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25 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

27 MONICA G. LOZANO, an individual and on
28 behalf of all others similarly situated,

Plaintiff,

v.

LECC BERG FEINFIELD EYE CENTERS,
LLC, a California limited liability company;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 22STCV40646
(*Related Case No. 23BBCV02359*)

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

**CLASS AND PAGA SETTLEMENT
AGREEMENT**

Action Filed: December 28, 2022
Trial Date: None Set

1 This Class and PAGA Settlement Agreement (“Settlement,” “Agreement” or “Settlement
2 Agreement”) is made by and between plaintiff Monica G. Lozano (“Plaintiff”), on one hand, and
3 defendant LECC Berg Feinfield Eye Centers, LLC (“Defendant”), on the other hand. The
4 Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

5 **1. DEFINITIONS**

6 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
7 Defendant, captioned *Monica Lozano v. LECC Berg Feinfield Eye Centers, LLC*, Case No.
8 22STCV40646, initiated on December 28, 2022, and pending in Superior Court of the State of
9 California, County of Los Angeles.

10 1.2. “Administrator” means Apex Class Action Administration (“Apex”), the neutral entity
11 the Parties have agreed to appoint to administer the Settlement.

12 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid
13 from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance
14 with the Administrator’s “not to exceed” bid submitted to the Court in connection with
15 Preliminary Approval of the Settlement.

16 1.4. “Aggrieved Employees” means Class Members working for Defendant as hourly-paid,
17 non-exempt employees during the PAGA Period in the State of California.

18 1.5. “Class” or “Settlement Class” means all persons currently or formerly employed by
19 Defendant, either directly or through any subsidiary, staffing agency, or professional employer
20 organization, including but not limited to any parent, subsidiary, affiliated, or related entities, as
21 non-exempt, hourly-paid employees in the State of California at any time during the Class Period.

22 1.6. “Class Counsel” means David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group,
23 P.C.

24 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean
25 the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
26 expenses, respectively, incurred to prosecute the Action.

27 1.8. “Class Data” means Class Member identifying information in Defendant’s custody,
28 possession, or control, including the Class Member’s (1) name; (2) last known address(es); (3)

1 last four (4) digits of the last known Social Security Number(s); and (4) the dates of employment
2 (i.e., hire dates, and, if applicable, re-hire date(s) and/or separation date(s)).

3 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either
4 a Participating Class Member or Non-Participating Class Member (including a Non- Participating
5 Class Member who qualifies as an Aggrieved Employee).

6 1.10. “Class Member Address Search” means the Administrator’s investigation and search for
7 current Class Member mailing addresses using all reasonably available sources, methods and
8 means including, but not limited to, the National Change of Address database, skip traces, and
9 direct contact by the Administrator with Class Members.

10 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION
11 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to
12 Class Members in English and Spanish in the form, without material variation, attached as Exhibit
13 A and incorporated by reference into this Agreement.

14 1.12. “Class Period” means the period from December 28, 2018, through April 27, 2024.

15 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action
16 seeking Court approval to serve as a Class Representative.

17 1.14. “Class Representative Service Payment” means the payment to the Class Representative
18 for initiating the Action and providing services in support of the Action.

19 1.15. “Court” means the Superior Court of California, County of Los Angeles.

20 1.16. “Defendant” means named defendant LECC Berg Feinfield Eye Centers, LLC.

21 1.17. “Defense Counsel” means David Fishman, Stephanie B. Kantor, Janet S. Soutanian of
22 Ballard Rosenberg Golper & Savitt, LLP

23 1.18. “Effective Date” means the date when both of the following have occurred: (a) the Court
24 enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment
25 is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating
26 Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more
27 Participating Class Members objects to the Settlement, the day after the deadline for filing a
28 notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after

1 the appellate court affirms the Judgment and issues a remittitur..

2 1.19. “Final Approval” or “Final Order” means the Court’s order granting final approval of the
3 Settlement.

4 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval
5 of the Settlement.

6 1.21. “Final Judgment” means the Judgment entered by the Court based upon the Final
7 Approval.

8 1.22. “General Release” means the broader release of claims by Plaintiff, which is in addition
9 to Plaintiff’s limited release of claims as a Participating Class Member.

10 1.23. “Gross Settlement Amount” means \$275,000.00 (Two Hundred Seventy-Five Thousand
11 Dollars and Zero Cents), which is the total amount Defendant agrees to pay under the Settlement,
12 except as provided in Paragraph 8.1 below, and any and all employer payroll taxes owed on the
13 Wage Portions of the Individual Class Payments. The Gross Settlement Amount will be used to
14 pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class
15 Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, and
16 Administrator’s Expenses.

17 1.24. “Individual Class Payment(s)” means the Participating Class Member’s pro rata share of
18 the Net Settlement Amount calculated according to the number of Workweeks worked during
19 the Class Period.

20 1.25. “Individual PAGA Payment(s)” means the Aggrieved Employee’s pro rata share of 25%
21 of the PAGA Penalties calculated according to the number of Workweeks worked during the
22 PAGA Period.

23 1.26. “Judgment” means the judgment entered by the Court based upon Final Approval.

24 1.27. “LWDA” means the California Labor and Workforce Development Agency, the agency
25 entitled, under Labor Code section 2699, subd. (i).

26 1.28. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA
27 under Labor Code section 2699, subd. (i).

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1 1.29. "Motion for Final Approval" means Plaintiff's submission of a written motion, including
2 any evidence as may be required for the Court to conduct an inquiry into the fairness of the
3 Settlement as set forth in this Agreement, to conduct a Final Approval Hearing, and to enter a
4 Final Order in this Action.

5 1.30. "Motion for Preliminary Approval" means Plaintiff's submission of a written motion,
6 including any evidence as may be required for the Court to grant preliminary approval of the
7 Settlement as required by Rule 3.769 of the California Rules of Court.

8 1.31. "Net Settlement Amount" means the Gross Settlement Amount, less the following
9 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
10 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
11 Litigation Expenses Payment, and Administration Expenses Payment. The remainder is to be
12 paid to Participating Class Members as Individual Class Payments.

13 1.32. "Non-Participating Class Member(s)" means any Class Member who opts out of the
14 Settlement by sending the Administrator a valid and timely Request for Exclusion. Non-
15 Participating Class Member(s) who worked during the PAGA Period shall still receive their pro
16 rata share of the PAGA Penalties and will be bound by the release of the Released PAGA Claims.

17 1.33. "Operative Complaint" means the First Amended Complaint to be filed in the Action.

18 1.34. "PAGA Pay Period(s)" means any Pay Period during which an Aggrieved Employee
19 worked for Defendant for at least one day during the PAGA Period.

20 1.35. "PAGA Period" means the period from January 6, 2022 through April 27, 2024.

21 1.36. "PAGA" means the Private Attorneys' General Act (Labor Code §§ 2698. *et seq.*).

22 1.37. "PAGA Notice" means Plaintiff's January 6, 2023 letter to Defendant and the LWDA,
23 providing notice pursuant to Labor Code section 2699.3 subd. (a).

24 1.38. "PAGA Penalties" means the total amount of PAGA civil penalties (\$10,000.00) to be
25 paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$2,500.00)
26 and 75% to the LWDA (\$7,500.00) in settlement of PAGA claims. Aggrieved Employees are not
27 permitted to exclude themselves from receiving their pro rata share of the PAGA Penalties.

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1 1.39. “Participating Class Member(s)” means a Class Member who does not submit a valid and
2 timely Request for Exclusion from the Settlement and will therefore receive his or her share of
3 the Net Settlement Amount automatically without the need to return a claim form. Each
4 Participating Class Member will be paid his/her Individual Class Payment. Class Members may
5 not exclude themselves from receiving their pro rata share of the PAGA Penalties, if applicable.

6 1.40. “Plaintiff”, “Named Plaintiff” or “Class Representative” means Monica G. Lozano, the
7 named plaintiff in the Actions.

8 1.41. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the
9 Settlement.

10 1.42. “Preliminary Approval Order” means the proposed Order granting Preliminary Approval
11 and Approval of PAGA Settlement to be mutually agreed upon by the Parties prior to Plaintiff’s
12 presentation of the same to the Court.

13 1.43. “Qualified Settlement Account”, “QSA”, “Qualified Settlement Fund” or “QSF” means
14 a fund within the meaning of Treasury Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that
15 is established by the Administrator for the benefit of Participating Class Members.

16 1.44. “Released Class Claims” means the claims being released as described in Paragraph 5.2
17 below.

18 1.45. “Released PAGA Claims” means the claims being released as described in Paragraph 5.4
19 below.

20 1.46. “Released Parties” means Defendant and all its present and former parent companies,
21 subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors,
22 employees, agents, attorneys, insurers, successors and assigns, including but not limited to Berg
23 Feinfield Vision Correction Corporation.

24 1.47. “Request for Exclusion” means a Class Member’s submission of a written request to be
25 excluded from the Class Settlement signed by the Class Member. Class Members who worked
26 during the PAGA Period are not permitted to object to the Released PAGA Claims or any portion
27 of the Settlement pertaining to the Released PAGA Claims. Class Members who worked during
28 the PAGA Period that submit a Request for Exclusion will still be deemed Aggrieved Employees,

1 will still receive their Individual PAGA Payments, and will be bound by the release of the
2 Released PAGA Claims.

3 1.48. “Response Deadline” means forty-five (45) days after the Administrator mails Notice to
4 Class Members and Aggrieved Employees and shall be the last date on which Class Members
5 may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail
6 his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after
7 having been returned undeliverable to the Administrator shall have an additional 15 days beyond
8 the Response Deadline has expired.

9 1.49. “Settlement” means the disposition of the Action effected by this Agreement and the
10 Judgment.

11 1.50. “Workweek” means any week during which a Class Member was employed by and
12 worked for the Defendant in a non-exempt, hourly position during the Class Period in California,
13 based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

14 **2. RECITALS**

15 2.1. On December 28, 2022, Plaintiff commenced this Action by filing a class action
16 Complaint in Superior Court of the State of California, County of Los Angeles captioned *Monica*
17 *Lozano v. LECC Berg Feinfield Eye Centers, LLC*, Case No. 22STCV40646, alleging causes of
18 action against Defendant for: (1) failure to pay overtime wages; (2) failure to pay minimum
19 wages; (3) failure to provide meal periods or compensation in lieu thereof; (4) failure to provide
20 rest periods or compensation in lieu thereof; (5) failure to pay all wages due upon separation; (6)
21 failure to provide accurate wage statements; (7) failure to timely pay wages; (8) failure to
22 indemnify for business expenses; (9) failure to pay interest on deposits; (10) failure to pay unused
23 vested vacation time (violation of Labor Code Section 227.3); and (11) engaging in unfair
24 competition (the “Class Action”).

25 2.2. On January 6, 2023, Plaintiff filed with the LWDA and served on Defendant a notice
26 under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the LWDA to
27 recover civil penalties on behalf of Aggrieved Employees for various Labor Code violations
28 (“PAGA Notice”).

1 2.3. On October 10, 2023, after 65 days passed without any communication from the LWDA,
2 Plaintiff filed a separate representative action under PAGA in the Superior Court of California
3 for the County of Los Angeles, entitled as *Monica Lozano v. LECC Berg Feinfield Eye Centers,*
4 *LLC*, Case No. 23BBCV02359, for civil penalties under Labor Code sections 210, 226.3, 558,
5 1174.5, 1197.1 and 2699 in connection with the allegations made in the PAGA Notice (the
6 “PAGA Action”).

7 2.4. On November 15, 2023, the parties participated in an all-day mediation presided over by
8 Michael J. Loeb, Esq., a well-regarded mediator experienced in mediating complex labor and
9 employment matters, which led to this Agreement to settle the Action.

10 2.5. Prior to mediation, Plaintiff obtained, through informal discovery: (1) time and payroll
11 records for approximately 100% of the estimated 62 putative class members for the Class Period;
12 (2) time and payroll records for approximately 100% of the estimated 39 putative Aggrieved
13 Employees for the Pay Period; and (3) Defendant’s wage and hour policy documents, including
14 Defendant’s handbooks in effect during the Class Period. Plaintiff’s investigation was sufficient
15 to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48
16 Cal. App. 4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116,
17 129-130 (*Dunk/Kullar*).

18 2.6. As part of this Agreement, the Parties agree to stipulate to Plaintiff filing a First Amended
19 Complaint in the Class Action that effectively consolidates the allegations of the Class Action
20 and the PAGA Action within the Class Action for purposes of settlement approval. Upon the
21 acceptance of the filing of the First Amended Complaint, Plaintiff shall dismiss the PAGA Action
22 without prejudice. The First Amended Complaint shall be the Operative Complaint.

23 2.7. The Court has not granted class certification.

24 2.8. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any
25 other pending matter or action asserting claims that will be extinguished or affected by the
26 Settlement.

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3. MONETARY TERMS

3.1. Gross Settlement Amount. Defendant promises to pay \$275,000.00 as the Gross Settlement Amount, unless escalated pursuant to Paragraph 8.1 of this Agreement, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

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

3.2.1. To Plaintiff: Class Representative Service Payment to Class Representative or named plaintiff of not more than \$7,500.00, in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative or named plaintiff is entitled to receive as a Participating Class Member. Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will endeavor in good faith to seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. Any amount requested by Plaintiff for the Service Award and not awarded by the Court shall become part of the Net Settlement Amount and shall be distributed to Participating Class Members as part of their Individual Settlement Payment. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff will be solely and legally responsible to pay any and all applicable taxes on the Service Award and shall hold harmless Defendant, Class Counsel and Defense Counsel from any claim or liability for taxes, penalties, or interest arising as a result of payment of the Service Award.

1 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 35% of the
2 Gross Settlement Amount, which, unless escalated pursuant to Paragraph 8.1 of this
3 Agreement, is currently estimated to be \$96,250.00 and a Class Counsel Litigation
4 Expenses Payment of not more than \$25,000.00. Defendant will not oppose requests for
5 these payments provided that do not exceed these amounts. Plaintiff and/or Class
6 Counsel will endeavor in good faith to file a motion for Class Counsel Fees Payment
7 and Class Litigation Expenses Payment no later than 16 court days prior to the Final
8 Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class
9 Counsel Litigation Expenses Payment less than the amounts requested, the
10 Administrator will allocate the remainder to the Net Settlement Amount. Released
11 Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising
12 from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel
13 Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees
14 Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms.
15 Class Counsel shall be solely and legally responsible to pay all applicable taxes on the
16 award of attorneys' fees. Class Counsel assumes full responsibility and liability for taxes
17 owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses
18 Payment and holds Defendant and Defense Counsel harmless, and indemnifies
19 Defendant and Defense Counsel, from any dispute or controversy regarding any division
20 or sharing of any of these Payments. There will be no additional charge of any kind to
21 either the Settlement Class Members or request for additional consideration from
22 Defendant for such work unless, Defendant materially breaches this Agreement,
23 including any term regarding funding, and further efforts are necessary from Class
24 Counsel to remedy said breach, including, without limitation, moving the Court to
25 enforce the Agreement. Should the Court approve attorneys' fees and/or litigation costs
26 and expenses in amounts that are less than the amounts provided for herein, then the
27 unapproved portion(s) shall be a part of the Net Settlement Amount.

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1 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
2 \$5,400.00 except for a showing of good cause and as approved by the Court. To the
3 extent the Administration Expenses are less or the Court approves payment less than
4 \$5,400.00, the Administrator will retain the remainder in the Net Settlement Amount.

5 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by
6 (a) dividing the Net Settlement Amount by the total number of Workweeks worked by
7 all Participating Class Members during the Class Period, and (b) multiplying the result
8 by each Participating Class Member's Workweeks.

9 3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating
10 Class Member's Individual Class Payment will be allocated to settlement of
11 wage claims (the "Wage Portion"). The Wage Portions are subject to tax
12 withholding and will be reported on an IRS W-2 Form. The 80% of each
13 Participating Class Member's Individual Class Payment will be allocated to
14 settlement of claims for interest and penalties (the "Non-Wage Portion"). The
15 Non-Wage Portions are not subject to wage withholdings and will be reported
16 on IRS 1099 Forms. Participating Class Members assume full responsibility and
17 liability for any employee taxes owed on their Individual Class Payment. All
18 monies received by Participating Class Members under the Settlement which
19 are attributable to wages shall constitute income to such Participating Class
20 Members solely in the year in which such monies actually are received by the
21 Participating Class Members. It is the intent of the Parties that Individual
22 Settlement Payment provided for in this Agreement are the sole payments to be
23 made by Defendant to Participating Class Members in connection with this
24 Settlement, with the exception of the Named Plaintiff, and that the Participating
25 Class Members are not entitled to any new or additional compensation or
26 benefits as a result of having received the Individual Settlement Payments.
27 Furthermore, the receipt of Individual Settlement Payments by Participating
28 Class Members shall not, and does not, by itself establish any general, special,

1 or joint employment relationship between and among the Participating Class
2 Member(s) and Defendant. Forms W-2 and/or Forms 1099 will be distributed
3 by the Settlement Administrator at times and in the manner required by the
4 Internal Revenue Code of 1986 (the "Code") and consistent with this
5 Agreement. If the Code, the regulations promulgated thereunder, or other
6 applicable tax law, is changed after the date of this Agreement, the processes
7 set forth in this Section may be modified in a manner to bring Defendant into
8 compliance with any such changes.

9 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual
10 Class Payments. Non-Participating Class Members will not receive any
11 Individual Class Payments. The Administrator will retain amounts equal to their
12 Individual Class Payments in the Net Settlement Amount for distribution to
13 Participating Class Members on a pro rata basis.

14 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
15 \$10,000.00 to be paid from the Gross Settlement Amount, with 75% (\$7,500.00)
16 allocated to the LWDA PAGA Payment and 25% (\$2,500.00) allocated to the Individual
17 PAGA Payments.

18 3.2.5.1. The Administrator will calculate each Individual PAGA
19 Payment by (a) dividing the amount of the Aggrieved Employees' 25% share
20 of PAGA Penalties (\$2,500.00) by the total number of PAGA Period Pay
21 Periods worked by all Aggrieved Employees during the PAGA Period and (b)
22 multiplying the result by each Aggrieved Employee's PAGA Period Pay
23 Periods. Aggrieved Employees assume full responsibility and liability for any
24 taxes owed on their Individual PAGA Payment.

25 3.2.5.2. If the Court approves PAGA Penalties of less than the
26 amount requested, the Administrator will allocate the remainder to the Net
27 Settlement Amount. The Administrator will report the Individual PAGA
28 Payments on IRS 1099 Forms.

1 **4. SETTLEMENT FUNDING AND PAYMENTS**

2 4.1. Class Workweeks and Aggrieved Employee Pay Periods. The Parties estimate there are
3 62 Class Members who collectively worked a total of 6,643 Workweeks, and 39 Aggrieved
4 Employees who worked a total of 1,321 PAGA Pay Periods.

5 4.2. Class Data. Not later than 14 days after the Court grants Preliminary Approval of the
6 Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the
7 form of a Microsoft Excel spreadsheet. To protect Class Members’ privacy rights, the
8 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
9 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
10 employees who need access to the Class Data to effect and perform under this Agreement.
11 Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class
12 Data omitted class member identifying information and to provide corrected or updated Class
13 Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant
14 must send the Class Data to the Administrator, the Parties and their counsel will expeditiously
15 use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or
16 omitted Class Data.

17 4.3. Funding of Gross Settlement Amount. No later than 14 calendar days after the Effective
18 Date, Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts
19 necessary to fully pay Defendant’s share of payroll taxes by transmitting the funds to the
20 Administrator pursuant to Internal Revenue Code section 1.468B-1 for deposit in an interest-
21 bearing qualified settlement account (“QSA”) with an FDIC insured banking institution, for
22 distribution in accordance with this Agreement and the Court’s Orders and subject to the
23 conditions described herein.

24 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the
25 Gross Settlement Amount, or soon thereafter as practicable, the Administrator will distribute
26 payments from the QSA for all Individual Class Payments, all Individual PAGA Payments, the
27 LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees
28 Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service

1 Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation
2 Expenses Payment and the Class Representative Service Payment shall not precede disbursement
3 of Individual Class Payments and the Individual PAGA Payments.

4 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or
5 Individual PAGA Payments and send them to the Class Members via First Class U.S.
6 Mail, postage prepaid. The face of each check shall prominently state the date (not less
7 than 180 days after the date of mailing) when the check will be voided. The
8 Administrator will cancel all checks not cashed by the void date. The Administrator will
9 send checks for Individual Settlement Payments to all Participating Class Members
10 (including those for whom Class Notice was returned undelivered). The Administrator
11 will send checks for Individual PAGA Payments to all Aggrieved Employees including
12 Non-Participating Class Members who qualify as Aggrieved Employees (including
13 those for whom Class Notice was returned undelivered). The Administrator may send
14 Participating Class Members a single check combining the Individual Class Payment
15 and the Individual PAGA Payment. Before mailing any checks, the Settlement
16 Administrator must update the recipients' mailing addresses using the National Change
17 of Address Database.

18 4.4.2. The Administrator must conduct a Class Member Address Search for all other
19 Class Members whose checks are returned undelivered without USPS forwarding
20 address. Within 7 days of receiving a returned check the Administrator must re-mail
21 checks to the USPS forwarding address provided or to an address ascertained through
22 the Class Member Address Search. The Administrator need not take further steps to
23 deliver checks to Class Members whose re-mailed checks are returned as undelivered.
24 The Administrator shall promptly send a replacement check to any Class Member whose
25 original check was lost or misplaced, requested by the Class Member prior to the void
26 date. In the event a Participating Class Member fails to cash/deposit his or her Individual
27 Settlement Payment, the Participating Class Member shall nevertheless remain bound
28 by the Settlement.

1 4.4.3. Participating Class Members will receive an Individual Settlement Payment.
2 Individual Settlement Payment checks shall remain valid and negotiable for one hundred
3 and eighty (180) calendar days after the date of their issuance. Thereafter, checks for
4 such payments shall be canceled and funds associated with such checks shall be
5 transmitted to the California Controller’s Office, Unclaimed Property Fund.

6 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall
7 not obligate Defendant to confer any additional benefits or make any additional
8 payments to Class Members (such as 401(k) contributions or bonuses) beyond those
9 specified in this Agreement.

10 **5. RELEASE OF CLAIMS**

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

15 5.1. Plaintiff’s Release. Plaintiff and her respective former and present spouses,
16 representatives, agents, attorneys, heirs, administrators, successors and assigns generally releases
17 and forever discharges Released Parties, to the fullest extent permitted by law, of and from any
18 and all claims, known and unknown, asserted and not asserted, which the Named Plaintiff has or
19 may have against the Released Parties as of the date of execution of this Agreement (“Plaintiff’s
20 Released Claims”). Plaintiff’s Released Claims include, but are not limited to, all of the Released
21 Claims, the Released PAGA Claims and any other claims arising under the California Labor
22 Code; any claim arising out of the California common law of contract; the Fair Labor Standards
23 Act, 29 U.S.C. § 201 *et seq.*, and federal common law; all claims for lost wages and benefits,
24 emotional distress, retaliation, punitive damages, and attorneys’ fees and costs arising under
25 federal, state, or local laws for discrimination, harassment, and wrongful termination, including
26 but not limited to, 42 U.S.C. section 1981, Title VII of the Civil Rights Act of 1964, the
27 Americans with Disabilities Act, the Age Discrimination in Employment Act, the California Fair
28 Employment and Housing Act, the California Labor Code, and the law of contract and tort.

1 Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or the
2 release of claims not permitted by law. Plaintiff acknowledges that Plaintiff may discover facts
3 or law different from, or in addition to, the facts or law that Plaintiff now know or believe to be
4 true but agree, nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
5 notwithstanding such different or additional facts or Plaintiff's discovery of them.

6 5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
7 purposes of Plaintiff's Release only, Plaintiff expressly waives and relinquishes the
8 provisions, rights and benefits, if any, of section 1542 of the California Civil Code or
9 similar provisions of applicable law, which reads:

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

16 5.2. Release by Participating Class Members: For the duration of the Class Period, all
17 Participating Class Members, on behalf of themselves and their respective former and present
18 representatives, agents, attorneys, heirs, administrators, successors and assigns, release Released
19 Parties from any and all claims that were alleged or reasonably could have been alleged based on
20 the facts stated in the Operative Complaint including: (1) all claims for failure to pay overtime
21 wages; (2) all claims for failure to pay minimum wages; (3) all claims for failure to provide meal
22 periods or compensation in lieu thereof; (4) all claims for failure to provide rest periods or
23 compensation in lieu thereof; (5) all claims for failure to pay all wages due upon separation; (6)
24 all claims for failure to provide accurate wage statements; (7) all claims for failure to timely pay
25 wages; (8) all claims for failure to indemnify business expenses; (9) all claims for failure to pay
26 interest on deposits; (10) all claims for failure to pay unused vacation time; and (11) all claims
27 asserted through California Business & Professions Code section 17200, *et seq.*, arising out of the
28 Labor Code violations referenced in the Class Action Operative Complaint.

1 5.3. Except as set forth in Section 5.2 of this Agreement, Participating Class Members do not
2 release any other claims, including claims for vested benefits, wrongful termination, violation of
3 the Fair Employment and Housing Act, unemployment insurance, disability, social security,
4 workers' compensation, or claims based on facts occurring outside the Class Period.

5 5.4. Release by Aggrieved Employees: For the duration of the PAGA Period, the State of
6 California and all Aggrieved Employees are deemed to release, on behalf of themselves and their
7 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
8 and assigns, the Released Parties from any and all claims for PAGA penalties that were alleged,
9 or reasonably could have been alleged, based on the PAGA Period facts stated in the PAGA
10 Operative Complaint and the PAGA Notice, including, claims for PAGA penalties pursuant to
11 Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 in connection with alleged
12 violations of Labor Code sections Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 226,
13 226.3, 226.7, 227.3, 232, 232.5, 245, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194,
14 1197, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

15 **6. AMENDMENT OF PLEADINGS AND MOTION FOR PRELIMINARY**
16 **APPROVAL**

17 6.1. The Parties hereby stipulate to filing of a First Amended Complaint in the Class Action
18 that includes all of the allegations in the PAGA Action. If and when the First Amended Complaint
19 is filed, Plaintiff will dismiss the PAGA Action without prejudice, thereby effectively
20 consolidating all allegations in the PAGA Action into the Class Action. In the event the Court
21 does not grant final approval of this Settlement, Plaintiff will be permitted to separately file the
22 PAGA Action without prejudice and the filing shall relate back to the original filing date of the
23 PAGA Action. The First Amended Complaint filed in the Class Action shall be the "Operative
24 Complaint" for the purposes of settlement.

25 6.2. The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion
26 for Preliminary Approval") that complies with the Court's current checklist for Preliminary
27 Approvals.

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1 6.3. Defendant’s Declaration in Support of Preliminary Approval. Because funds from
2 uncashed checks will be transmitted to the California Controller’s Office, Unclaimed Property
3 Fund, Defendants and Defendants’ counsel have no obligation to provide declarations disclosing
4 any facts relevant to any actual or potential conflicts with a “*cy pres* recipient.”

5 6.4. Plaintiff’s Responsibilities. Plaintiff will prepare and endeavor in good faith to deliver to
6 Defense Counsel prior to filing all documents necessary for obtaining Preliminary Approval,
7 including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary
8 Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for
9 approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft
10 proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft
11 proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to
12 exceed” bid for administering the Settlement and attesting to its willingness to serve;
13 competency; operative procedures for protecting the security of Class Data; amounts of insurance
14 coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any
15 actual or potential conflicts of interest with Class Members; and the nature and extent of any
16 financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration
17 from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant
18 to any actual or potential conflicts of interest with Class Members, the Administrator and the
19 proposed Cy Pres; (vi) a signed declaration from each Class Counsel firm attesting to its
20 competency to represent the Class Members; its timely transmission to the LWDA of all
21 necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)),
22 Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code
23 section 2699, subd. (l)(2)); (vii) a redlined version of the parties’ Agreement showing all
24 modifications made to the Model Agreement ready for filing with the Court; and (viii) all facts
25 relevant to any actual or potential conflict of interest with Class Members and the Administrator.
26 In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware
27 of any other pending matter or action asserting claims that will be extinguished or adversely
28 affected by the Settlement.

1 6.5. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible
2 for expeditiously finalizing and filing the Motion for Preliminary Approval after the full
3 execution of this Agreement such that the Motion for Preliminary Approval will be heard by the
4 Court-set deadline for April 10, 2024 and for appearing in Court to advocate in favor of the
5 Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s
6 Preliminary Approval to the Administrator.

7 6.6. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
8 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
9 Defense Counsel will expeditiously work together on behalf of the Parties by meeting and
10 conferring, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary
11 Approval or conditions Preliminary Approval on any material change to this Agreement, Class
12 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by
13 meeting and conferring, and in good faith, to modify the Agreement and otherwise satisfy the
14 Court’s concerns.

15 **7. SETTLEMENT ADMINISTRATION**

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

23 7.2. Employer Identification Number. The Administrator shall have and use its own Employer
24 Identification Number for purposes of calculating payroll tax withholdings and providing reports
25 to state and federal tax authorities.

26 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
27 the requirements of a Qualified Settlement Fund (“QSF”) under U.S. Treasury Regulation section
28 468B-1.

1 7.4. Notice to Class Members

2 7.4.1. No later than three (3) business days after receipt of the Class Data, the
3 Administrator shall notify Class Counsel that the list has been received and state the
4 number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class
5 Data.

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

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

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

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1 7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
2 discovers any persons who believe they should have been included in the Class Data
3 and should have received Class Notice, the Parties will expeditiously meet and confer
4 in person or by telephone and in good faith, in an effort to agree on whether to include
5 them as Class Members. If the Parties agree, such persons will be Class Members
6 entitled to the same rights as other Class Members, and the Administrator will send, via
7 email or overnight delivery, a Class Notice requiring them to exercise options under this
8 Agreement not later than 15 days after receipt of Class Notice, or the deadline dates in
9 the Class Notice, which ever are later.

10 7.5. Requests for Exclusion (Opt-Outs).

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

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

1 7.5.3. Every Class Member who does not submit a timely and valid Request for
2 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled
3 to all benefits and bound by all terms and conditions of the Settlement, including the
4 Participating Class Members' Releases under Paragraphs 5.2 and 5.4 of this Agreement,
5 regardless whether the Participating Class Member actually receives the Class Notice
6 or objects to the Settlement.

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

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

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1 7.7. Objections to Settlement

2 7.7.1. Only Participating Class Members may object to the class action components of
3 the Settlement and/or this Agreement, including contesting the fairness of the
4 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
5 Counsel Litigation Expenses Payment and/or Class Representative Service Payment.
6 Class Members who worked during the PAGA Period are not permitted to object to the
7 Released PAGA Claims or any portion of the Settlement pertaining to the Released
8 PAGA Claims.

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

16 7.7.3. Non-Participating Class Members have no right to object to any of the class action
17 components of the Settlement.

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

20 7.8.1. Email Address and Toll-Free Number. The Administrator will maintain and
21 monitor an email address and a toll-free telephone number to receive Class Member
22 calls, faxes and emails.

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

1 other identifying information of Class Members who have submitted invalid Requests
2 for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted
3 (whether valid or invalid).

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

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

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

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1 7.8.6. Final Report by Settlement Administrator. Within 10 days after the Administrator
2 disburses all funds in the Gross Settlement Amount, the Administrator will provide
3 Class Counsel and Defense Counsel with a final report detailing its disbursements by
4 employee identification number only of all payments made under this Agreement. At
5 least 7 days before any deadline set by the Court, the Administrator will prepare, and
6 submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in
7 Court attesting to its disbursement of all payments required under this Agreement. Class
8 Counsel is responsible for filing the Administrator's declaration in Court.

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

10 The Parties estimate that, as of the date of this Settlement Agreement, (1) there are 62
11 Class Members and 6,643 Total Workweeks during the Class Period and (2) there were 39
12 Aggrieved Employees who worked 1,321 Pay Periods during the PAGA Period.

13 8.1. Increase in Workweeks. Defendant represents that there are no more than 6,643
14 Workweeks during the Class Period as of November 15, 2023. In the event the number of
15 Workweeks during the Class Period increases by more than 10%, or an additional 665
16 Workweeks, then Defendant shall increase the GFV on a proportional basis above 10% (i.e., if
17 there is an 11% increase in the number of workweeks during the Class Period, Defendant agrees
18 to increase the Gross Settlement Amount by 1%); (2) elect to end the Class Period on the date to
19 the number of workweeks reaches 7,308 Workweeks (6,643 Workweeks + 665 Workweeks).

20 **9. MOTION FOR FINAL APPROVAL**

21 Not later than 16 court days prior to the calendared Final Approval Hearing, Plaintiff will
22 file in Court, a motion for final approval of the Settlement that includes a request for approval of
23 the PAGA settlement under Labor Code section 2699, subd. (1), a Proposed Final Approval Order
24 and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall endeavor in
25 good faith to provide drafts of these documents to Defense Counsel for review at least three (3)
26 business days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel
27 will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any
28 disagreements concerning the Motion for Final Approval.

1 9.1. Response to Objections. Each Party retains the right to respond to any objection raised by
2 a Participating Class Member, including the right to file responsive documents in Court no later
3 than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted
4 by the Court.

5 9.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
6 Approval on any material change to the Settlement (including, but not limited to, the scope of
7 release to be granted by Class Members), the Parties will expeditiously work together in good
8 faith to address the Court's concerns by revising the Agreement as necessary to obtain Final
9 Approval. The Court's decision to award less than the amounts requested for the Class
10 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
11 Expenses Payment and Administrator Expenses Payment shall not constitute a material
12 modification to the Agreement within the meaning of this paragraph.

13 9.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the
14 Court will retain jurisdiction over the Parties, Actions and the Settlement solely for purposes of
15 (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters,
16 and (iii) addressing such post-Judgment matters as are permitted by law.

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

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1 9.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
2 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material
3 modification of this Agreement (including, but not limited to, the scope of release to be granted
4 by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
5 expeditiously work together in good faith to address the appellate court's concerns and to obtain
6 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
7 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
8 the Court's award of the Class Representative Service Payment or any payments to Class Counsel
9 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
10 as long as the Gross Settlement Amount remains unchanged.

11 **10. NO ADMISSION**

12 10.1. In entering into this Agreement, Defendant does not admit, and specifically denies, the
13 allegations in the Action, that it violated any federal, state, or local law; violated any regulations
14 or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or
15 legal requirements; breached any contract; violated or breached any duty; engaged in any
16 misrepresentation or deception; or engaged in any other unlawful conduct with respect to its
17 employees. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations
18 connected with it, will be construed as an admission or concession by Defendant of any such
19 violations or failures to comply with any applicable law.

20 **11. LIMITATIONS ON USE OF THIS SETTLEMENT**

21 11.1. Non-Evidentiary Use. Whether or not the Effective Date occurs, neither this Agreement,
22 nor any of its terms, nor the Settlement itself, will be: (a) construed as, offered, or admitted in
23 evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any
24 other of the Released Parties, including but not limited to, evidence of a presumption, concession,
25 indication, or admission by any of the Released Parties of any liability, fault, wrongdoing,
26 omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against any
27 of the Released Parties in any further proceeding in the Actions, except for the purposes of
28 effectuating the Settlement pursuant to this Agreement, enforcing the Agreement, or for

1 Defendant to establish that a Class Member has resolved any of his or her claims released through
2 this Agreement.

3 11.2. Nullification. The Parties have agreed to the certification of the Class encompassing all
4 claims alleged in the Actions for the sole purpose of effectuating this Agreement. If (a) the Court
5 should for any reason fail to certify this Class for settlement, or (b) the Court should fail to finally
6 approve this Settlement, or (c) the Court should fail to finally enter the Final Order, or (d) the
7 Final Order is reversed, or declared or rendered void, or (e) the Court should for fail to finally
8 dispose of the Actions in their entirety, then (i) this Agreement shall be considered null and void;
9 (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force
10 or effect; (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as
11 if the Agreement had been neither entered into nor filed with the Court; and (iv) the fact that the
12 Parties were willing to stipulate to class certification of all causes of action pled in the Actions
13 as part of the Settlement will have no bearing on, and will not be admissible in connection with,
14 the issue of whether the Class should be certified by the Court in a non-settlement context in
15 these Actions or any other action, and in any of those events, Defendant expressly reserves the
16 right to oppose certification of the Class. The Parties will then request that the Court reopens the
17 proceedings within 14 days. Additionally, should the Settlement not become final, any Settlement
18 Administration Costs already incurred by the Settlement Administrator shall be split evenly
19 amongst the Parties. However, notwithstanding the foregoing, the Parties agreed to cooperate in
20 addressing any Court concerns regarding the Settlement, and if necessary, meet and confer with
21 respect to any amendments to this Agreement or supplemental briefings to address Court
22 concerns. In the event of a timely appeal from the Final Order, the Final Order shall be stayed
23 and the Gross Settlement Amount shall not be distributed pending the completion of the appeal.

24 **12. AMENDED JUDGMENT**

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

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1 **13. ADDITIONAL PROVISIONS**

2 13.1. No Admission of Liability, Class Certification or Representative Manageability for Other
3 Purposes. This Agreement represents a compromise and settlement of highly disputed claims.
4 Nothing in this Agreement is intended or should be construed as an admission by Defendant that
5 any of the allegations in the Operative Complaint have merit or that Defendant has any liability
6 for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that
7 Defendant’s defenses in the Action have merit. The Parties agree that class certification and
8 representative treatment is for purposes of this Settlement only. If, for any reason the Court does
9 grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to
10 contest certification of any class for any reasons, and Defendant reserves all available defenses
11 to the claims in the Action, and Plaintiff reserves the right to move for class certification on any
12 grounds available and to contest Defendant’s defenses. The Settlement, this Agreement and
13 Parties' willingness to settle the Action will have no bearing on, and will not be admissible in
14 connection with, any litigation (except for proceedings to enforce or effectuate the Settlement
15 and this Agreement). Payment of wages does not extend or alter the Class Members’ or
16 Aggrieved Employees’ period of employment for any purpose.

17 13.2. Confidentiality. Plaintiff, Class Counsel, Defendant and Defense Counsel separately
18 agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of
19 them will not disclose, disseminate and/or publicize, or cause or permit another person to
20 disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly,
21 specifically or generally, to any person, corporation, association, government agency, or other
22 entity except: (1) to the Parties’ attorneys, accountants, or spouses, all of whom will be instructed
23 to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary
24 to report income to appropriate taxing authorities; (4) in response to a court order or subpoena;
25 or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each
26 Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or
27 subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel
28 separately agree not to, directly or indirectly, initiate any conversation or other communication,

1 before the filing of the Motion for Preliminary Approval, any with third party regarding this
2 Agreement or the matters giving rise to this Agreement except to respond only that “the matter
3 was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s
4 communications with Class Members in accordance with Class Counsel’s ethical obligations
5 owed to Class Members.

6 13.3. No Solicitation. The Parties separately agree that they and their respective counsel and
7 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal
8 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s
9 ability to communicate with Class Members in accordance with Class Counsel’s ethical
10 obligations owed to Class Members.

11 13.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
12 together with its attached exhibits shall constitute the entire agreement between the Parties
13 relating to the Settlement, superseding any and all oral representations, warranties, covenants or
14 inducements made to or by any Party.

15 13.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
16 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate
17 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
18 its terms and to execute any other documents reasonably required to effectuate the terms of this
19 Agreement including any amendments to this Agreement.

20 13.6. Cooperation. The Parties and their counsel will cooperate with each other and use their
21 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
22 Settlement Agreement, submitting supplemental evidence, and supplementing points and
23 authorities as requested by the Court. In the event the Parties are unable to agree upon the form
24 or content of any document necessary to implement the Settlement or on any modification of the
25 Agreement that may become necessary to implement the Settlement, the Parties will seek the
26 assistance of the Court for resolution.

27 13.7. No Prior Assignments. The Parties separately represent and warrant that they have not
28 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer or

1 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
2 action or right released and discharged by the Party in this Settlement.

3 13.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are
4 providing any advice regarding taxes or taxability nor shall anything in this Settlement be relied
5 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR
6 Part 10, as amended) or otherwise.

7 13.9. Modification of Agreement. This Agreement, and all parts of it, may be amended,
8 modified, changed, or waived only by an express written instrument signed by all Parties or their
9 representatives, and approved by the Court.

10 13.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to
11 the benefit of, the successors of each of the Parties.

12 13.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
13 governed by and interpreted according to the internal laws of the State of California, without
14 regard to conflict of law principles.

15 13.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
16 this Agreement. This Agreement will not be construed against any Party on the basis that the
17 Party was the drafter or participated in the drafting.

18 13.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
19 during Action and in this Agreement relating to the confidentiality of information shall survive
20 the execution of this Agreement.

21 13.14. Use of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code
22 §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant
23 in connection with the mediation, other settlement negotiations or in connection with the
24 Settlement, may be used only with respect to this Settlement and no other purpose, and may not
25 be used in any way that violates any existing contractual agreement, statute, or rule of court.

26 13.15. No Public Comment. The Class Representative and Class Counsel will not make any
27 public disclosures of any kind regarding the Settlement, including but not limited to postings on
28 Class Counsel's website and postings on any social media sites/outlets that identify Defendant.

1 Class Counsel will take all steps necessary to ensure the Class Representative is aware of, and
2 will encourage her to adhere to, the restriction against any public disclosures regarding the
3 Settlement. Class Counsel will not include or use the Settlement for any marketing or
4 promotional purposes, or for attempting to influence Defendant's business relationships, either
5 before or after the Motion for Preliminary Approval is filed. Following preliminary approval of
6 the Settlement, the Class Representative and Class Counsel will not initiate any communications
7 with the media or third parties. If contacted by the media or third parties (except for Class
8 Members and the Settlement Administrator), the Class Representative and Class Counsel will
9 only discuss information publicly available. Class Counsel will take all steps necessary to ensure
10 the Class Representative is aware of, and will encourage her to adhere to, the restriction against
11 initiating any media comment. Class Counsel further agrees not to use the Settlement or any of
12 its terms for any marketing or promotional purposes. Nothing herein will restrict Class Counsel
13 from including publicly available information regarding this settlement in future judicial
14 submissions regarding Class Counsel's qualifications and experience.

15 13.16. Headings. The descriptive heading of any section or paragraph of this Agreement is
16 inserted for convenience of reference only and does not constitute a part of this Agreement.

17 13.17. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall
18 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
19 weekend or federal legal holiday, such date or deadline shall be on the first business day
20 thereafter.

21 13.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts
22 by facsimile, electronically (i.e., DocuSign) or email, which, for purposes of this Agreement,
23 shall be accepted as an original. All executed counterparts and each of them will be deemed to
24 be one and the same instrument if counsel for the Parties will exchange between themselves
25 signed counterparts. Any executed counterpart will be admissible in evidence to prove the
26 existence and contents of this Agreement.

27 13.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the
28 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further

1 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend
2 the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
3 process.

4 13.20. Severability. In the event that one or more of the provisions contained in this Agreement
5 shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity,
6 illegality or unenforceability shall in no way effect any other provision if Defense Counsel and
7 Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to
8 proceed as if such invalid, illegal or unenforceable provision had never been included in this
9 Agreement.

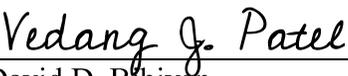
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11 **IT IS SO AGREED:**

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13  (Nov 14, 2024 13:42 PST)

14 For Plaintiff, Monica G. Lozano

For Defendant, LECC Berg Feinfield Eye
Centers, LLC

15
16 

17 David D. Bfbiyan
18 Vedang J. Patel
19 Brandon Chang
20 Counsel for Plaintiff, Monica G. Lozano

21 David Fishman
22 Stephanie B. Kantor
23 Janet S. Soutanian
24 Counsel for Defendant, LECC Berg Feinfield
25 Eye Centers, LLC
26
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28

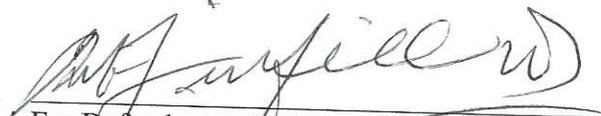
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9 Agreement.

10 ///

11 **IT IS SO AGREED:**

12
13 _____
14 For Plaintiff, Monica G. Lozano



For Defendant, LECC Berg Feinfield Eye
Centers, LLC

15
16 David D. Bibiyan
17 Vedang J. Patel
18 Brandon Chang
19 Counsel for Plaintiff, Monica G. Lozano



David Fishman
Stephanie B. Kantor
Janet S. Soutanian
Counsel for Defendant, LECC Berg Feinfield
Eye Centers, LLC

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