “Released PAGA Claims”). It is understood and acknowledged that PAGA Members entitled to a share of the PAGA Amount will be issued a check for their share of the PAGA Amount and will not have the opportunity to opt out of, or object to, the Released PAGA Claims as set forth in this Paragraph. The Released PAGA Claims are binding upon all PAGA Members upon Court approval and payment of the PAGA Amount. Further, the PAGA Members are bound by the Released PAGA Claims regardless of whether they cash their PAGA check.

13.3 In addition to the foregoing releases, Plaintiff agrees to a general release of all claims, known or unknown, in favor of Defendant and the Released Parties, except those that cannot be released by law. This general release will include a waiver of rights under section 1542 of the California Civil Code. Plaintiff makes this release understanding the significance of this waiver. Section 1542 provides:

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

13.4 Plaintiff warrants and represents that he has not assigned, or transferred, to any person or entity any of Plaintiff’s Released Claims or any rights, claims, or causes of action arising out of Plaintiff’s Released Claims.

13.5 Prohibition on Subsequent Assertion of Released Claims. Plaintiff, to the fullest extent allowed by law, is prohibited from asserting a Plaintiff’s Released Claim, and from commencing, joining in, or voluntarily assisting in a lawsuit or adversary proceeding against the Released Parties, based on Plaintiff’s Released Claims. Excluded from this prohibition are any instances where any individual is legally compelled to testify through service of a subpoena or other process. Settlement Class Members, to the fullest extent allowed by law, are prohibited from asserting a Released Claim, and from commencing, joining in, or voluntarily assisting in a lawsuit or adversary proceeding against the Released Parties, based on Released Claims. Excluded from this prohibition are any instances where any individual is legally compelled to testify through service of a subpoena or other process. The State of California and PAGA Members, to the fullest extent allowed by law, are prohibited from asserting a Released Claim, and from commencing, joining in, or voluntarily assisting in a lawsuit or adversary proceeding against the Released Parties, based on the Released PAGA Claims. Excluded from this prohibition are any instances where any individual is legally compelled to testify through service of a subpoena or other process.

14. **Class Settlement Notice and Claims Administration.**

14.1 Engagement of Settlement Administrator. The Parties agree to Phoenix Settlement Administrators as the Settlement Administrator to perform the notice and other settlement claims administration functions set forth below.

- 14.1.1 The Settlement Administrator shall provide Defendant's counsel and Class Counsel with weekly summary reports, including the total number of Class Settlement Notices that were returned as undeliverable, the total number of objections and requests to opt out of the settlement, and the amounts not claimed by Class Members as a result of the submission of timely and valid requests to opt out of the settlement, if any, and/or any uncashed or undeliverable Settlement Checks. The Settlement Administrator shall maintain records of its work, which shall be available for inspection upon request by Defendant's counsel or Class Counsel.
- 14.1.2 The Administrator will promptly review on a rolling basis opt-out requests to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting opt-out requests, the Settlement Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid opt-out requests ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid opt-out requests; (c) copies of all opt-out requests from Settlement submitted (whether valid or invalid).
- 14.1.3 Not later than 14 days before the date by which Plaintiff is required to file his Motion for Final Approval, the Settlement Administrator will provide to Class Counsel and Defense Counsel a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of opt-out requests from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Settlement Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.
- 14.1.4 Within 10 days after the Settlement Administrator disburses all funds in the GSA, the Settlement Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Settlement Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

14.2 Identification of Class Members.

- 14.2.1 Within 21 calendar days of the entry of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the following Class Data, to the extent that it possesses the information.
- (1) the names, last known addresses, last known telephone numbers, and Social Security Number of each Class Member;
 - (2) dates of employment for each Class Member during the Class Period;

- (3) the number of workweeks worked by each Class Member during the Class Period; and
- (4) the number of workweeks worked by each PAGA Member during the PAGA Period.
- (5) To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Settlement Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Settlement Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

- 14.2.2 Upon its receipt of the Class Data, the Settlement Administrator shall access the National Change of Address ("NCOA") Database, and update the addresses.
- 14.2.3 No later than 10 calendar days after receipt of the Class Data, the Settlement Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, and workweeks in the Class Data.
- 14.2.4 The Settlement Administrator shall provide the Notice Packet by first class mail, forwarding requested, to the Class Members at the addresses identified through the process described above. This mailing shall occur no later than 35 calendar days after the entry of the Preliminary Approval Order. The first page of the Class Notice shall estimate the dollar amounts of any Class Member Payment and/or PAGA Member Payment payable to the Settlement Class Member, and the number of workweeks used to calculate these amounts.
- 14.2.5 As to any Notice Packets that are returned as undeliverable within 5 calendar days after the date of the initial mailing or where the NCOA Database indicates that the last known address of any Class Member is invalid or otherwise undeliverable, the Settlement Administrator shall perform one-skip trace procedure. Such skip-trace procedure shall be performed within two business days of the date on which the Settlement Administrator is informed that a Notice Packet is undeliverable. If this procedure reveals a new address, the Settlement Administrator shall within five business days thereafter re-mail the Notice Packet to the new address.
- 14.2.6 If Defendant and the Settlement Administrator determine, based upon further review of available data, that a person previously identified as being a Class Member or PAGA Member should not be so included or identify a person who should have been included as a Class Member or a PAGA Member but was not so included, Defendant and the Settlement Administrator shall promptly delete or add such person as appropriate and immediately notify Class Counsel prior to such deletions or additions (and the reasons therefore).

14.2.7 If the Settlement Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Settlement Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

14.2.8 Other than the obligations set forth in this Settlement Agreement, Defendant shall have no additional obligation to identify or locate any Class Member or PAGA Member or have any liability in connection with the provision of information to the Settlement Administrator or otherwise.

14.3 Class Settlement Notice and Notification of Workweeks.

14.3.1 Class Settlement Notice for Persons Identified as Class Members. The Class Settlement Notice shall be a pre-printed notice, in substantially the form attached hereto as **Exhibit A** and to be approved by the Court. In addition to other information contained on the Class Settlement Notice, the Class Settlement Notice shall state: (1) the number of workweeks that the Class Member worked in California during the Class Period; (2) and the number of workweeks that the PAGA Member worked in California during the PAGA Period. The workweeks worked shall be determined according to Defendant's records. The Class Settlement Notice also shall include an estimate of the Class Member's individual Class Member Payment and an explanation of the pro rata distribution formula.

14.3.1.1 A Class Member may challenge the workweeks worked by communicating with the Settlement Administrator via fax, email or mail. The Settlement Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Settlement Administrator is entitled to presume that the workweeks worked contained in the Class Notice are correct so long as they are consistent with the Class Data. The Parties are entitled to respond to a Class Member's challenge and submit documentation or information supporting their view of the workweeks worked by the Class Member. The Settlement Administrator's determination of each Class Member's allocation of workweeks worked shall be final and not appealable or otherwise susceptible to challenge. The Settlement Administrator shall promptly provide copies of all challenges to calculation of workweeks to Defense Counsel and Class Counsel and the Settlement Administrator's determination of the challenges.

15. **Objections to the Settlement.**

Any Class Member who does not submit a valid and timely request to opt out of the settlement (i.e., a Settlement Class Member) may object to the Settlement. Any Settlement Class Member who wishes to object to the Settlement must submit a written objection, by U.S. mail, to the Settlement Administrator no later than the Response Deadline. The objection must include the case name and number and must set forth, in clear and concise terms, a statement of the reasons why the objector believes that the Court should find

that the Settlement is not in the best interest of the Class Members and the reasons why the Settlement should not be approved, including the legal and factual arguments supporting the objection. The Settlement Administrator will promptly serve copies of any objection or notice of intention to appear on Class Counsel and Defense Counsel. Settlement Class Members shall be entitled to appear and/or object at the Final Approval Hearing regardless of whether they have submitted a timely written objection and notice of intention to appear pursuant to this Section. Settlement Class Members may appear at the Final Approval Hearing, either in person or through a lawyer retained at their own expense.

16. Right to Opt Out.

- 16.1 Class Members who do not timely opt out of the Settlement will be deemed to participate in the Settlement and shall become a Settlement Class Member without having to submit a claim form or take any other action. In order to opt out of the Settlement, the Class Member must timely submit by mail, an opt-request request to the Settlement Administrator by the Response Deadline. The opt-out request should state the Class Member's name, address, telephone number, last four (4) digits of Social Security Number, and signature. However, the Settlement Administrator may not reject an opt-out request as invalid because it fails to contain all the information specified in the Class Notice. The Settlement Administrator shall accept any opt-out request as valid if the Settlement Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Settlement Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Settlement Administrator has reason to question the authenticity of an opt-out request, the Settlement Administrator may demand additional proof of the Class Member's identity. The Settlement Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 16.2 Any opt-out request that is not postmarked by the Response Deadline will be invalid. In the event that, prior to the Response Deadline, any Class Notice mailed to a Class Member is returned as having been undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace search and seek an address correction for such Class Member(s), and a second Class Notice will be sent to any new or different address obtained. Such Class Member(s) shall have an additional 15 days in which to opt out. Class Members who opt out of the Settlement pursuant to the terms of this Agreement shall not be permitted to object to the Settlement or appeal and shall not receive any Class Member Payment from the Net Settlement Amount. Class Members who opt out also shall not be bound by the Class Release provisions in this Agreement or the Final Approval Order. However, PAGA Members cannot opt out of the Release by PAGA Members, and will be bound by that release, regardless of whether they opt out of the Release by Settlement Class Members. Each Class Member who does not opt out of the Settlement shall remain qualified to receive a Class Member Payment and shall be subject to being bound by the applicable Released Class Claims provisions in this Agreement or the Final Approval Order, regardless of whether the Class Member actually receives the Class Notice or objects to the Settlement.
- 16.3 Except for persons who elect to opt out of the Class in the manner and within the time limits specified above and in the Class Settlement Notice, all Class Members shall be deemed to be within the Class for all purposes under this Settlement Agreement, shall be bound by the terms and conditions of this Settlement Agreement (including the release provisions in Paragraph 13), including all orders issued pursuant thereto, and shall be deemed to have waived all unstated objections and unstated opposition to the fairness, reasonableness, and adequacy of this Settlement Agreement, and any of its terms. PAGA Members do not have

the right to opt out of the portion of the Agreement that applies to the PAGA Member Payment or the Released PAGA Claims.

16.4 If the Settlement Agreement is given final approval, the Effective Date occurs, and Defendant has fully funded the GSA as well as employer taxes, it shall operate as a full, complete, and final release of all Plaintiff's Released Claims, and all Released Class Claims and Released PAGA Claims and as an effective covenant not to sue.

17. Payment of Settlement Proceeds.

17.1 Payments to the Settlement Class Members. Class Member Payments to Settlement Class Members shall occur no later than 45 calendar days after the Effective Date.

18. Application for Preliminary Approval Order.

After the Parties' execution of this Agreement, Plaintiff shall file for preliminary approval of the proposed Settlement, requesting a Preliminary Approval Order that contains the following provisions:

- (1) preliminarily approving the Settlement Agreement and its terms;
- (2) approving the form of the Class Settlement Notice, and finding that the proposed method of disseminating the Class Settlement Notice meets the requirements of due process and is the best notice practicable under the circumstances;
- (3) establishing the procedures and the deadline by which Class Members may assert objections to the Settlement or opt out of the Settlement;
- (4) establishing a deadline to submit papers/briefing in response to any objections and for Plaintiff to submit papers/briefing in support of final approval of the Settlement Agreement including the Service Award for the Class Representative and the Class Counsel Fees and Costs Award;
- (5) appointing Class Counsel, the Settlement Administrator, and the Class Representative; and
- (6) setting a date for the Fairness Hearing.

Counsel for Defendant will be given an opportunity to comment on said motion prior to filing, and such comments shall be implemented to the extent they are deemed reasonable by Plaintiff and Class Counsel.

19. Final Approval Order and Judgment.

If the Settlement shall be finally approved by the Court following the Fairness Hearing, the Parties hereto shall jointly request that the Court enter a Final Approval Order and Judgment, which includes the following provisions:

- (1) confirming certification of the Settlement Class for settlement purposes;
- (2) finding that the dissemination of the Class Notice, in the form and manner ordered by the Court was accomplished as directed, and met the requirements of due process;
- (3) finally approving the Settlement Agreement and the Settlement as fair, reasonable and adequate and directing consummation of the Settlement in accordance with its terms and

provisions, including the terms of the Settlement Agreement that pertain to the PAGA Amount and the Released PAGA Claims;

19. Effect of Settlement Not Being Final.

In the event that the Settlement does not become Final then the Settlement Agreement shall become null and void, and all negotiations, proceedings, and statements relating thereto shall be without prejudice as to the rights of any and all Parties hereto, and all Parties and their respective predecessors and successors shall be deemed to have reverted to their respective positions in the Action as of the date and time immediately prior to the execution of this Settlement Agreement, and shall retain all rights to make all arguments regarding the merits of the claims and the appropriateness of the case for class and/or representative action treatment. If the Court does not approve either preliminarily or finally any material term or condition of the Settlement Agreement, or if the Court effects a material change to the Settlement, then this entire Settlement Agreement will be, at the Parties' discretion, voidable and unenforceable. Notwithstanding the foregoing, the Parties shall meet and confer to address any concerns the Court may have regarding the Settlement, including revisions to this Agreement as requested by the Court and agreed by the Parties, additional briefing, and additional declarations, among other things.

20. Tolerance of Requests to Opt Out.

Notwithstanding any other provision of this Settlement Agreement, Defendant shall retain the right, in the exercise of their sole discretion, to nullify the Settlement within 15 business days after expiration of the Response Deadline, if twenty or more Class Members choose to validly and timely request to opt out of this Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void *ab initio*, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Settlement Agreement; provided, however, the withdrawing Defendant will remain responsible for paying all Settlement Administration Costs incurred through the date of nullification. Defendant shall notify Class Counsel of its decision to nullify no later than 25 calendar days after expiration of the Opt-Out Deadline.

21. No Admissions.

The Parties understand and agree that this Settlement Agreement is the result of a good faith compromise settlement of disputed claims, and no part of this Settlement Agreement or any conduct or written or oral statements made in connection with this Settlement and this Settlement Agreement, whether or not the Settlement is finally approved and/or consummated, may be offered as or construed to be an admission or concession of any kind by Defendant, or any of the Class Members, Released Parties, or Plaintiff. This Settlement and this Settlement Agreement shall not constitute an admission on behalf of Defendant of any form of liability or the accuracy of any allegation made by Plaintiff or Class Counsel.

22. Waiver of Right to Appeal.

Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees and Costs Award reflected set forth in this Settlement, the Parties, their respective counsel, and all Settlement Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final.

23. Amended Judgment.

If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

24. Avoidance of Undue Publicity.

The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or have any communication with the press about the fact, amount or terms of the settlement. If counsel for any party receives an inquiry about the Settlement from the media, counsel may respond only after the motion for preliminary approval has been filed and only by confirming the accurate terms of the Settlement. Class Counsel agrees not to identify Defendant in any way in any website, blog, article, or social media. Nothing in this provision shall prevent Defendant from making any required disclosure or Class Counsel from referencing the Settlement in adequacy filings. Nothing in this Settlement Agreement shall preclude Class Counsel from communicating with members of the Settlement Class about the Agreement or in submitting filings with the Court or the LWDA in furtherance of obtaining approval of the Settlement. After the Effective Date, Class Counsel may state on their website that the case has been settled and provide a short and plain description of the claims that were settled, subject to Defendant's approval. Nor shall anything herein restrict Class Counsel from including publicly available information regarding this Settlement in future judicial submissions regarding Class Counsel's qualifications and experience or otherwise allowing the Judgment to become known to Class Members.

25. Extensions of Time.

Without further order of the Court, the Parties hereto may agree in writing to reasonable extensions of time to carry out any of the provisions of the Settlement.

26. Construction.

This Settlement Agreement was entered into after substantial good faith, arms-length negotiations between the Parties' counsel. This Settlement Agreement has been entered into without any coercion and under no duress. The Parties acknowledge and agree that all Parties had an equal hand in drafting this Settlement Agreement so that it shall not be deemed to have been prepared or drafted by one party or another.

27. Good Faith.

The Parties to this Settlement Agreement agree that it reflects their good faith compromise of the claims raised in the Action, or those that could have been raised in the Action, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel. The Parties to this Settlement Agreement pledge their good faith and fair dealing in supporting the approval of this Settlement by the Court, are represented by competent counsel, and have had an opportunity to consult with counsel prior to execution of this Settlement Agreement.

28. Due Authority of Attorneys.

Each of the attorneys executing this Settlement Agreement on behalf of one or more Parties hereto warrants and represents that he or she has been duly authorized and empowered to execute this Settlement Agreement on behalf of each such respective Party and to bind them to the terms hereof.

29. Entire Agreement.

This Settlement Agreement (including all Exhibits hereto) sets forth the entire agreement of the Parties with respect to its subject matter and supersedes any and all other prior agreements and all negotiations leading up to the execution of this Settlement Agreement, whether oral or written, regarding the subjects covered herein. The Parties acknowledge that no representations, inducements, warranties, promises, or statements relating to the subjects covered herein, oral or otherwise, have been made by any of the Parties which are not embodied or incorporated by reference herein.

30. Modification or Amendment.

This Settlement Agreement may not be modified or amended except in a writing signed by all signatories hereto or their successors in interest.

31. Successors.

This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors and assigns, and upon any corporation, partnership or other entity into or with which any Party hereto may merge, combine or consolidate.

32. Counterparts.

This Settlement Agreement may be executed in counterparts, by facsimile or electronically, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

33. Waivers.

The waiver by any Party of any breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

34. Governing Law.

This Settlement Agreement shall be governed by and construed, enforced, and administered in accordance with the internal laws of the State of California.

35. Headings.

The headings contained in this Settlement Agreement are for convenience and reference purposes only, and shall not be given weight in its construction.

36. Continuing Jurisdiction.

The Court in which the Parties will seek approval of the Settlement shall retain continuing jurisdiction over the Action to ensure the continuing implementation and enforcement of the provisions of this Settlement Agreement under applicable law, including, but not limited to, California Code of Civil section 664.6.

37. Notices.

Any notices, requests, demands, or other communications required or permitted to be given pursuant to this Settlement Agreement, other than notice to the Class or Class Members, shall be in writing and mailed or emailed as follows: (1) to Class Representative, the Class, and Class Counsel to the attention of David

Bibiyon, Bibiyon Law Group, 8484 Wilshire Blvd., Suite 500, Beverly Hills, California, 90211, (310) 438-5555, david@tomorrowlaw.com, and vedang@tomorrowlaw.com or any alternative address provided; (2) to Defendant and counsel for Defendant, to the attention of David D. Jacobson, Seyfarth Shaw LLP, 2029 Century Park East, Suite 3500, Los Angeles, California 90067-3021, (310) 277-7200, djacobson@seyfarth.com or any alternative address provided.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by and on behalf of the Parties, as follows:

Dated: Jul 17, 2023

By: *Rodney Jordan*
Rodney Jordan (Jul 17, 2023 15:31 PDT)

Rodney Albert Jordan
On behalf of himself, as Plaintiff, and the Class, and as a private attorney general on behalf of the State of California

Dated: _____

By: _____

The Martin-Brower Company, L.L.C.

Approved:

Dated: July 20, 2023

By: *Vedang J. Patel*

David Bibiyon
Vedang J. Patel
Counsel for Plaintiff Rodney Albert Jordan

Dated: _____

By: _____

David D. Jacobson
Counsel for Defendant The Martin-Brower Company, L.L.C.

Bibiyon, Bibiyon Law Group, 8484 Wilshire Blvd., Suite 500, Beverly Hills, California, 90211, (310) 438-5555, david@tomorrowlaw.com, and vedang@tomorrowlaw.com or any alternative address provided; (2) to Defendant and counsel for Defendant, to the attention of David D. Jacobson, Seyfarth Shaw LLP, 2029 Century Park East, Suite 3500, Los Angeles, California 90067-3021, (310) 277-7200, djacobson@seyfarth.com or any alternative address provided.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by and on behalf of the Parties, as follows:

Dated:

By: _

Rodney Albert Jordan

On behalf of himself, as Plaintiff, and the Class, and as a private attorney general on behalf of the State of California

Dated: July 13, 2023

By: _



The Martin-Brower Company, L.L.C.

Approved:

Dated:

By: _____

David Bibiyon

Vedang J. Patel

Counsel for Plaintiff Rodney Albert Jordan

Dated: July 13, 2023

By: _



David D. Jacobson

Counsel for Defendant The Martin-Brower Company, L.L.C.