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

25 **FOR THE COUNTY OF ALAMEDA**

26 ADRIAN MARTINEZ FLORES, an
27 individual and on behalf of all others similarly
28 situated,

Plaintiff,

v.

APT MAINTENANCE, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendant.

CASE NO.: 22CV024427

[Assigned for all purposes to the Hon. Noel
Wise in Dept. 21]

**CLASS AND PAGA SETTLEMENT
AGREEMENT**

Action Filed: April 1, 2020

Trial Date: None Set

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between Plaintiff Adrian Martinez Flores (“Plaintiff”) and Defendant APT Maintenance, Inc.
3 (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or
4 individually as “Party.”

5 **1. DEFINITIONS**

6 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
7 Defendant, captioned *Adrian Martinez Flores v. APT Maintenance, Inc.*, Case No. 22CV024427,
8 initiated on December 22, 2022, and pending in the Superior Court of the State of California,
9 County of Alameda (the “Class Action”), as well as to the civil action alleging a cause of action
10 for civil penalties under the California Labor Code Private Attorneys General Act of 2004, Cal.
11 Lab. Code §§ 2698, et seq. (“PAGA”) against Defendant, captioned *Adrian Martinez Flores v.*
12 *APT Maintenance, Inc.*, Case No. 23CV028359, initiated on February 24, 2023, and also pending
13 in Superior Court of the State of California, County of Alameda (the “PAGA Action”, hereinafter
14 collectively, the “Actions”).

15 1.2. “Administrator” means Apex Class Action Administration (“Apex”) the neutral entity the
16 Parties have agreed to appoint to administer the Settlement.

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

21 1.4. “Aggrieved Employee” means a person employed by Defendant in California and
22 classified as a non-exempt, hourly-paid employee who worked for Defendant during the PAGA
23 Period.

24 1.5. “Class” or “Class Members” means all current and former persons employed by
25 Defendant in California and classified as a non-exempt, hourly-paid employee who worked for
26 Defendant during the Class Period.

27 1.6. “Class Counsel” means David D. Bibiyan, Jeffrey Klein, and Vedang J. Patel of Bibiyan
28 Law Group, P.C., 1460 Westwood Boulevard, Los Angeles, California 90024.

1 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean
2 the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
3 expenses, respectively, incurred to prosecute the Action.

4 1.8. “Class Data” means Class Member identifying information in Defendant’s custody,
5 possession, or control, including the Class Member’s (1) last known full name(s); (2) last known
6 mailing address(es); (3) last known telephone number(s); (4) last known Social Security
7 Number(s); and (5) dates worked as a non-exempt employee in the state of California during the
8 Class Period, and such other information as is necessary for the Administrator to calculate
9 Workweeks and Pay Periods.

10 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either
11 a Participating Class Member or Non-Participating Class Member (including a Non- Participating
12 Class Member who qualifies as an Aggrieved Employee).

13 1.10. “Class Member Address Search” means the Administrator’s investigation and search for
14 current Class Member mailing addresses using all reasonably available sources, methods and
15 means including, but not limited to, the National Change of Address database, skip traces, and
16 direct contact by the Administrator with Class Members.

17 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION
18 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to
19 Class Members in English and Spanish in the form, without material variation, attached as Exhibit
20 A and incorporated herein by reference into this Agreement.

21 1.12. “Class Period” means the period from December 22, 2018 through April 1, 2024.

22 1.13. “Class Representative” means the named Plaintiff in the Operative Complaint in the
23 Action seeking Court approval to serve as a Class Representative.

24 1.14. “Class Representative Enhancement Fee” means the payment to the Class Representative
25 for initiating the Action and providing services in support of the Action.

26 1.15. “Court” means the Superior Court of California, County of Alameda.

27 1.16. “Defendant” means named Defendant APT Maintenance, Inc.

28 1.17. “Defense Counsel” means Collin Cook and Hyunki (John) Jung of Fisher & Phillips

1 LLP.

2 1.18. “Effective Date” means the later of: (a) the Court enters a Judgment on its Order Granting
3 Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the
4 latest 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 Class Members
6 objects to the Settlement, the day after the deadline for filing a notice of appeal from the
7 Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court
8 affirms the Judgment and issues a remittitur.

9 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.

10 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval
11 of the Settlement.

12 1.21. “Final Judgment” means the Judgment entered by the Court based upon the Final
13 Approval.

14 1.22. “Gross Settlement Amount” means \$350,000.00 (Three Hundred Fifty Thousand Dollars
15 and Zero Cents) which is the total amount Defendant agrees to pay under the Settlement, except
16 as provided in Paragraph 8.1 below and any and all employer payroll taxes owed on the Wage
17 Portions of the Individual Class Payments. The Gross Settlement Amount will be used to pay
18 Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class
19 Counsel Fees, Class Counsel Expenses, Class Representative Enhancement Fee, and
20 Administrator’s Expenses.

21 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the
22 Net Settlement Amount calculated according to the number of Workweeks worked during the
23 Class Period.

24 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of
25 the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA
26 Period.

27 1.25. “Judgment” means the judgment entered by the Court based upon Final Approval.

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1 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency
2 entitled, under Labor Code section 2699, subd. (i).

3 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA
4 under Labor Code section 2699, subd. (i).

5 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following
6 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
7 Payment, Class Representative Enhancement Fee, Class Counsel Fees Payment, Class Counsel
8 Litigation Expenses Payment, and Administration Expenses Payment. The remainder is to be
9 paid to Participating Class Members as Individual Class Payments.

10 1.29. “Non-Participating Class Member” means any Class Member who opts out of the
11 Settlement by sending the Administrator a valid and timely Request for Exclusion.

12 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked
13 for Defendant for at least one day during the PAGA Period, based on hire dates, re-hire dates (as
14 applicable), and termination dates (as applicable).

15 1.31. “PAGA Period” means the period from December 22, 2021 through the end of the Class
16 Period.

17 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

18 1.33. “PAGA Notice” means plaintiff’s December 22, 2022 letter to Defendant and the LWDA,
19 providing notice pursuant to Labor Code section 2699.3 subd. (a).

20 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the
21 Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$8,750.00) and the 75%
22 to the LWDA (\$26,250.00) in settlement of PAGA claims.

23 1.35. “Participating Class Member” means a Class Member who does not submit a valid and
24 timely Request for Exclusion from the Settlement.

25 1.36. “Plaintiff” means Adrian Martinez Flores, the named Plaintiff in the Action.

26 1.37. “Preliminary Approval” means entry of an order of the Court preliminarily approving this
27 Settlement pursuant to California Rules of Court Rule 3.769, granting conditional Class
28 Certification for purposes of the Settlement, certifying Class Counsel, approving the form of the

1 Class Notice, and scheduling a Final Approval Hearing.

2 1.38. “Preliminary Approval Order” means the Order granting Preliminary Approval.

3 1.39. “Released Class Claims” means the claims being released as described in Paragraph 5.2
4 below.

5 1.40. “Released PAGA Claims” means the claims being released as described in Paragraph 5.4
6 below.

7 1.41. “Released Parties” means: Defendant, and each of its former, present and future owners,
8 parents, and subsidiaries, and all of their current, former, and future officers, directors, members,
9 managers, employees, consultants, partners, shareholders, joint venturers, agents, predecessors,
10 successors, assigns, accountants, insurers, reinsurers, and/or legal representatives.

11 1.42. “Request for Exclusion” means a Class Member’s submission of a written request to be
12 excluded from the Class Settlement signed by the Class Member.

13 1.43. “Response Deadline” means forty-five (45) days after the Administrator mails Notice to
14 Class Members and Aggrieved Employees, and shall be the last date on which Class Members
15 may: (a) mail Requests for Exclusion from the Settlement, or (b) mail his or her Objection to the
16 Settlement. Class Members to whom Notice Packets are resent after having been returned
17 undeliverable to the Administrator shall have an additional 15 days beyond the Response
18 Deadline has expired.

19 1.44. “Settlement” means the disposition of the Action effected by this Agreement and the
20 Judgment.

21 1.45. “Workweek” means any week during which a Class Member worked for Defendant, for
22 at least one day during the Class Period, based on hire dates, re-hire dates (as applicable), and
23 termination dates (as applicable).

24 **2. RECITALS**

25 2.1. On December 22, 2022, Plaintiff filed a class action complaint in Alameda County
26 against Defendant alleging various Labor Code violations. In particular, the complaint alleges
27 causes of action for failure to pay overtime wages (Labor Code section 510), failure to pay
28 minimum wages (Labor Code section 1197), failure to provide meal periods (Labor Code section

1 512), failure to provide rest breaks (Labor Code section 226.7), failure to pay owed wages on
2 separation (Labor Code sections 201-203), failure to furnish accurate wage statements (section
3 226), failure to timely pay wages (Labor Code section 204), failure to reimburse business
4 expenses (section 2802), and unfair competition (Bus. & Prof. section 17200) (the “Class
5 Action”).

6 2.2. That same day, Plaintiff filed with the Labor and Workforce Development Agency
7 (LWDA) and served the same on Defendant, a notice stating that Plaintiff intended to serve as a
8 proxy of the LWDA on behalf of the Aggrieved Employees for various violations of the Labor
9 Code (the “PAGA Notice”).

10 2.3. On February 24, 2023, after 65 days had passed without any communication from the
11 LWDA, Plaintiffs filed a separate representative action under PAGA in the Alameda County
12 Superior Court, captioned *Adrian Martinez Flores, et al. v. APT Maintenance, Inc., et al.*, Case
13 Number 23CV028359, for civil penalties under Labor Code sections 210, 226.3, 558, 1174.5,
14 1197.1, and 2699, in connection with the allegations made in the PAGA Notice (the “PAGA
15 Action”).

16 2.4. Thereafter, the Parties agreed to exchange informal discovery and attend private
17 mediation.

18 2.5. Prior to mediation Plaintiff obtained from Defendant, through informal discovery,
19 information sufficient to meaningfully evaluate the claims at issue in the Actions, including: (a)
20 Plaintiff’s personal file; (b) 100% sampling of time and pay records; (c) excerpts of Defendant’s
21 policies and procedures; (d) an example meal and rest period waiver, dated March 13, 2023, with
22 signature redacted; and (e) an example arbitration agreement with signatures and dates redacted.

23 2.6. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in
24 *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker*
25 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

26 2.7. On January 30, 2024, the Parties participated in an all-day mediation presided over by
27 Lynn Frank, Esquire. The mediation was successful, and the Parties agreed to globally resolve
28 all class and PAGA claims in the Action, memorialized in an executed Memorandum of

1 Understanding (“MOU”).

2 2.8. The Court has not granted class certification.

3 2.9. The Parties, Class Counsel, and Defense Counsel represent that they are not aware of any
4 other pending matter or action asserting claims that will be extinguished or affected by the
5 Settlement.

6 2.10. To implement the Settlement, Plaintiff and Defendant have agreed that Plaintiff will file
7 a First Amended Complaint in the Class Action, which, *inter alia*, will include the allegation of
8 the PAGA Action, including any omitted allegations in the LWDA Letter for purpose of the
9 Released Class Claims as well as the Released PAGA Claims as it pertains to PAGA civil
10 penalties. Upon acceptance by the Court of the First Amended Complaint in the Class Action,
11 Plaintiff shall cause the PAGA action to be dismissed without prejudice. The First Amended
12 Complaint in the Class Action shall be the “Operative Complaint”.

13 **3. MONETARY TERMS**

14 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8.1 below,
15 Defendant promise to pay Three Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00)
16 as the Gross Settlement Amount, unless increased pursuant to Paragraph 8.1 of this Agreement,
17 and to separately pay any and all employer payroll taxes owed on the Wage Portions of the
18 Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or
19 any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The
20 Administrator will disburse the entire Gross Settlement Amount without asking or requiring
21 Participating Class Members or Aggrieved Employees to submit any claim as a condition of
22 payment. None of the Gross Settlement Amount will revert to Defendant.

23 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct
24 the following payments from the Gross Settlement Amount, in the amounts specified by the Court
25 in the Final Approval:

26 3.2.1. To Plaintiff: Class Representative Enhancement Fee to Plaintiff of not more than
27 Ten Thousand Dollars (\$10,000.00), in addition to any Individual Class Payment and
28 any Individual PAGA Payment Plaintiff is entitled to receive as a Participating Class

1 Member. Defendant will not oppose Plaintiff's request for a Class Representative
2 Enhancement Fee that does not exceed this amount. As part of the motion for Class
3 Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court
4 approval for any Class Representative Enhancement Fees prior to the Final Approval
5 Hearing. If the Court approves a Class Representative Enhancement Fee less than the
6 amount requested, the Administrator will retain the remainder in the Net Settlement
7 Amount. The Administrator will pay the Class Representative Enhancement Fee using
8 IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes
9 owed on the Class Representative Enhancement Fee.

10 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 1/3 of the
11 Gross Settlement Amount, which, unless escalated pursuant to Paragraph 8.1 of this
12 Agreement, is currently estimated to be One Hundred Sixteen Thousand Six Hundred
13 Sixty-Six Dollars and Sixty-Seven Cents (\$116,666.67) and a Class Counsel Litigation
14 Expenses Payment of not more than Thirty Thousand Dollars (\$30,000.00). Defendant
15 will not oppose requests for these payments provided that do not exceed these amounts.
16 Plaintiff and/or Class Counsel will endeavor to file a motion for Class Counsel Fees
17 Payment and Class Litigation Expenses Payment prior to the Final Approval Hearing.
18 If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation
19 Expenses Payment less than the amounts requested, the Administrator will allocate the
20 remainder to the Net Settlement Amount. Released Parties shall have no liability to
21 Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any
22 Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The
23 Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses
24 Payment using one or more IRS 1099 Forms. Class Counsel assume full responsibility
25 and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel
26 Litigation Expenses Payment and holds Defendant harmless, and indemnifies
27 Defendant, from any dispute or controversy regarding any division or sharing of any of
28 these Payments. There will be no additional charge of any kind to either the Settlement

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

8 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed Four
9 Thousand Nine Hundred Ninety Dollars and Zero Cents (\$4,990.00) except for a
10 showing of good cause and as approved by the Court. To the extent the Administration
11 Expenses are less or the Court approves payment less than Four Thousand Nine Hundred
12 Ninety Dollars and Zero Cents (\$4,990.00), the Administrator will retain the remainder
13 in the Net Settlement Amount.

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

18 3.2.4.1. Tax Allocation of Individual Class Payments. 10% of each Participating
19 Class Member's Individual Class Payment will be allocated to settlement of
20 wage claims (the "Wage Portion"). The Wage Portions are subject to tax
21 withholding and will be reported on an IRS W-2 Form. The 90% of each
22 Participating Class Member's Individual Class Payment will be allocated to
23 settlement of claims for interest and penalties (the "Non-Wage Portion"). The
24 Non-Wage Portions are not subject to wage withholdings and will be reported
25 on IRS 1099 Forms. Participating Class Members assume full responsibility
26 and liability for any employee taxes owed on their Individual Class Payment.

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1 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual
2 Class Payments. Non-Participating Class Members will not receive any
3 Individual Class Payments. The Administrator will retain amounts equal to
4 their Individual Class Payments in the Net Settlement Amount for distribution
5 to Participating Class Members on a pro rata basis.

6 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
7 Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00) to be paid from the Gross
8 Settlement Amount, with 75% (\$26,250.00) allocated to the LWDA PAGA Payment
9 and 25% (\$8,750.00) allocated to the Individual PAGA Payments.

10 3.2.5.1. The Administrator will calculate each Individual PAGA
11 Payment by (a) dividing the amount of the Aggrieved Employees' 25% share
12 of PAGA Penalties \$8,750.00 by the total number of PAGA Period Pay Periods
13 worked by all Aggrieved Employees during the PAGA Period and (b)
14 multiplying the result by each Aggrieved Employee's PAGA Period Pay
15 Periods. Aggrieved Employees assume full responsibility and liability for any
16 taxes owed on their Individual PAGA Payment.

17 3.2.5.2. If the Court approves PAGA Penalties of less than the
18 amount requested, the Administrator will allocate the remainder to the Net
19 Settlement Amount. The Administrator will report the Individual PAGA
20 Payments on IRS 1099 Forms.

21 **4. SETTLEMENT FUNDING AND PAYMENTS**

22 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records
23 to date, Defendant estimate there are 76 Class Members who collectively worked a total of 8,836
24 Workweeks, and 48 of Aggrieved Employees who worked a total of 1,610 PAGA Pay Periods.

25 4.2. Class Data. Not later than 14 days after the Court grants Preliminary Approval of the
26 Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the
27 form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
28 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes

1 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
2 employees who need access to the Class Data to effect and perform under this Agreement.
3 Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class
4 Data omitted class member identifying information and to provide corrected or updated Class
5 Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant
6 must send the Class Data to the Administrator, the Parties and their counsel will expeditiously
7 use their best efforts, in good faith, to reconstruct or otherwise resolve any issues related to
8 missing or omitted Class Data.

9 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement
10 Amount, and also fund the amounts necessary to fully pay Defendant' share of payroll taxes by
11 transmitting the funds to the Administrator no later than 30 days after the Effective Date.

12 4.4. Payments from the Gross Settlement Amount. Within 7 days after Defendant funds the
13 Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments,
14 all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses
15 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and
16 the Class Representative Enhancement Fee. Disbursement of the Class Counsel Fees Payment,
17 the Class Counsel Litigation Expenses Payment and the Class Representative Enhancement Fee
18 shall not precede disbursement of Individual Class Payments, and the Individual PAGA
19 Payments.

20 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or
21 Individual PAGA Payments and send them to the Class Members via First Class U.S.
22 Mail, postage prepaid. The face of each check shall prominently state the date (not less
23 than 180 days after the date of mailing) when the check will be voided. The
24 Administrator will cancel all checks not cashed by the void date. The Administrator
25 will send checks for Individual Settlement Payments to all Participating Class Members
26 (including those for whom Class Notice was returned undelivered). The Administrator
27 will send checks for Individual PAGA Payments to all Aggrieved Employees including
28 Non-Participating Class Members who qualify as Aggrieved Employees (including

1 those for whom Class Notice was returned undelivered). The Administrator may send
2 Participating Class Members a single check combining the Individual Class Payment
3 and the Individual PAGA Payment. Before mailing any checks, the Settlement
4 Administrator must update the recipients' mailing addresses using the National Change
5 of Address Database.

6 4.4.2. The Administrator must conduct a Class Member Address Search for all other
7 Class Members whose checks are returned undelivered without USPS forwarding
8 address. Within 7 days of receiving a returned check the Administrator must re-mail
9 checks to the USPS forwarding address provided or to an address ascertained through
10 the Class Member Address Search. The Administrator need not take further steps to
11 deliver checks to Class Members whose re-mailed checks are returned as undelivered.
12 The Administrator shall promptly send a replacement check to any Class Member whose
13 original check was lost or misplaced, requested by the Class Member prior to the void
14 date.

15 4.4.3. For any Class Member whose Individual Class Payment check or Individual
16 PAGA Payment check is uncashed and cancelled after the void date, the Administrator,
17 after the Court approves the final accounting of the same, shall transmit the funds
18 represented by such checks to the *cy pres* recipient, Legal Aid at Work, for use in
19 Alameda County, pursuant to Cal. Code. Civ. Proc. § 384. The Parties each represent
20 that they do not have any significant affiliation or involvement with the proposed *cy*
21 *pres* recipient.

22 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall
23 not obligate Defendant to confer any additional benefits or make any additional
24 payments to Class Members (such as 401(k) contributions or bonuses) beyond those
25 specified in this Agreement.

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1 **5. RELEASE OF CLAIMS**

2 Effective only upon entry of Judgment, the Order granting Final Approval of this
3 Settlement, and on the date when Defendant fully fund the entire Gross Settlement Amount and
4 fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
5 Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as
6 follows:

7 5.1. Plaintiff’s General Release of Claims. Plaintiff and his or her respective former and
8 present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns
9 generally, release and discharge Released Parties from all claims, demands, rights, transactions,
10 or occurrences, liabilities, causes of action of every nature and description whatsoever, known or
11 unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of
12 any state or federal statute, rule, or regulation arising out of, relating to, or in connection with
13 any act or omission by or on the part of any Defendant, including, but not limited to all claims
14 that were, or reasonably could have been, alleged, based on the facts contained, in the Operative
15 Complaint (“Plaintiff’s Release.”) Plaintiff’s Release does not extend to any claims or actions to
16 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
17 benefits, social security benefits, workers’ compensation benefits that arose at any time, or based
18 on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts
19 or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to
20 be true but agrees, nonetheless, that Plaintiff’s Release shall be and remain effective in all
21 respects, notwithstanding such different or additional facts or Plaintiff’s discovery of them.

22 5.1.1. Plaintiff’s Waiver of Rights Under California Civil Code Section 1542. For
23 purposes of Plaintiff’s Release only, Plaintiff expressly waives and relinquish the
24 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,
25 which reads:

26 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
27 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
28

1 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
2 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
3 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**
4 **DEBTOR OR RELEASED PARTY.**

5 5.2. Release by Participating Class Members: For the duration of the Class Period, Plaintiff
6 and all Participating Class Members, on behalf of themselves and their respective former and
7 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release
8 Released Parties from all claims that were alleged, based on the facts stated in the complaint filed
9 in the Class Action, including: (1) failure to pay overtime wages (2) failure to pay minimum
10 wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to pay
11 owed wages on separation, (6) failure to furnish accurate wage statements, (7) failure to timely
12 pay wages, (8) failure to reimburse business expenses, and (9) unfair or unlawful business
13 practices pursuant to California Business and Professions Code §§ 17200, *et seq.* referenced in
14 the Operative Complaint filed in the Class Action.

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

19 5.4. PAGA Settlement Release: Upon the Effective Date and Defendant's full funding of all
20 amounts owed under the Settlement, Plaintiff, as an agent and proxy of the State of California,
21 will be deemed to have fully, finally, and forever released, settled, compromised, relinquished,
22 and discharged the Released Parties of all claims for PAGA penalties that were alleged, or
23 reasonably could have been alleged, based on the facts stated in the PAGA Notice ("Released
24 PAGA Claims").

25 **6. MOTION FOR PRELIMINARY APPROVAL**

26 The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion
27 for Preliminary Approval") that complies with the Court's current checklist for Preliminary
28 Approvals.

1 6.1. Defendant’ Declaration in Support of Preliminary Approval. Within 7 days of full
2 execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed
3 declaration from Defendant and Defense Counsel disclosing all facts relevant to any actual or
4 potential conflicts of interest with the Administrator and *cy pres* Recipient.

5 6.2. Plaintiff’s Responsibilities. Plaintiff will prepare and to deliver to Defense Counsel all
6 documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and
7 memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the
8 Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor
9 Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and
10 Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from
11 the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting
12 to its willingness to serve; competency; operative procedures for protecting the security of Class
13 Data; amounts of insurance coverage for any data breach, defalcation of funds or other
14 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;
15 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense
16 Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve
17 and disclosing all facts relevant to any actual or potential conflicts of interest with Class
18 Members; (v) a signed declaration from each Class Counsel firm attesting to its competency to
19 represent the Class Members; its timely transmission to the LWDA of all necessary PAGA
20 documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative
21 Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699,
22 subd. (l)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class
23 Members and the Administrator.

24 6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible
25 for expeditiously finalizing and filing the Motion for Preliminary Approval after the full
26 execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary
27 Approval; and appearing in Court to advocate in favor of the Motion for Preliminary Approval.
28 Class Counsel is responsible for delivering the Court’s Preliminary Approval to the

1 Administrator.

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

10 **7. SETTLEMENT ADMINISTRATION**

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

18 7.2. Employer Identification Number. The Administrator shall have and use its own Employer
19 Identification Number for purposes of calculating payroll tax withholdings and providing reports
20 state and federal tax authorities.

21 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
22 the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section
23 468B-1.

24 7.4. Notice to Class Members

25 7.4.1. No later than three (3) business days after receipt of the Class Data, the
26 Administrator shall notify Class Counsel that the list has been received and state the
27 number of Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the
28 Class Data.

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

11 7.4.3. Not later than 3 business days after the Administrator’s receipt of any Class Notice
12 returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice
13 using any forwarding address provided by the USPS. If the USPS does not provide a
14 forwarding address, the Administrator shall conduct a Class Member Address Search,
15 and re-mail the Class Notice to the most current address obtained. The Administrator
16 has no obligation to make further attempts to locate or send Class Notice to Class
17 Members whose Class Notice is returned by the USPS a second time.

18 7.4.4. The deadlines for Class Members’ written objections, Challenges to Workweeks
19 and/or Pay Periods, and Requests for Exclusion will be extended an additional 15 days
20 beyond the 45 days otherwise provided in the Class Notice for all Class Members whose
21 notice is re-mailed. The Administrator will inform the Class Member of the extended
22 deadline with the re-mailed Class Notice.

23 7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
24 discovers any persons who believe they should have been included in the Class Data
25 and should have received Class Notice, the Parties will expeditiously meet and confer,
26 and in good faith, in an effort to agree on whether to include them as Class Members.
27 If the Parties agree, such persons will be Class Members entitled to the same rights as
28 other Class Members, and the Administrator will send, via email or overnight delivery,

1 a Class Notice requiring them to exercise options under this Agreement not later than
2 15 days after receipt of Class Notice, or the deadline dates in the Class Notice, which
3 ever are later.

4 7.5. Requests for Exclusion (Opt-Outs).

5 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement
6 must send the Administrator, by mail, a signed written Request for Exclusion not later
7 than 45 days after the Administrator mails the Class Notice (plus an additional 15 days
8 for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter
9 from a Class Member or his/her representative that reasonably communicates the Class
10 Member's election to be excluded from the Settlement and includes the Class Member's
11 name, address and email address or telephone number. To be valid, a Request for
12 Exclusion must be timely postmarked by the Response Deadline.

13 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it
14 fails to contain all the information specified in the Class Notice. The Administrator
15 shall accept any Request for Exclusion as valid if the Administrator can reasonably
16 ascertain the identity of the person as a Class Member and the Class Member's desire
17 to be excluded. The Administrator's determination shall be final and not appealable or
18 otherwise susceptible to challenge. If the Administrator has reason to question the
19 authenticity of a Request for Exclusion, the Administrator may demand additional proof
20 of the Class Member's identity. The Administrator's determination of authenticity shall
21 be final and not appealable or otherwise susceptible to challenge.

22 7.5.3. Every Class Member who does not submit a timely and valid Request for
23 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled
24 to all benefits and bound by all terms and conditions of the Settlement, including the
25 Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement,
26 regardless whether the Participating Class Member actually receives the Class Notice
27 or objects to the Settlement.
28

1 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a
2 Non-Participating Class Member and shall not receive an Individual Class Payment or
3 have the right to object to the class action components of the Settlement. Because future
4 PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-
5 Participating Class Members who are Aggrieved Employees are deemed to release the
6 claims identified in Paragraph 5.4 of this Agreement and are eligible for an Individual
7 PAGA Payment.

8 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after
9 the Administrator mails the Class Notice (plus an additional 15 days for Class Members whose
10 Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods
11 (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge
12 the allocation by communicating with the Administrator via mail. The Administrator must
13 encourage the challenging Class Member to submit supporting documentation. In the absence
14 of any contrary documentation, the Administrator is entitled to presume that the Workweeks
15 contained in the Class Notice are correct so long as they are consistent with the Class Data. The
16 Administrator's determination of each Class Member's allocation of Workweeks and/or Pay
17 Periods shall be final and not appealable or otherwise susceptible to challenge. The
18 Administrator shall promptly provide copies of all challenges to calculation of Workweeks
19 and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination
20 the challenges.

21 7.7. Objections to Settlement

22 7.7.1. Only Participating Class Members may object to the class action components of
23 the Settlement and/or this Agreement, including contesting the fairness of the
24 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
25 Counsel Litigation Expenses Payment and/or Class Representative Enhancement Fee.

26 7.7.2. Participating Class Members may send written objections to the Administrator, by
27 mail. In the alternative, Participating Class Members may appear in Court (or hire an
28 attorney to appear in Court) to present verbal objections at the Final Approval Hearing.

1 A Participating Class Member who elects to send a written objection to the
2 Administrator must do so not later than 45 days after the Administrator’s mailing of the
3 Class Notice (plus an additional 15 days for Class Members whose Class Notice was re-
4 mailed).

5 7.7.3. Non-Participating Class Members have no right to object to any of the class action
6 components of the Settlement.

7 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
8 performed or observed by the Administrator contained in this Agreement or otherwise.

9 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will maintain
10 and use an internet website to post information of interest to Class Members including
11 the date, time and location for the Final Approval Hearing and copies of the Settlement
12 Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class
13 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment,
14 Class Counsel Litigation Expenses Payment and Class Representative Enhancement
15 Fee, the Final Approval and the Judgment. The Administrator will also maintain and
16 monitor an email address and a toll-free telephone number to receive Class Member
17 calls and emails.

18 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
19 promptly review on a rolling basis Requests for Exclusion to ascertain their validity.
20 Not later than 5 days after the expiration of the deadline for submitting Requests for
21 Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel
22 containing (a) the names and other identifying information of Class Members who have
23 timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and
24 other identifying information of Class Members who have submitted invalid Requests
25 for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted
26 (whether valid or invalid).

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1 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written
2 reports to Class Counsel and Defense Counsel that, among other things, tally the number
3 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for
4 Exclusion (whether valid or invalid) received, objections received, challenges to
5 Workweeks and/or Pay Periods received and/or resolved, and checks mailed for
6 Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The
7 Weekly Reports must include provide the Administrator’s assessment of the validity of
8 Requests for Exclusion and attach copies of all Requests for Exclusion and objections
9 received.

10 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to
11 address and make final decisions consistent with the terms of this Agreement on all
12 Class Member challenges over the calculation of Workweeks and/or Pay Periods. The
13 Administrator’s decision shall be final and not appealable or otherwise susceptible to
14 challenge.

15 7.8.5. Administrator’s Declaration. Before the date by which Plaintiff is required to file
16 the Motion for Final Approval of the Settlement, the Administrator will provide to Class
17 Counsel and Defense Counsel, a declaration suitable for filing in Court attesting to its
18 due diligence and compliance with all of its obligations under this Agreement,
19 including, but not limited to, its mailing of Class Notice, the Class Notices returned as
20 undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total
21 number of Requests for Exclusion from Settlement it received (both valid or invalid),
22 the number of written objections and attach the Exclusion List. The Administrator will
23 supplement its declaration as needed or requested by the Parties and/or the Court. Class
24 Counsel is responsible for filing the Administrator’s declaration(s) in Court.

25 7.8.6. Final Report by Settlement Administrator. Within 10 days after the Administrator
26 disburses all funds in the Gross Settlement Amount, the Administrator will provide
27 Class Counsel and Defense Counsel with a final report detailing its disbursements by
28 employee identification number only of all payments made under this Agreement. At

1 least 7 days before any deadline set by the Court, the Administrator will prepare, and
2 submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in
3 Court attesting to its disbursement of all payments required under this Agreement. Class
4 Counsel is responsible for filing the Administrator's declaration in Court.

5 **8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE**

6 Based on its records, Defendant estimates that, as of the date of this Settlement
7 Agreement, (1) there are 76 Class Members and 8,836 Total Workweeks during the Class Period
8 and (2) there are 48 Aggrieved Employees who worked 1,610 Pay Periods during the PAGA
9 Period.

10 8.1. Increase in Workweeks. Defendant represents that there are no more than 8,836
11 Workweeks worked during the Class Period. In the event the number of Workweeks worked by
12 Class Members during the Class Period increases by more than 10%, or 883 Workweeks, then
13 Defendant will have the option to: (1) increase the Gross Settlement Amount proportionally or
14 (2) end the Class Period on an earlier date such that the number of Workweeks does not exceed
15 9,719. For example, should there be 9,808 Workweeks (*i.e.* 11% greater than 8,836 Workweeks
16 in the Class Period, and Defendant elects option (1) above, then the Gross Settlement Amount
17 shall be increased by 1% from \$350,000.00 to \$353,500.00.

18 8.2. Defendant's Election to Nullify Settlement. If more than 15% of the Settlement Class opts
19 out of the Settlement, the Defendant shall have the right, in its sole discretion to nullify this
20 Agreement. If Defendant elects to nullify this Agreement, then the Agreement shall be deemed
21 null and void *ab initio*, except that Defendant will be responsible to pay any and all costs of the
22 Settlement Administrator up to the date of Defendant's Election.

23 **9. MOTION FOR FINAL APPROVAL**

24 Prior to the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for
25 final approval of the Settlement that includes a request for approval of the PAGA settlement
26 under Labor Code section 2699, subd. (1), a Proposed Final Approval Order and a proposed
27 Judgment (collectively "Motion for Final Approval"). Plaintiff shall endeavor to provide drafts
28 of these documents to Defense Counsel 5 calendar days prior to filing the Motion for Final

1 Approval. Class Counsel and Defense Counsel will expeditiously meet and confer, and in good
2 faith, to resolve any disagreements concerning the Motion for Final Approval.

3 9.1. Response to Objections. Each Party retains the right to respond to any objection raised
4 by a Participating Class Member, including the right to file responsive documents in Court no
5 later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted
6 by the Court.

7 9.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
8 Approval on any material change to the Settlement (including, but not limited to, the scope of
9 release to be granted by Class Members), the Parties will expeditiously work together in good
10 faith to address the Court's concerns by revising the Agreement as necessary to obtain Final
11 Approval. The Court's decision to award less than the amounts requested for the Class
12 Representative Enhancement Fee, Class Counsel Fees Payment, Class Counsel Litigation
13 Expenses Payment, Administrator Expenses Payment and/or individual claims of Plaintiff for
14 alleged wrongful termination, shall not constitute a material modification to the Agreement
15 within the meaning of this paragraph.

16 9.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the
17 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of
18 (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters,
19 and (iii) addressing such post-Judgment matters as are permitted by law.

20 9.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
21 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class
22 Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
23 respective counsel, and all Participating Class Members who did not object to the Settlement as
24 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
25 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
26 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver
27 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
28 Parties' obligations to perform under this Agreement will be suspended until such time as the

1 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
2 the amount of the Net Settlement Amount.

3 9.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
4 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material
5 modification of this Agreement (including, but not limited to, the scope of release to be granted
6 by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
7 expeditiously work together in good faith to address the appellate court's concerns and to obtain
8 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
9 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
10 the Court's award of the Class Representative Enhancement Fee or any payments to Class
11 Counsel shall not constitute a material modification of the Judgment within the meaning of this
12 paragraph, as long as the Gross Settlement Amount remains unchanged.

13 **10. AMENDED JUDGMENT**

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

16 **11. ADDITIONAL PROVISIONS**

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

1 connection with, any litigation (except for proceedings to enforce or effectuate the Settlement
2 and this Agreement).

3 11.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and
4 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement
5 is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit
6 another person to disclose, disseminate or publicize, any of the terms of the Agreement directly
7 or indirectly, specifically or generally, to any person, corporation, association, government
8 agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom
9 will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the
10 extent necessary to report income to appropriate taxing authorities; (4) in response to a court
11 order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
12 government agency. Each Party agrees to immediately notify each other Party of any judicial or
13 agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant
14 and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or
15 other communication, before the filing of the Motion for Preliminary Approval, any with third
16 party regarding this Agreement or the matters giving rise to this Agreement except to respond
17 only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class
18 Counsel's communications with Class Members in accordance with Class Counsel's ethical
19 obligations owed to Class Members.

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

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

1 11.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
2 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate
3 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
4 its terms, and to execute any other documents reasonably required to effectuate the terms of this
5 Agreement including any amendments to this Agreement.

6 11.6. Cooperation. The Parties and their counsel will cooperate with each other and use their
7 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
8 Settlement Agreement, submitting supplemental evidence and supplementing points and
9 authorities as requested by the Court. In the event the Parties are unable to agree upon the form
10 or content of any document necessary to implement the Settlement, or on any modification of the
11 Agreement that may become necessary to implement the Settlement, the Parties will seek the
12 assistance of a mediator and/or the Court for resolution.

13 11.7. No Prior Assignments. The Parties separately represent and warrant that they have not
14 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
15 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
16 action, or right released and discharged by the Party in this Settlement.

17 11.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are
18 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
19 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR
20 Part 10, as amended) or otherwise.

21 11.9. Modification of Agreement. This Agreement, and all parts of it, may be amended,
22 modified, changed, or waived only by an express written instrument signed by all Parties or their
23 representatives, and approved by the Court.

24 11.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to
25 the benefit of, the successors of each of the Parties.

26 11.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
27 governed by and interpreted according to the internal laws of the state of California, without
28 regard to conflict of law principles.

1 11.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
2 this Agreement. This Agreement will not be construed against any Party on the basis that the
3 Party was the drafter or participated in the drafting

4 11.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
5 during Action and in this Agreement relating to the confidentiality of information shall survive
6 the execution of this Agreement

7 11.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal.
8 Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by
9 Defendant in connection with the mediation, other settlement negotiations, or in connection with
10 the Settlement, may be used only with respect to this Settlement, and no other purpose, and may
11 not be used in any way that violates any existing contractual agreement, statute, or rule of court.

12 11.15. Headings. The descriptive heading of any section or paragraph of this Agreement is
13 inserted for convenience of reference only and does not constitute a part of this Agreement.

14 11.16. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall
15 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
16 weekend or federal legal holiday, such date or deadline shall be on the first business day
17 thereafter.

18 11.17. Execution in Counterparts. This Agreement may be executed in one or more counterparts
19 by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall
20 be accepted as an original. All executed counterparts and each of them will be deemed to be one
21 and the same instrument if counsel for the Parties will exchange between themselves signed
22 counterparts. Any executed counterpart will be admissible in evidence to prove the existence
23 and contents of this Agreement.

24 11.18. Stay of Litigation. The Parties agree that upon the execution of this Agreement the
25 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
26 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend
27 the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
28 process.

1 11.19. Severability. In the event that one or more of the provisions contained in this Agreement
2 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,
3 illegality, or unenforceability shall in no way effect any other provision if Defendant' Counsel
4 and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing
5 to proceed as if such invalid, illegal, or unenforceable provision had never been included in this
6 Agreement.

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IT IS SO AGREED:

Date: 10/14/2024

Adrian Martinez
Plaintiff, Adrian Martinez Flores

Date: _____

Defendant, APT Maintenance, Inc.

AGREED AS TO FORM ONLY:

Date: _____

David D. Bibiyan
Vedang J. Patel
Andrew Magaline
Counsel for Plaintiff

Date: _____

Collin D. Cook
Hyunki (John) Jung
Counsel for Defendant

1 11.19. Severability. In the event that one or more of the provisions contained in this Agreement
2 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,
3 illegality, or unenforceability shall in no way effect any other provision if Defendant' Counsel
4 and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing
5 to proceed as if such invalid, illegal, or unenforceable provision had never been included in this
6 Agreement.

7
8 **IT IS SO AGREED:**

9
10 Date: 10/14/2024

Adrian Martinez
Plaintiff, Adrian Martinez Flores

11
12 Date: 10/16/2024

[Signature]
Defendant, APT Maintenance, Inc.

13
14
15 **AGREED AS TO FORM ONLY:**

16
17 Date: _____

David D. Bibiyan
Vedang J. Patel
Andrew Magaline
Counsel for Plaintiff

18
19
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21 Date: 10/16/2024

Collin Cook
Collin D. Cook
Hyunki (John) Jung
Counsel for Defendant

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