

1 **BIBIYAN LAW GROUP**

2 David D. Bibiyán (Cal. Bar No. 287811)

3 *david@tomorrowlaw.com*

4 Jeffrey D. Klein (Cal. Bar No. 297296)

5 *jeff@tomorrowlaw.com*

6 Vedang J. Patel (Cal. Bar No. 328647)

7 *vedang@tomorrowlaw.com*

8 8484 Wilshire Blvd., Suite 500

9 Los Angeles, California 90211

10 Telephone: (310) 438-5555 Facsimile: (310) 300-1705

11 Attorneys for Plaintiff, ALEJANDRO FERRER,
12 on behalf of himself and all others similarly situated

13 Christina T. Tellado (SBN 298597)

14 Samuel J. Stone (SBN 317013)

15 **HOLLAND & KNIGHT LLP**

16 400 South Hope Street, 8th Floor

17 Los Angeles, CA 90071

18 Telephone: 213.896.2400

19 Fax: 213.896.2450

20 E-mail: christina.tellado@hkllaw.com

21 sam.stone @hkllaw.com

22 Attorneys for Defendants, INEOS USA, LLC
23 and TONY COCKRAM

24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

25 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

26 ALEJANDRO FERRER, an individual and
27 on behalf of all others similarly situated,

28 Plaintiff,

v.

INEOS USA, LLC., a Delaware limited
liability company; TONY COCKRAM, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 21STCV28076

[Assigned to the Hon. Elihu M. Berle in
Dept. 6]

**CLASS ACTION SETTLEMENT
AGREEMENT**

Action Filed: July 30, 2021

Trial Date: None Set

1 This Class Action Settlement Agreement (“Settlement,” “Agreement,” or “Settlement
2 Agreement”) is made by and between plaintiff Alejandro Ferrer (“Plaintiff”) and defendants
3 Ineos USA, LLC (“Ineos”), and Tony Cockram (“Mr. Cockram,” collectively with Ineos, the
4 “Defendants”). The Agreement refers to Plaintiff and Defendants collectively as “Parties” or
5 individually as “Party.”

6 **1. DEFINITIONS**

7 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations
8 against Defendants, captioned *Alejandro Ferrer v. Ineos USA, LLC, et al.*,
9 initiated on July 30, 2021 and pending in Superior Court of the State of California,
10 County of Los Angeles.

11 1.2. “Administrator” means Phoenix Settlement Administrators (“Phoenix”),
12 the neutral entity the Parties have agreed to appoint to administer the Settlement.

13 1.3. “Administration Expenses Payment” means the amount the Administrator
14 will be paid from the Gross Settlement Amount to reimburse its reasonable fees
15 and expenses in accordance with the Administrator’s “not to exceed” bid
16 submitted to the Court in connection with the Preliminary Approval of the
17 Settlement.

18 1.4. “Class” means all persons currently or formerly employed by Defendants
19 in California and classified as non-exempt, hourly-paid employees who worked
20 for Defendants during the Class Period.

21 1.5. “Class Counsel” means David D. Bibiyan and Jeffrey D. Klein of Bibiyan
22 Law Group, LLC.

23 1.6. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses
24 Payment” mean the amounts allocated to Class Counsel for reimbursement of
25 reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the
26 Action.

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- 1 1.7. “Class Data” means Class Member’s identifying information in
2 Defendants’ possession including the Class Member’s name, last-known mailing
3 address, Social Security number, hire dates, termination dates (as applicable) and
4 re-hire dates (as applicable), and Class Period Workweeks.
- 5 1.8. “Class Member” or “Settlement Class Member” means a member of the
6 Class, as either a Participating Class Member or Non-Participating Class Member.
- 7 1.9. “Class Member Address Search” means the Administrator’s investigation
8 and search for current Class Member mailing addresses using all reasonably
9 available sources, methods and means including, but not limited to, the National
10 Change of Address database, skip traces and direct contact by the Administrator
11 with Class Members.
- 12 1.10. “Class Notice” means the COURT APPROVED NOTICE OF CLASS
13 ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT
14 APPROVAL, to be mailed to Class Members in English and in Spanish in the
15 form, without material variation, attached as Exhibit “A” and incorporated by
16 reference into this Agreement.
- 17 1.11. “Class Period” means the period from July 30, 2017 through June 5, 2023.
- 18 1.12. “Class Representative” means the named Plaintiff in the operative
19 complaint in the Action seeking Court approval to serve as a Class Representative.
- 20 1.13. “Class Representative Service Payment” means the payment to the Class
21 Representative for initiating the Action and providing services in support of the
22 Action.
- 23 1.14. “Court” means the Superior Court of California, County of Los Angeles.
- 24 1.15. “Defendants” means the named defendants Ineos USA, LLC (“Ineos”),
25 and Tony Cockram.
- 26 1.16. “Defense Counsel” means Christina T. Tellado and Samuel J. Stone of
27 Holland and Knight, LLP.
- 28

1 1.17. “Effective Date” means the date by when both of the following have
2 occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of
3 the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest
4 of the following occurrences: (a) if no Participating Class Member objects to the
5 Settlement, the day the Court enters Judgment; (b) if one or more Participating
6 Class Members objects to the Settlement, the day after the deadline for filing a
7 notice of appeal from the Judgment; or if a timely appeal from the Judgment is
8 filed, the day after the appellate court affirms the Judgment and issues a remittitur.

9 1.18. “Final Approval” means the Court’s order granting final approval of the
10 Settlement.

11 1.19. “Final Approval Hearing” means the Court’s hearing on the Motion for
12 Final Approval of the Settlement.

13 1.20. “Final Judgment” means the Judgment entered by the Court upon granting
14 Final Approval of the Settlement.

15 1.21. “Gross Settlement Amount” means Three Hundred Thousand Dollars and
16 Zero Cent (\$300,000.00), which is the total amount Defendants agree to pay under
17 the settlement except as provided in Paragraph 8.1 below. The Gross Settlement
18 Amount will be used to pay Individual Class Payments, Class Representative
19 Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
20 Expenses Payment, and the Administrator’s Expenses.

21 1.22. “Individual Class Payment” means the Participating Class Member’s pro
22 rata share of the Net Settlement Amount calculated according to the number of
23 Workweeks worked during the Class Period.

24 1.23. “Judgment” means the judgment entered by the Court based upon the Final
25 Approval.

26 1.24. “Net Settlement Amount” means the Gross Settlement Amount, less the
27 following payments in the amounts approved by the Court: Class Representative
28 Service Payment, Class Counsel Fees Payment, Class Counsel Litigation

1 Expenses Payment and the Administration Expenses Payment. The remainder is
2 to be paid to Participating Class Members as Individual Class Payments.

3 1.25. "Non-Participating Class Member" means any Class Member who opts
4 out of the Settlement by sending the Administrator a valid and timely Request for
5 Exclusion.

6 1.26. "Participating Class Member" means a Class Member who does not
7 submit a valid and timely Request for Exclusion from the Settlement.

8 1.27. "Plaintiff" means Alejandro Ferrer, the named Plaintiff in the Action.

9 1.28. "Preliminary Approval" means the Court's Order Granting Preliminary
10 Approval of the Settlement.

11 1.29. "Preliminary Approval Order" means the proposed Order Granting
12 Preliminary Approval of the Settlement.

13 1.30. "Released Class Claims" means the claims being released as described in
14 Paragraph 5.2 below.

15 1.31. "Released Parties" means: Defendants and each of its former and present
16 directors, officers, shareholders, owners, members, attorneys, insurers,
17 predecessors, successors, assigns, subsidiaries, and affiliates.

18 1.32. "Request for Exclusion" means a Class Member's submission of a written
19 request to be excluded from the Class Settlement signed by the Class Member.

20 1.33. "Response Deadline" means forty-five (45) days after the Administrator
21 mails Notice to Class Members and shall be the last date on which Class Members
22 may: (a) mail Requests for Exclusion from the Settlement, or (b) mail his or her
23 Objection to the Settlement. Class Members to whom Notice Packets are resent
24 after having been returned undeliverable to the Administrator shall have an
25 additional fifteen (15) days beyond the Response Deadline has expired.

26 1.34. "Settlement" means the disposition of the Action effected by this
27 Agreement and the Judgment.
28

1 1.35. “Workweek” means any week during which a Class Member worked for
2 Defendants in a non-exempt, hourly-paid position during the Class Period in
3 California, based on hire dates, re-hire dates (as applicable) and termination dates
4 (as applicable).

5 **2. RECITALS**

6 2.1. On July 30, 2021, Plaintiff commenced this Action by filing a Complaint
7 alleging causes of action against Defendants for: (1) failure to pay overtime
8 wages; (2) failure to pay minimum wages; (3) failure to provide meal periods or
9 compensation in lieu thereof; (4) failure to provide rest periods or compensation
10 in lieu thereof; (5) failure to timely pay wages during employment; (6) failure to
11 indemnify for business expenses; (7) failure to pay for unused vested vacation
12 time; (8) engaging in unfair competition within the meaning of Business and
13 Professions Code section 17200 arising out of Labor Code violations referenced
14 in the Complaint. The Complaint is the operative complaint in the Action (the
15 “Operative Complaint”). Defendants deny the allegations in the Operative
16 Complaint, deny any failure to comply with the laws identified in the Operative
17 Complaint, and deny any and all liability for the causes of action alleged.

18 2.2. On December 14, 2022, the Parties participated in an all-day mediation
19 presided over by Jeffrey A. Ross, Esquire, which led to this Agreement to settle
20 the Action.

21 2.3. Prior to mediation, Plaintiff obtained, through informal discovery: (1) time
22 and payroll records for all of 38 Class Members; (2) class data points, including
23 average rates of pay, and the total hours and the number of pay periods worked by
24 Class Members during the Class Period, and the number of Class Members
25 separated from employment in the waiting time penalty period; (3) all relevant
26 policy document; and (4) Defendants’ Collective Bargaining Agreement with the
27 relevant employee union. Plaintiff’s investigation was sufficient to satisfy the
28 criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48

1 Cal. App. 4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc. Foot Locker Retail,*
2 *Inc.* (2008) 168 Cal. App. 4th 116, 129-130 (*Dunk/Kullar*).

3 2.4. The Court has not granted class certification.

4 2.5. The Parties, Class Counsel and Defense Counsel represent that they are
5 not aware of any other pending matter or action asserting claims that will be
6 extinguished or affected by the Settlement.

7 **3. MONETARY TERMS**

8 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8.1
9 below, Defendant Ineos promises to pay \$300,000.00 and no more as the Gross
10 Settlement Amount, and to separately pay any and all employer payroll taxes
11 owed on the Wage Portions of the Individual Class Payments. Defendant Ineos
12 has no obligation to pay the Gross Settlement Amount or any payroll taxes prior
13 to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will
14 disburse the entire Gross Settlement Amount without asking or requiring
15 Participating Class Members or Aggrieved Employees to submit any claim as a
16 condition of payment. None of the Gross Settlement Amount will revert to
17 Defendants.

18 3.2. Payments from the Gross Settlement Amount. The Administrator will
19 make and deduct the following payments from the Gross Settlement Amount, in
20 the amounts specified by the Court in the Final Approval:

21 3.2.1 To Plaintiff: Class Representative Service Payment to the Class
22 Representative of not more than \$7,500.00 in addition to any Individual
23 Class Payment the Class Representative is entitled to receive as a
24 Participating Class Member. Defendants will not oppose Plaintiff's request
25 for a Class Representative Service Payment that does not exceed this
26 amount. As part of the motion for Class Counsel Fees Payment and Class
27 Litigation Expenses Payment, Plaintiff will seek Court approval for any
28 Class Representative Service Payment no later than 16 court days prior to

1 the Final Approval Hearing. If the Court approves a Class Representative
2 Service Payment less than the amount requested, the Administrator will
3 retain the remainder in the Net Settlement Amount. The Administrator will
4 pay the Class Representative Service Payment using IRS Form 1099.
5 Plaintiff assumes full responsibility and liability for employee taxes owed
6 on the Class Representative Service Payment.

7 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than
8 35% of the Gross Settlement Amount, which is currently estimated to be
9 \$105,000.00 unless increased pursuant to paragraph 8.1 of this Agreement,
10 and a Class Counsel Litigation Expenses Payment of not more than
11 \$25,000.00. Defendants will not oppose requests for these payments
12 provided that do not exceed these amounts. Class Counsel will file a
13 motion for Class Counsel Fees Payment and a Class Litigation Expenses
14 Payment no later than 16 court days prior to the final Approval Hearing. If
15 the Court approves the Class Counsel Fees Payment and/or Class Counsel
16 Litigation Expenses Payment less than the amounts requested, the
17 Administrator will allocate the remainder to the Net Settlement Amount.
18 Released Parties shall have no liability to Class Counsel or any other
19 Plaintiff's Counsel arising from any claim to any portion of any Class
20 Counsel Fees Payment and/or Class Counsel Litigation Expenses
21 Payment. The Administrator will pay the Class Counsel Fees Payment and
22 Class Counsel Litigation Expenses Payment using one or more IRS 1099
23 Forms. Class Counsel assumes full responsibility and liability for taxes
24 owed on the Class Counsel Fees Payment and the Class Counsel Litigation
25 Expenses Payment and holds Defendants harmless, and indemnifies
26 Defendants, from any dispute or controversy regarding any division or
27 sharing of any of these payments. There will be no additional charge of
28 any kind to either the Class Members or request for additional

1 consideration from Defendants for such work unless, Defendants
2 materially breach this Agreement, including any term regarding funding,
3 and further efforts are necessary from Class Counsel to remedy said
4 breach, including, without limitation, moving the Court to enforce the
5 Agreement. Should the Court approve attorney's fees and/or litigation
6 costs and expenses in amounts that are less than the amounts provided for
7 herein, then the unapproved portion(s) shall be part of the Net Settlement
8 Amount.

9 3.2.3. To the Administrator: An Administrator Expenses Payment not to
10 exceed \$4,795 except for a showing of good cause and as approved by the
11 Court. To the extent the Administration Expenses are less or the Court
12 approves payment less than \$4,795, the Administrator will retain the
13 remainder in the Net Settlement Amount.

14 3.2.4. To Each Participating Class Member: An Individual Class Payment
15 calculated by (a) dividing the Net Settlement Amount by the total number
16 of Workweeks worked by all Participating Class Members during the Class
17 Period and (b) multiplying the result by each Participating Class Member's
18 Workweeks.

19 3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each
20 Participating Class Member's Individual Class Payment will be
21 allocated to settlement of wage claims (the "Wage Portion"). The
22 Wage Portions are subject to tax withholding and will be reported
23 on an IRS W-2 Form. The 80% of each Participating Class
24 Member's Individual Class Payment will be allocated to
25 settlement of claims for interest and penalties (the "Non-Wage
26 Portion"). The Non-Wage Portions are not subject to wage
27 withholdings and will be reported on IRS 1099 Forms.
28 Participating Class Members assume full responsibility and

1 liability for any employee taxes owed on their Individual Class
2 Payment.

3 3.2.4.2. Effect of Non-Participating Class Members on
4 Calculation of Individual Class Payments. Non-Participating
5 Class Members will not receive any Individual Class Payments.
6 The Administrator will retain amounts equal to their Individual
7 Class Payments in the Net Settlement Amount for distribution to
8 Participating Class Members on a pro rata basis.

9 **4. SETTLEMENT FUNDING AND PAYMENTS**

10 4.1. Class Workweeks. As of the date of mediation (December 14, 2022),
11 Defendants estimate there are 38 Class Members who collectively work a total of
12 7,705 Workweeks.

13 4.2. Class Data. Not later than ten (10) days after the Court grants Preliminary
14 Approval of the Settlement, Defendants will deliver the Class Data to the
15 Administrator in the form of a Microsoft Excel spreadsheet. To protect Class
16 Members' privacy rights, the Administrator must maintain the Class Data in
17 confidence, use the Class Data only for purposes of this Settlement and for no
18 other purpose, and restrict access to the Class Data to Administrator's employees
19 who need access to the Class Data to effect and perform under this Agreement.
20 Defendants shall notify Class Counsel if they discover that the Class Data omitted
21 class member identifying information and will provide corrected or updated Class
22 Data to the Administrator as soon as reasonably feasible. Without any extension
23 of the deadline by which Defendants must send the Class Data to the
24 Administrator, the Parties and their counsel will expeditiously use best efforts, in
25 good faith, to reconstruct or otherwise resolve any issues related to missing or
26 omitted Class Data.

27 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the
28 Gross Settlement Amount, and also fund the amounts necessary to fully pay

1 Defendants' share of payroll taxes by transmitting the funds to the Administrator
2 no later than 14 days after the Effective Date.

3 4.4. Payments from the Gross Settlement Amount. Within fourteen (14) days
4 after Defendants fund the Gross Settlement Amount, the Administrator will mail
5 checks for all Individual Class Payments, the Administration Expenses Payment,
6 the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment
7 and the Class Representative Service Payment. Disbursement of the Class
8 Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the
9 Class Representative Service Payment shall not precede disbursement of
10 Individual Class Payments.

11 4.4.1. The Administrator will issue checks for the Individual Class
12 Payments and send them to the Class Members via First Class U.S. Mail,
13 postage prepaid. The face of each check shall prominently state the date
14 (not less than 180 days after the date of mailing) when the check will be
15 voided. The Administrator will cancel all checks not cashed by the void
16 date. The Administrator will send checks for Individual Settlement
17 Payments to all Participating Class Members (including those for whom
18 Class Notice was returned undelivered). Before mailing any checks, the
19 Settlement Administrator must update the recipients' mailing addresses
20 using the National Change of Address Database.

21 4.4.2. The Administrator must conduct a Class Member Address Search
22 for all other Class Members whose checks are returned undelivered
23 without USPS forwarding address. Within seven (7) days of receiving a
24 returned check, the Administrator must re-mail checks to the USPS
25 forwarding address provided or to an address ascertained through the Class
26 Member Address Search. The Administrator need not take further steps to
27 deliver checks to Class Members whose re-mailed checks are returned as
28 undelivered. The Administrator shall promptly send a replacement check

1 to any Class Member whose original check was lost or misplaced,
2 requested by the Class Member prior to the void date.

3 4.4.3. For any Class Member whose Individual Class Payment check is
4 uncashed and cancelled after the void date, the Administrator shall
5 transmit the funds represented by such checks to Legal Aid at Work (“Cy
6 Pres Recipient”), located at 180 Montgomery Street, Suite 600, San
7 Francisco, CA 94104, for use in the County of Los Angeles, pursuant to
8 Code of Civil Procedure Section 384, subd. (b). The Parties, Class Counsel
9 and Defense Counsel represent that they have no interest or relationship,
10 financial or otherwise, with the intended Cy Pres Recipient.

11 4.4.4. The payment of Individual Class Payments shall not obligate
12 Defendants to confer any additional benefits or make any additional
13 payments to Class Members (such as 401(k) contributions or bonuses)
14 beyond those specified in this Agreement.

15 **5. RELEASE OF CLAIMS.** Effective on the date when Defendants fully fund the entire
16 Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion
17 of the Individual Class Payments, Plaintiff, Class Members and Class Counsel will release
18 claims against all Released Parties as follows:

19 5.1. Plaintiff’s Release. Plaintiff and his or her respective former and present
20 spouses, representatives, agents, attorneys, heirs, administrators, successors and
21 assigns generally release and discharge Released Parties from all claims,
22 transactions or occurrences that occurred during the Class Period, including, but
23 not limited to, all claims that were, or reasonably could have been, alleged, based
24 on the facts contained in the Operative Complaint, or ascertained during the
25 Action, including, but not limited to, all claims and code sections identified and
26 released under Section 5.2 (“Plaintiff’s Release”). Plaintiff’s Release does not
27 extend to any claims or actions to enforce this Agreement, or to any claims for
28 vested benefits, unemployment benefits, disability benefits, social security

1 benefits, workers' compensation benefits that arose at any time, or based on
2 occurrences outside the Class Period. Plaintiff acknowledges that he may discover
3 facts or law different from, or in addition to, the facts or law that he now knows
4 or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and
5 remain effective in all respects, notwithstanding such different or additional facts
6 or his discovery of them.

7 5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section
8 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and
9 relinquishes the provisions, rights and benefits, if any, of section 1542 of
10 the California Civil Code, which reads:

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

15 5.2. Release by Participating Class Members: All Participating Class Members,
16 on behalf of themselves and their respective former and present representatives,
17 agents, attorneys, heirs, administrators, successors and assigns, release Released
18 Parties from all claims that were alleged or reasonably could have been alleged
19 based on the Class Period facts stated in the Operative Complaint, including: (1)
20 any and all claims involving any alleged failure to pay overtime wages (including
21 without limitation Labor Code sections 510, 1194, and 1199 and the applicable
22 IWC Wage Orders); (2) any and all claims involving any alleged failure to pay
23 minimum wages (including without limitation Labor Code sections 1197, 1199,
24 218.6, 1194, 1194.2, and the applicable IWC Wage Orders); (3) any and all claims
25 involving any alleged failure to provide meal periods or compensation in lieu
26 thereof (including without limitation Labor Code sections 512, 226, 226.7, and
27 the applicable IWC Wage Orders); (4) any and all claims involving any alleged
28 failure to provide rest periods or compensation in lieu thereof (including without

1 limitation Labor Code sections 226, 226.7, and the applicable IWC Wage Orders);
2 (5) any and all claims involving any alleged failure to timely pay wages during
3 employment (including without limitation Labor Code sections 204, 210, 218.6,
4 and the applicable IWC Wage Orders); (6) any and all claims involving any
5 alleged failure to indemnify for business expenses (including without limitation
6 Labor Code section 2802); (7) any and all claims involving any alleged failure to
7 pay for unused vested vacation time (including without limitation Labor Code
8 sections 227.3); (8) any and all claims involving any alleged engaging in unfair
9 competition within the meaning of Business and Professions Code section 17200
10 arising out of Labor Code violations referenced in the Complaint.

11 5.3 Except as set forth in Section 5.2 of this Agreement, Participating Class
12 Members do not release any other claims, including claims for vested benefits,
13 wrongful termination, violation of the Fair Employment and Housing Act,
14 unemployment insurance, disability, social security, workers' compensation, or
15 claims based on facts occurring outside the Class Period.

16 **6. MOTION FOR PRELIMINARY APPROVAL.** Plaintiff shall prepare and file a motion
17 for preliminary approval ("Motion for Preliminary Approval") that complies with the
18 Court's current checklist for Preliminary Approvals.

19 6.1. Defendant's Declaration in Support of Preliminary Approval. Within 14
20 days of the full execution of this Agreement, Defendants will prepare and deliver
21 to Class Counsel a signed Declaration from Defense Counsel disclosing all facts
22 relevant to any actual or potential conflicts of interest with the Administrator and
23 Cy Pres Recipient, including between Defendants and the same. In their
24 Declarations, Defense Counsel shall aver that they are not aware of any other
25 pending matter or action asserting claims that will be extinguished or adversely
26 affected by the Settlement.

27 6.2. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense
28 Counsel all documents necessary for obtaining Preliminary Approval, including:

1 (i) a draft of the notice, and memorandum in support, of the Motion for
2 Preliminary Approval that includes an analysis of the Settlement under
3 *Dunk/Kullar*; (ii) a draft proposed Order Granting Preliminary Approval; (iii) a
4 draft proposed Class Notice; (iv) a signed declaration from the Administrator
5 attaching its “not to exceed” bid for administering the Settlement and attesting to
6 its willingness to serve; competency; operative procedures for protecting the
7 security of Class Data; amounts of insurance coverage for any data breach,
8 defalcation of funds or other misfeasance; all facts relevant to any actual or
9 potential conflicts of interest with Class Members; and the nature and extent of
10 any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a
11 signed declaration from Plaintiff confirming willingness and competency to serve
12 and disclosing all facts relevant to any actual or potential conflicts of interest with
13 Class Members, the Administrator and the proposed Cy Pres; (v) a signed
14 declaration from each Class Counsel firm attesting to its competency to represent
15 the Class Members; Operative Complaint (Labor Code section 2699, subd. (1)(1)),
16 this Agreement (Labor Code section 2699, subd. (1)(2)); and (vi) all facts relevant
17 to any actual or potential conflict of interest with Class Members, the
18 Administrator and/or the Cy Pres Recipient. In their Declarations, Plaintiff and
19 Class Counsel Declaration shall aver that they are not aware of any other pending
20 matter or action asserting claims that will be extinguished or adversely affected
21 by the Settlement.

22 6.3. Responsibilities of Class Counsel. Class Counsel is responsible for
23 expeditiously finalizing and filing the Motion for Preliminary Approval after the
24 full execution of this Agreement such that the Motion for Preliminary Approval
25 will be heard by the Court-set deadline of June 5, 2023; and for appearing in
26 Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel
27 is responsible for delivering the Court’s Preliminary Approval to the
28 Administrator.

1 6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed
2 Motion for Preliminary Approval and/or the supporting declarations and
3 documents, Class Counsel and Defense Counsel will expeditiously work together
4 on behalf of the Parties by meeting-and-conferring in good faith to resolve the
5 disagreement. If the Court does not grant Preliminary Approval or conditions
6 Preliminary Approval on any material change to this Agreement, Class Counsel
7 and Defense Counsel will expeditiously work together on behalf of the Parties by
8 meeting-and-conferring in good faith to modify the Agreement and otherwise
9 satisfy the Court’s concerns.

10 **7. SETTLEMENT ADMINISTRATION**

11 7.1. Selection of Administrator. The Parties have jointly selected Phoenix to
12 serve as the Administrator and verified that, as a condition of appointment,
13 Administrator agrees to be bound by this Agreement and to perform, as a
14 fiduciary, all duties specified in this Agreement in exchange for payment of
15 Administration Expenses. The Parties and their Counsel represent that they have
16 no interest or relationship, financial or otherwise, with the Administrator other
17 than a professional relationship arising out of prior experiences administering
18 settlements.

19 7.2. Employer Identification Number. The Administrator shall have and use its
20 own Employer Identification Number for purposes of calculating payroll tax
21 withholdings and providing reports state and federal tax authorities.

22 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement
23 fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under
24 US Treasury Regulation section 468B-1.

25 7.4. Notice to Class Members

26 7.4.1. No later than three (3) business days after receipt of the Class Data,
27 the Administrator shall notify Class Counsel that the list has been received
28 and state the number of Class Members and Workweeks in the Class Data.

1 7.4.2. Using best efforts to perform as soon as possible, and in no event
2 later than fourteen (14) days after receiving the Class Data, the
3 Administrator will send to all Class Members identified in the Class Data,
4 via first-class United States Postal Service (“USPS”) mail, the Class
5 Notice, with Spanish translation, substantially in the form attached to this
6 Agreement as Exhibit “A.” The first page of the Class Notice shall
7 prominently estimate the dollar amounts of any Individual Class Payment
8 payable to the Class Member, and the number of Workweeks used to
9 calculate these amounts. Before mailing Class Notices, the Administrator
10 shall update Class Member addresses using the National Change of Address
11 database.

12 7.4.3. Not later than three (3) business days after the Administrator’s
13 receipt of any Class Notice returned by the USPS as undelivered, the
14 Administrator shall re-mail the Class Notice using any forwarding address
15 provided by the USPS. If the USPS does not provide a forwarding address,
16 the Administrator shall conduct a Class Member Address Search and re-
17 mail the Class Notice to the most current address obtained. The
18 Administrator has no obligation to make further attempts to locate or send
19 Class Notice to Class Members whose Class Notice is returned by the
20 USPS a second time.

21 7.4.4. The deadlines for Class Members’ written objections, Challenges
22 to Workweeks and Requests for Exclusion will be extended an additional
23 15 days beyond the 45 days otherwise provided in the Class Notice for all
24 Class Members whose notice is re-mailed. The Administrator will inform
25 the Class Member of the extended deadline with the re-mailed Class
26 Notice.

27 7.4.5. If the Administrator, Defendants or Class Counsel is contacted by
28 or otherwise discovers any persons who believe they should have been

1 included in the Class Data and should have received Class Notice, the
2 Parties will expeditiously meet and confer in good faith in an effort to
3 agree on whether to include them as Class Members. If the Parties agree,
4 such persons will be Class Members entitled to the same rights as other
5 Class Members and the Administrator will send, via email or overnight
6 delivery, a Class Notice requiring them to exercise options under this
7 Agreement not later than 15 days after receipt of Class Notice or the
8 deadline dates in the Class Notice, which ever are later.

9 7.5. Requests for Exclusion (Opt-Outs)

10 7.5.1. Class Members who wish to exclude themselves (opt-out of) the
11 Class Settlement must send the Administrator, by mail, a signed written
12 Request for Exclusion not later than 45 days after the Administrator mails
13 the Class Notice (plus an additional 15 days for Class Members whose
14 Class Notice is re-mailed). A Request for Exclusion is a letter from a Class
15 Member or his/her representative that reasonably communicates the Class
16 Member's election to be excluded from the Settlement and includes the
17 Class Member's name, address and email address or telephone number. To
18 be valid, a Request for Exclusion must be emailed or postmarked by the
19 Response Deadline.

20 7.5.2. The Administrator may not reject a Request for Exclusion as
21 invalid because it fails to contain all the information specified in the Class
22 Notice. The Administrator shall accept any Request for Exclusion as valid
23 if the Administrator can reasonably ascertain the identity of the person as
24 a Class Member and the Class Member's desire to be excluded. The
25 Administrator's determination shall be final and not appealable or
26 otherwise susceptible to challenge. If the Administrator has reason to
27 question the authenticity of a Request for Exclusion, the Administrator
28 may demand additional proof of the Class Member's identity. The

1 Administrator's determination of authenticity shall be final and not
2 appealable or otherwise susceptible to challenge.

3 7.5.3. Every Class Member who does not submit a timely and valid
4 Request for Exclusion is deemed to be a Participating Class Member under
5 this Agreement, entitled to all benefits and bound by all terms and
6 conditions of the Settlement, including the Participating Class Members'
7 Releases under Section 5.2 of this Agreement, regardless whether the
8 Participating Class Member actually receives the Class Notice or objects
9 to the Settlement.

10 7.5.4. Every Class Member who submits a valid and timely Request for
11 Exclusion is a Non-Participating Class Member and shall not receive an
12 Individual Class Payment or have the right to object to the class action
13 components of the Settlement.

14 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have
15 45 days after the Administrator mails the Class Notice (plus an additional 15 days
16 for Class Members whose Class Notice is re-mailed) to challenge the number of
17 Class Workweeks allocated to the Class Member in the Class Notice. The Class
18 Member may challenge the allocation by communicating with the Administrator
19 via email or mail. The Administrator must encourage the challenging Class
20 Member to submit supporting documentation. The Administrator shall presume
21 that the Workweeks contained in the Class Notice are correct so long as they are
22 consistent with the Class Data and absent clear and convincing proof from the
23 Class Member. The Administrator's determination of each Class Member's
24 allocation of Workweeks shall be final and not appealable or otherwise susceptible
25 to challenge. The Administrator shall promptly provide copies of all challenges to
26 calculation of Workweeks to Defense Counsel and Class Counsel and the
27 Administrator's determination the challenges.

28 7.7. Objections to Settlement

1 7.7.1. Only Participating Class Members may object to the class action
2 components of the Settlement and/or this Agreement, including contesting
3 the fairness of the Settlement, and/or amounts requested for the Class
4 Counsel Fees Payment, Class Counsel Litigation Expenses Payment
5 and/or Class Representative Service Payment.

6 7.7.2. Participating Class Members may send written objections to the
7 Administrator by email or mail. In the alternative, Participating Class
8 Members may appear in Court (or hire an attorney to appear in Court) to
9 present verbal objections at the Final Approval Hearing. A Participating
10 Class Member who elects to send a written objection to the Administrator
11 must do so not later than 45 days after the Administrator's mailing of the
12 Class Notice (plus an additional 15 days for Class Members whose Class
13 Notice was re-mailed).

14 7.7.3. Non-Participating Class Members have no right to object to any of
15 the class action components of the Settlement.

16 7.8. Administrator Duties. The Administrator has a duty to perform or observe
17 all tasks to be performed or observed by the Administrator contained in this
18 Agreement or otherwise.

19 7.8.1. Website, Email Address and Toll-Free Number. The Administrator
20 will establish and maintain and use an internet website to post information
21 of interest to Class Members, including the date, time and location for the
22 Final Approval Hearing and copies of the Settlement Agreement, Motion
23 for Preliminary Approval, the Preliminary Approval, the Class Notice, the
24 Motion for Final Approval, the Motion for Class Counsel Fees Payment,
25 Class Counsel Litigation Expenses Payment and Class Representative
26 Service Payment, the Final Approval and the Judgment. The Administrator
27 will also maintain and monitor an email address and a toll-free telephone
28 number to receive Class Member calls and emails.

1 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The
2 Administrator will promptly review on a rolling basis Requests for
3 Exclusion to ascertain their validity. Not later than five (5) days after the
4 expiration of the deadline for submitting Requests for Exclusion, the
5 Administrator shall email a list to Class Counsel and Defense Counsel
6 containing (a) the names and other identifying information of Class
7 Members who have timely submitted valid Requests for Exclusion
8 (“Exclusion List”); (b) the names and other identifying information of
9 Class Members who have submitted invalid Requests for Exclusion; and
10 (c) copies of all Requests for Exclusion from Settlement submitted
11 (whether valid or invalid).

12 7.8.3. Weekly Reports. The Administrator must, on a weekly basis,
13 provide written reports to Class Counsel and Defense Counsel that, among
14 other things, tally the number of: Class Notices mailed or re-mailed, Class
15 Notices returned undelivered, Requests for Exclusion (whether valid or
16 invalid) received, objections received, challenges to Workweeks received
17 and/or resolved and checks mailed for Individual Class Payments
18 (“Weekly Report”). The Weekly Reports must include (provide) the
19 Administrator’s assessment of the validity of Requests for Exclusion and
20 attach copies of all Requests for Exclusion and objections received.

21 7.8.4. Workweek Challenges. The Administrator has the authority to
22 address and make final decisions consistent with the terms of this
23 Agreement on all Class Member challenges over the calculation of
24 Workweeks. The Administrator’s decision shall be final and not
25 appealable or otherwise susceptible to challenge.

26 7.8.5. Administrator’s Declaration and Report. Before the date by which
27 Plaintiff is required to file the Motion for Final Approval of the Settlement,
28 the Administrator will provide to Class Counsel and Defense Counsel, a

1 signed declaration suitable for filing in Court attesting to its due diligence
2 and compliance with all of its obligations under this Agreement, including,
3 but not limited to, its mailing of Class Notice, the Class Notices returned
4 as undelivered, the re-mailing of Class Notices, attempts to locate Class
5 Members, the total number of Requests for Exclusion from Settlement it
6 received (both valid or invalid), the number of written objections and
7 attach the Exclusion List. The Administrator will supplement its
8 declaration as needed or requested by the Parties and/or the Court. Class
9 Counsel is responsible for filing the Administrator's declaration(s) in
10 Court. Additionally, not later than ten (10) days *prior to* the Final
11 Approval hearing the Administrator shall prepare and distribute to
12 Defendants' counsel a report detailing the total amount of payroll taxes due.

13 7.8.6. Final Report by Settlement Administrator. Within 10 days after the
14 Administrator disburses all funds in the Gross Settlement Amount, the
15 Administrator will provide Class Counsel and Defense Counsel with a
16 final report detailing its disbursements by employee identification number
17 only of all payments made under this Agreement. At least seven (7) days
18 before any deadline set by the Court, the Administrator will prepare, and
19 submit to Class Counsel and Defense Counsel, a signed declaration
20 suitable for filing in Court attesting to its disbursement of all payments
21 required under this Agreement. Class Counsel is responsible for filing the
22 Administrator's declaration in Court.

23 **8. CLASS SIZE ESTIMATES.** Based on its records, Defendants estimate that, as of the
24 date of mediation on December 14, 2022, there are 38 Class Members and 7,705 Total
25 Workweeks during the Class Period.

26 8.1. Increase in Workweeks. In the event the number of Workweeks worked
27 increases by more than 10% or 771 Workweeks worked, then the Gross Settlement
28 Amount shall be increased proportionally by the Workweeks worked in the Class

1 Period in excess of 8,476 Workweeks (7,705 Workweeks + 771 Workweeks) by
2 the Workweek Value. The Workweek Value shall be calculated by dividing the
3 originally agreed-upon Gross Settlement Amount by 7,705 Workweeks. The
4 Parties agree that the Workweek Value amounts to and the settlement amounts to
5 \$38.94 per Workweek ($\$300,000 / 7,705$ Workweeks). Thus, for example, should
6 there be 9000 Workweeks worked by Class Members in the Class Period, then the
7 Gross Settlement Amount shall be increased by $\$20,404.56$ ($(9,000$ Workweeks –
8 $8,476$ Workweeks) \times $\$38.94$ per Workweek).

9 **9. MOTION FOR FINAL APPROVAL.** Before the calendared Final Approval Hearing,
10 Plaintiff will file in Court, a motion for final approval of the Settlement that includes a
11 Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final
12 Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel prior to
13 filing the Motion for Final Approval. Class Counsel and Defense Counsel will
14 expeditiously meet and confer in good faith to resolve any disagreements concerning the
15 Motion for Final Approval.

16 9.1. Response to Objections. Each Party retains the right to respond to any
17 objection raised by a Participating Class Member, including the right to file
18 responsive documents in Court no later than five (5) court days prior to the Final
19 Approval Hearing, or as otherwise ordered or accepted by the Court.

20 9.2. Duty to Cooperate. If the Court does not grant Final Approval or
21 conditions Final Approval on any material change to the Settlement (including,
22 but not limited to, the scope of release to be granted by Class Members), the
23 Parties will expeditiously work together in good faith to address the Court’s
24 concerns by revising the Agreement as necessary to obtain Final Approval. The
25 Court’s decision to award less than the amounts requested for the Class
26 Representative Service Payment, Class Counsel Fees Payment, Class Counsel
27 Litigation Expenses Payment and/or Administrator Expenses Payment shall not
28

1 constitute a material modification to the Agreement within the meaning of this
2 paragraph.

3 9.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of
4 Judgment, the Court will retain jurisdiction over the Parties, Action and the
5 Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment,
6 (ii) addressing settlement administration matters, and (iii) addressing such post-
7 Judgment matters as are permitted by law. The Court may award reasonable
8 attorneys' fees and costs to the prevailing party in any motion or action taken
9 based on an alleged violation of any material term of this Settlement Agreement.

10 9.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the
11 terms and conditions of this Agreement, specifically including the Class Counsel
12 Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth
13 in this Settlement, the Parties, their respective counsel, and all Participating Class
14 Members who did not object to the Settlement as provided in this Agreement,
15 waive all rights to appeal from the Judgment, including all rights to post-judgment
16 and appellate proceedings, the right to file motions to vacate judgment, motions
17 for new trial, extraordinary writs and appeals. The waiver of appeal does not
18 include any waiver of the right to oppose such motions, writs or appeals. If an
19 objector appeals the Judgment, the Parties' obligations to perform under this
20 Agreement will be suspended until such time as the appeal is finally resolved and
21 the Judgment becomes final, except as to matters that do not affect the amount of
22 the Net Settlement Amount.

23 9.5. Appellate Court Orders to Vacate, Reverse or Materially Modify
24 Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a
25 manner that requires a material modification of this Agreement (including, but not
26 limited to, the scope of release to be granted by Class Members), this Agreement
27 shall be null and void. The Parties shall, nevertheless, expeditiously work together
28 in good faith to address the appellate court's concerns and to obtain Final

1 Approval and entry of Judgment, sharing, on a 50-50 basis, any additional
2 Administration Expenses reasonably incurred after remittitur. An appellate
3 decision to vacate, reverse, or modify the Court's award of the Class
4 Representative Service Payment or any payments to Class Counsel shall not
5 constitute a material modification of the Judgment within the meaning of this
6 paragraph, as long as the Gross Settlement Amount remains unchanged.

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

10 **11. ADDITIONAL PROVISIONS**

11 11.1. No Admission of Liability, Class Certification or Representative
12 Manageability for Other Purposes. This Agreement represents a compromise and
13 settlement of highly disputed claims. Nothing in this Agreement is intended or
14 should be construed as an admission by Defendants that any of the allegations in
15 the Operative Complaint has merit or that Defendants have any liability for any
16 claims asserted; nor should it be intended or construed as an admission by Plaintiff
17 that Defendants' defenses in the Action have merit. The Parties agree that class
18 certification and representative treatment is for purposes of this Settlement only.
19 If, for any reason the Court does grant Preliminary Approval, Final Approval or
20 enter Judgment, Defendants reserve the right to contest certification of any class
21 for any reasons, and Defendants reserve all available defenses to the claims in the
22 Action, and Plaintiff reserves the right to move for class certification on any
23 grounds available and to contest Defendants' defenses. The Settlement, this
24 Agreement and Parties' willingness to settle the Action will have no bearing on,
25 and will not be admissible in connection with, any litigation except for
26 proceedings to enforce or effectuate the Settlement and this Agreement.

27 11.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel,
28 Defendants and Defense Counsel separately agree that, until the Motion for

1 Preliminary Approval of Settlement is filed, they and each of them will not
2 disclose, disseminate and/or publicize, or cause or permit another person to
3 disclose, disseminate or publicize, any of the terms of the Agreement directly or
4 indirectly, specifically or generally, to any person, corporation, association,
5 government agency, or other entity except: (1) to the Parties' attorneys,
6 accountants or spouses, all of whom will be instructed to keep this Agreement
7 confidential; (2) counsel in a related matter; (3) to the extent necessary to report
8 income to appropriate taxing authorities; (4) in response to a court order or
9 subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
10 government agency. Each Party agrees to immediately notify each other Party of
11 any judicial or agency order, inquiry or subpoena seeking such information.
12 Plaintiff, Class Counsel, Defendants and Defense Counsel separately agree not to,
13 directly or indirectly, initiate any conversation or other communication, before the
14 filing of the Motion for Preliminary Approval, any with third party regarding this
15 Agreement or the matters giving rise to this Agreement except to respond only
16 that "the matter was resolved," or words to that effect. This paragraph does not
17 restrict Class Counsel's communications with Class Members in accordance with
18 Class Counsel's ethical obligations owed to Class Members.

19 11.3. No Solicitation. The Parties separately agree that they and their respective
20 counsel and employees will not solicit any Class Member to opt out of or object
21 to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be
22 construed to restrict Class Counsel's ability to communicate with Class Members
23 in accordance with Class Counsel's ethical obligations owed to Class Members.

24 11.4. Integrated Agreement. Upon execution by all Parties and their counsel, this
25 Agreement together with its attached exhibits shall constitute the entire agreement
26 between the Parties relating to the Settlement, superseding any and all oral
27 representations, warranties, covenants, or inducements made to or by any Party.
28

1 11.11. Applicable Law. All terms and conditions of this Agreement, and its
2 exhibits will be governed by and interpreted according to the internal laws of the
3 state of California without regard to conflict of law principles.

4 11.12. Cooperation in Drafting. The Parties have cooperated in the drafting and
5 preparation of this Agreement. This Agreement will not be construed against any
6 Party on the basis that the Party was the drafter or participated in the drafting.

7 11.13. Confidentiality. To the extent permitted by law, all agreements made, and
8 orders entered during Action and in this Agreement relating to the confidentiality
9 of information shall survive the execution of this Agreement.

10 11.14. Use of Mediation Data. Information provided to Class Counsel, pursuant
11 to Cal. Evid. Code §1152, and all copies and summaries of such provided to Class
12 Counsel by Defendants, in connection with the mediation, other settlement
13 negotiations or in connection with the Settlement, may be used only with respect
14 to this Settlement, and no other purpose, and may not be used in any way that
15 violates any existing contractual agreement, statute or rule of court.

16 11.15. Headings. The descriptive heading of any section or paragraph of this
17 Agreement is inserted for convenience of reference only and does not constitute a
18 part of this Agreement.

19 11.16. Calendar Days. Unless otherwise noted, all reference to “days” in this
20 Agreement shall be to calendar days. In the event any date or deadline set forth in
21 this Agreement falls on a weekend or federal legal holiday, such date or deadline
22 shall be on the first business day thereafter.

23 11.17 Notice. All notices, demands or other communications between the Parties
24 in connection with this Agreement will be in writing and deemed to have been
25 duly given as of the third business day after mailing by United States mail, or the
26 day sent by email or messenger, addressed as follows:

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28 To Plaintiff: **BIBIYAN LAW GROUP**
David D. Bibiyani (Cal. Bar No. 287811)
david@tomorrowlaw.com

1 Jeffrey D. Klein (Cal. Bar No. 297296)
2 *jeff@tomorrowlaw.com*
3 Vedang J. Patel (Cal. Bar No. 328647)
4 *vedang@tomorrowlaw.com*
5 8484 Wilshire Blvd., Suite 500
6 Los Angeles, California 90211
7 Telephone: (310) 438-5555 Facsimile: (310) 300-1705

8 To Defendants: Christina T. Tellado (SBN 298597)
9 Samuel J. Stone (SBN 317013)
10 **HOLLAND & KNIGHT LLP**
11 400 South Hope Street, 8th Floor
12 Los Angeles, CA 90071
13 Telephone: 213.896.2400
14 Fax: 213.896.2450
15 E-mail: christina.tellado@hklaw.com
16 sam.stone @hklaw.com

17 11.18. Execution in Counterparts. This Agreement may be executed in one or
18 more counterparts by facsimile, electronically (i.e. DocuSign) or email, which, for
19 purposes of this Agreement, shall be accepted as an original. All executed
20 counterparts and each of them will be deemed to be one and the same instrument
21 if counsel for the Parties will exchange between themselves signed counterparts.
22 Any executed counterpart will be admissible in evidence to prove the existence
23 and contents of this Agreement.

24 11.19. Stay of Litigation. The Parties agree that, upon the execution of this
25 Agreement, the litigation shall be stayed, except to effectuate the terms of this
26 Agreement. The Parties further agree that upon the signing of this Agreement that
27 pursuant to CCP section 583.330 to extend the date to bring a case to trial under
28 CCP section 583.310 for the entire period of this settlement process.

11.20 Severability. In the event that one or more of the provisions contained in
this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect,
such invalidity, illegality or unenforceability shall in no way effect any other provision if
Defense Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually
elect in writing to proceed as if such invalid, illegal or unenforceable provision had never been
included in this Agreement.

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IT IS SO AGREED:

Dated: Sep 13, 2023

Dated: _____


Alejandro Ferrer (Sep 13, 2023 20:12 PDT)
Plaintiff, Alejandro Ferrer

By: _____
Its authorized agent.

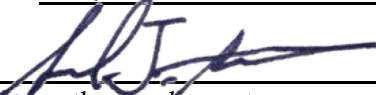
For Defendants Ineos USA, LLC and Tony
Cockram

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IT IS SO AGREED:

Dated: _____

Plaintiff, Alejandro Ferrer

Dated: September 11, 2023
By:  _____
Its authorized agent.

For Defendants Ineos USA, LLC and Tony
Cockram

1 **AS TO FORM ONLY:**

2 September 15, 2023

3 

4 David D. Bibiyan
5 Vedang J. Patel
6 Counsel for Plaintiff Alejandro Ferrer

7 September 11, 2023

8 

9 Christina T. Tellado
10 Samuel J. Stone
11 Counsel for Defendants Ineos USA, LLC,
12 and Tony Cockram

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