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erroneously sued as KYOCHON USA, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

PAULA JUAREZ, an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

KYOCHON USA, INC., a California
corporation; KYOCHON FRANCHSIE LLC,
A California limited liability company, and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 22STCV39925

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

**CLASS AND PAGA SETTLEMENT
AGREEMENT**

Action Filed: December 22, 2022

Trial Date: None Set

This Class and PAGA Settlement Agreement (“Settlement,” “Agreement” or “Settlement Agreement”) is made by and between plaintiff Paula Juarez (“Plaintiff”), on one hand, and defendant Kyochon USA Inc. (“Defendant”), on the other hand. The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS

1.1. “Action” or “Actions” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant, captioned *Paula Juarez v. Kyochon USA Inc., et. al.*, Case No. 22STCV39925, initiated on December 22, 2022, and pending in Superior Court of the State of California, County of Los Angeles, and Plaintiff’s lawsuit alleging civil penalties under the California Private Attorneys General Act of 2004, California Labor Code § 2698 et seq. (“PAGA”), captioned *Paula Juarez v. Kyochon USA Inc. et. al.*, Case No. 23STCV06761, initiated on March 28, 2023, and pending in Superior Court of the State of California, County of Los Angeles.

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

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

1.4. “Aggrieved Employees” means any and all non-exempt employees, whether hired directly or placed through staffing agencies, who worked for Defendant during the PAGA Period in the State of California.

1.5. “Class” or “Settlement Class” means all persons currently or formerly employed by Defendant, either directly or through any subsidiary, staffing agency, or professional employer organization, as non-exempt, hourly-paid employees at any time during the Class Period.

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

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

1.8. “Class Data” means Class Member identifying information in Defendant’s custody, possession, or control, including the Class Member’s (1) name; (2) last known address(es); (3) last known telephone number; (4) last four (4) digits of the last known Social Security Number(s); and (5) the dates of employment (i.e., hire dates, and, if applicable, re-hire date(s) and/or separation date(s)).

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

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

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

1.12. “Class Period” means the period from December 22, 2018, through January 15, 2024.

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

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

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

1.16. “Defendant” means named defendant Kyochon USA Inc.

1 1.17. “Defense Counsel” means Shannon R. Finley and Greg A. Feldman of Pettit Kohn
2 Ingrassia Lutz & Dolin PC.

3 1.18. “Effective Date” means the later of: (a) the Court enters a Judgment on its Order Granting
4 Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the
5 latest of the following occurrences: (a) if no Participating Class Member objects to the
6 Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members
7 objects to the Settlement, the day after the deadline for filing a notice of appeal from the
8 Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court
9 affirms the Judgment and issues a remittitur.

10 1.19. “Final Approval” or “Final Order” means the Court’s order granting final approval of the
11 Settlement.

12 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval
13 of the Settlement.

14 1.21. “Final Judgment” means the Judgment entered by the Court based upon the Final
15 Approval.

16 1.22. “General Release” means the broader release of claims by Plaintiff, which is in addition
17 to Plaintiff’s limited release of claims as a Participating Class Member.

18 1.23. “Gross Settlement Amount” means \$300,000.00 (Three Hundred Thousand Dollars and
19 Zero Cents), which is the total amount Defendant agrees to pay under the Settlement, except as
20 provided in Paragraph 8.1 below, and any and all employer payroll taxes owed on the Wage
21 Portions of the Individual Class Payments. The Gross Settlement Amount will be used to pay
22 Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class
23 Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, and
24 Administrator’s Expenses.

25 1.24. “Individual Class Payment(s)” means the Participating Class Member’s pro rata share of
26 the Net Settlement Amount calculated according to the number of Workweeks worked during
27 the Class Period.
28

1 1.25. “Individual PAGA Payment(s)” means the Aggrieved Employee’s pro rata share of 25%
2 of the PAGA Penalties calculated according to the number of Workweeks worked during the
3 PAGA Period.

4 1.26. “Judgment” means the judgment entered by the Court based upon Final Approval.

5 1.27. “LWDA” means the California Labor and Workforce Development Agency, the agency
6 entitled, under Labor Code section 2699, subd. (i).

7 1.28. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA
8 under Labor Code section 2699, subd. (i).

9 1.29. “Net Settlement Amount” means the Gross Settlement Amount, less the following
10 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
11 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
12 Litigation Expenses Payment, and Administration Expenses Payment. The remainder is to be
13 paid to Participating Class Members as Individual Class Payments.

14 1.30. “Non-Participating Class Member(s)” means any Class Member who opts out of the
15 Settlement by sending the Administrator a valid and timely Request for Exclusion.

16 1.31. “Operative Complaint” means the First Amended Complaint to be filed in the Superior
17 Court of the State of California, County of Los Angeles case entitled *Paula Juarez v. Kyochon*
18 *USA Inc., et. al.*, Case No. 22STCV39925.

19 1.32. “PAGA Pay Period(s)” means any Pay Period during which an Aggrieved Employee
20 worked for Defendant for at least one day during the PAGA Period, based on hire dates, re-hire
21 dates (as applicable), and termination dates (as applicable).

22 1.33. “PAGA Period” means the period from December 22, 2021, through January 15, 2024.

23 1.34. “PAGA” means the Private Attorneys’ General Act (Labor Code §§ 2698. *et seq.*).

24 1.35. “PAGA Notice” means Plaintiff’s December 22, 2022 letter to Defendant and the LWDA,
25 providing notice pursuant to Labor Code section 2699.3 subd. (a).

26 1.36. “PAGA Penalties” means the total amount of PAGA civil penalties (\$20,000.00) to be
27 paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$5,000.00)
28 and 75% to the LWDA (\$15,000.00) in settlement of PAGA claims.

1.37. “Participating Class Member(s)” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.38. “Plaintiff”, “Named Plaintiff” or “Class Representative” means Paula Juarez, the named plaintiff in the Actions.

1.39. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

1.40. “Preliminary Approval Order” means the proposed Order granting Preliminary Approval and Approval of PAGA Settlement.

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

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

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

1.44. “Released Parties” means Defendant, and any of its former and present parents, subsidiaries, affiliates, alleged joint employers (including staffing agencies), and other entities that have provided temporary, leased, or other workers to, or for the benefit of, Defendant.

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

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

1 1.47. “Settlement” means the disposition of the Action effected by this Agreement and the
2 Judgment.

3 1.48. “Workweek” means any week during which a Class Member was employed by and
4 worked for the Defendant at least one day in a non-exempt, hourly position during the Class
5 Period in California, based on hire dates, re-hire dates (as applicable), and termination dates (as
6 applicable).

7 **2. RECITALS**

8 2.1. On December 22, 2022, Plaintiff commenced this Action by filing a class action
9 Complaint in Superior Court of the State of California, County of Los Angeles captioned *Paula*
10 *Juarez v. Kyochon USA Inc., et al.*, Case No. 22STCV39925, alleging causes of action against
11 Defendant for: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure
12 to provide meal periods or compensation in lieu thereof; (4) failure to provide rest periods or
13 compensation in lieu thereof; (5) failure to pay all wages due upon separation; (6) failure to
14 provide accurate wage statements; (7) failure to indemnify for business expenses; (8) failure to
15 pay unused vested vacation time; and (9) engaging in unfair competition (the “Class Action”).

16 2.2. Also on December 22, 2022, Plaintiff filed with the LWDA and served on Defendant a
17 notice under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the
18 LWDA to recover civil penalties on behalf of Aggrieved Employees for various Labor Code
19 violation (“PAGA Notice”).

20 2.3. On March 28, 2023, after 65 days passed without any communication from the LWDA,
21 Plaintiff filed a separate representative action under PAGA in the Superior Court of California
22 for the County of Los Angeles, entitled as *Paula Juarez v. Kyochon USA Inc., et. al., Case No.*
23 *23STCV06761*, for civil penalties under Labor Code sections 210, 226.3, 558, 1174.5, 1197.1
24 and 2699 in connection with the allegations made in the PAGA Notice (the “PAGA Action”).

25 2.4. On October 17, 2023, the parties participated in an all-day mediation presided over by
26 Michael J. Loeb, Esq., a well-regarded mediator experienced in mediating complex labor and
27 employment matters, which led to this Agreement to settle the Action.
28

2.5. Prior to mediation, Plaintiff obtained, through informal discovery: (1) time and payroll records for approximately 25% of the estimated 371 putative class members for the period from March 10, 2019 through September 15, 2023; (2) class data points, including hire and termination dates for all putative Class Members; (3) Defendant's relevant wage and hour policy documents, including Defendant's handbooks in effect during the Class Period; (4) Plaintiff's personnel records and employment files. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal. App. 4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 129-130 (*Dunk/Kullar*).

2.6. Defendant denies all material allegations set forth in the Class Action and PAGA Action and has asserted numerous affirmative defenses. Nonetheless, in the interest of avoiding further litigation, Defendant desires to settle all actual and/or potential claims fully and finally by the Class and aggrieved employees.

2.7. As part of the Settlement, the Parties agree to stipulate to Plaintiff filing an amended complaint in the Class Action that effectively consolidates the allegations of the Class Action and the PAGA Action within the Class Action for the purpose of settlement approval ("First Amended Complaint"). Upon the acceptance of the filing of the amended complaint, Plaintiff shall dismiss the PAGA Action without prejudice.

2.8. The Parties agree no response to the First Amended Complaint will be required of Defendant.

2.9. The Court has not granted class certification.

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

3. MONETARY TERMS

3.1. Gross Settlement Amount. Defendant promises to pay \$300,000.00 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 Plaintiff of not more than \$7,500.00, in addition to any Individual Class Payment and any Individual PAGA Payment 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 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 assumes full responsibility and liability for any applicable employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 35% of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph 8.1 of this Agreement, is currently estimated to be \$105,000.00, and a Class Counsel Litigation Expenses Payment of not more than \$25,000.00. Defendant will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will endeavor in good faith to file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class

Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless and indemnifies Defendant from any dispute or controversy regarding any division or sharing of any of these Payments. There will be no additional charge of any kind to either the Settlement Class Members or request for additional consideration from Defendant for such work unless, Defendant materially breaches this Agreement, including any term regarding funding, and further efforts are necessary from Class Counsel to remedy said breach, including, without limitation, moving the Court to enforce the Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$8,990.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$8,990.00, the Administrator will retain the remainder in the Net Settlement Amount.

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

3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax

withholding and will be reported on an IRS W-2 Form. The 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

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

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$20,000.00 to be paid from the Gross Settlement Amount, with 75% (\$15,000.00) allocated to the LWDA PAGA Payment and 25% (\$5,000.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$5,000.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

1 **4. SETTLEMENT FUNDING AND PAYMENTS**

2 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on the information
3 available at the time of the mediation, the Parties estimate there are 371 Class Members who
4 collectively worked a total of 15,623 Workweeks, and 148 Aggrieved Employees who worked a
5 total of 3,308 PAGA Pay Periods.

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

18 4.3. Funding of Gross Settlement Amount. No later than 30 calendar days after the Effective
19 Date, Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts
20 necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the
21 Administrator pursuant to Internal Revenue Code section 1.468B-1 for deposit in an interest-
22 bearing qualified settlement account ("QSA") with an FDIC insured banking institution, for
23 distribution in accordance with this Agreement and the Court's Orders and subject to the
24 conditions described herein.

25 4.4. Payments from the Gross Settlement Amount. Within 7 days after Defendant funds the
26 Gross Settlement Amount, or soon thereafter as practicable, the Administrator will distribute
27 payments from the QSA for all Individual Class Payments, all Individual PAGA Payments, the
28 LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees

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

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

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

1 4.4.3. For any Class Member whose Individual Class Payment check or Individual
2 PAGA Payment check is uncashed and cancelled after the void date, the Administrator
3 shall transmit the funds represented by such checks to the California Controller's
4 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid
5 residue" subject to the requirements of California Code of Civil Procedure Section 384,
6 subd. (b).

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

11 **5. RELEASE OF CLAIMS**

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

16 5.1. Plaintiff's Release. Plaintiff and her respective former and present spouses,
17 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
18 and discharge Released Parties from all claims, transactions, or occurrences, including, but not
19 limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts
20 contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could
21 have been, alleged based on facts contained in the Operative Complaint and Plaintiff's PAGA
22 Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to
23 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
24 benefits, social security benefits, workers' compensation benefits, disability discrimination, lack
25 of accommodation, wrongful termination, negligent infliction of emotional distress, failure to
26 engage in the good faith and interactive process, intentional infliction of emotional distress, and
27 related claims that arose at any time, or any claims based on occurrences outside the Class Period.
28 Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to,

1 the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that
2 Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or
3 additional facts or Plaintiff's discovery of them.

4 5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
5 purposes of Plaintiff's Release only, Plaintiff expressly waives and relinquishes the
6 provisions, rights and benefits, if any, of section 1542 of the California Civil Code,
7 which reads:

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

14 5.1.1.1 However, Plaintiff's release specifically excludes Plaintiff's claims
15 for disability discrimination, lack of accommodation, wrongful
16 termination, negligent infliction of emotional distress, failure to
17 engage in the good faith and interactive process, intentional
18 infliction of emotional distress, and related claims, which are not
19 part of this agreement.

20 5.2. Release by Participating Class Members: For the duration of the Class Period, all
21 Participating Class Members, on behalf of themselves and their respective former and present
22 representatives, agents, attorneys, heirs, administrators, successors and assigns, release the
23 Released Parties from any and all wage-and-hour claims, rights, demands, damages, liabilities,
24 and causes of action, in law or in equity, arising at any time during the Class Period that were
25 alleged or reasonably could have been alleged based on the facts stated in the Operative
26 Complaint including: (1) all claims for failure to pay overtime wages; (2) all claims for failure to
27 pay minimum wages; (3) all claims for failure to provide meal periods or compensation in lieu
28 thereof; (4) all claims for failure to provide rest periods or compensation in lieu thereof; (5) all

claims for failure to pay all wages due upon separation; (6) all claims for failure to provide accurate wage statements; (7) all claims for failure to indemnify business expenses; (8) all claims for failure to pay unused vacation time; and (9) all claims asserted through California Business & Professions Code section 17200, *et seq.*, arising out of the Labor Code violations referenced in the Operative Complaint.

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

5.4. Release by Aggrieved Employees: For the duration of the PAGA Period, the State of California and all Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, including, claims for PAGA penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 in connection with alleged violations of Labor Code sections Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 212, 213, 221, 223 226, 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 404, 432, 432.3, 432.5, 432.6, 432.7, 432.8, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5, 1198.5, 1527, 2699, 2802, 2810.5, 3366, 3457, 6401, 6402, 6403, 6409.6, 6432, and 8397.4.

6. MOTION FOR PRELIMINARY APPROVAL

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

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

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

16 6.2. Responsibilities of Counsel. The Parties shall promptly submit this Stipulation of
17 Settlement to the Court in support of Plaintiffs’ Motion for Preliminary Approval and
18 determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon
19 execution of this Settlement Agreement, the Parties shall apply to the Court for the entry of an
20 order scheduling a fairness hearing on the question of whether the proposed settlement, including
21 payment of attorneys’ fees and costs and Individual Class Payment and any Individual PAGA
22 Payment, should be finally approved as fair, reasonable, and adequate. Class Counsel is
23 responsible for delivering the Court’s Preliminary Approval to the Administrator. As part of
24 Plaintiffs’ Motion for Preliminary Approval, Plaintiffs shall also apply to the Court for the entry
25 of an order as follows:

26 6.2.1. Certifying the Class for purpose of settlement;

27 6.2.2. Approving as to form and content the proposed Notice Packet;

28 6.2.3. Approving the manner and method for Class Members to request exclusion from

1 the Settlement as contained herein and within the Notice of Class Action Settlement;
2 6.2.4. Directing the mailing of the Notice Packet to the Class Members in accordance
3 with the Settlement;
4 6.2.5. Preliminarily approving the Settlement subject only to the objections of Class
5 Members and final review by the Court; and
6 6.2.6. Enjoining Plaintiffs and any Class Member from filing or prosecuting any claims,
7 suits, or administrative proceedings (including filing claims with the California Division
8 of Labor Standards Enforcement and the LWDA) regarding the released claims herein
9 unless and until such Class Members have filed valid Requests for Exclusion with the
10 Claims Administrator.
11 6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
12 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
13 Defense Counsel will expeditiously work together on behalf of the Parties by meeting and
14 conferring, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary
15 Approval or conditions Preliminary Approval on any material change to this Agreement, Class
16 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by
17 meeting and conferring, and in good faith, to modify the Agreement and otherwise satisfy the
18 Court's concerns.

19 **7. SETTLEMENT ADMINISTRATION**

20 7.1. Selection of Administrator. The Parties have jointly selected Apex to serve as the
21 Administrator and verified that, as a condition of appointment, Apex agrees to be bound by this
22 Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for
23 payment of Administration Expenses. The Parties and their Counsel represent that they have no
24 interest or relationship, financial or otherwise, with the Administrator other than a professional
25 relationship arising out of prior experiences administering settlements.
26 7.2. Employer Identification Number. The Administrator shall have and use its own Employer
27 Identification Number for purposes of calculating payroll tax withholdings and providing reports
28 to state and federal tax authorities.

1 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
2 the requirements of a Qualified Settlement Fund (“QSF”) under U.S. Treasury Regulation section
3 468B-1.

4 7.4. Notice to Class Members

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

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

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

26 7.4.4. The deadlines for Class Members’ written objections, Challenges to Workweeks
27 and/or Pay Periods, and Requests for Exclusion will be extended an additional 15 days
28 beyond the 45 days otherwise provided in the Class Notice for all Class Members whose

notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

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

7.5. Requests for Exclusion (Opt-Outs).

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

7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the

1 authenticity of a Request for Exclusion, the Administrator may demand additional proof
2 of the Class Member's identity. The Administrator's determination of authenticity shall
3 be final and not appealable or otherwise susceptible to challenge.

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

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

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

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

13 7.7.3. Non-Participating Class Members have no right to object to any of the class action
14 components of the Settlement.

15 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
16 performed or observed by the Administrator contained in this Agreement or otherwise.

17 7.8.1. Email Address and Toll-Free Number. The Administrator will maintain and
18 monitor an email address and a toll-free telephone number to receive Class Member
19 calls, faxes and emails.

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

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 The Parties estimate that, as of the date of this Settlement Agreement, (1) there are 371
7 Class Members and 15,623 Total Workweeks during the Class Period and (2) there were 148
8 Aggrieved Employees who worked 3,308 Pay Periods during the PAGA Period.

9 8.1. Increase in Workweeks. Defendant represents that the putative class members worked
10 15,623 Workweeks from December 22, 2018, through October 17, 2023. In the event the number
11 of Workweeks worked by the Class Members through January 15, 2024 are determined to be
12 more than 10% higher than 15,623, or an additional 1,562 Workweeks worked, then the Gross
13 Settlement Amount shall: (1) be increased proportionally by the Workweeks worked in excess
14 of 17,185 multiplied by the Workweek Value; or (2) Defendant can opt to cut off the class period
15 before the 17,185 Workweek threshold is reached, however, under no circumstances shall the
16 class period be cut off sooner than October 17, 2023. The Workweek Value shall be calculated
17 by dividing the Gross Settlement Amount by 15,623. The Parties agree that the Workweek Value
18 amounts to and the settlement amounts to \$19.20 per Workweek (\$300,000 / 15,623
19 Workweeks). Thus, for example, should there be 20,000 Workweeks in the Class Period, then
20 the Gross Settlement Amount shall be increased by \$54,048.00 (20,000 Workweeks – 17,185
21 Workweeks x \$19.20/Workweek) if the number of Workweeks as of October 17, 2023, exceeds
22 17,185, or if Defendant opts to pay the escalator clause for the Workweeks in excess of 17,185
23 for the dates from October 17, 2023 through January 15, 2024.

24 **9. MOTION FOR FINAL APPROVAL**

25 Plaintiff will file in Court, a motion for final approval of the Settlement that includes a
26 request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a
27 Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final
28 Approval”). Plaintiff shall endeavor in good faith to provide drafts of these documents to Defense

Counsel for review prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in good faith to resolve any disagreements concerning the Motion for Final Approval.

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

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

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

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

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 Service Payment or any payments to Class Counsel
11 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
12 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 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 has any liability
21 for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that
22 Defendant's 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 reserves the right to
25 contest certification of any class for any reasons, and Defendant reserves all available defenses
26 to the claims in the Action, and Plaintiff reserves the right to move for class certification on any
27 grounds available and to contest Defendant's 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,
14 Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any
15 conversation or other communication, before the filing of the Motion for Preliminary Approval,
16 any with third party regarding this Agreement or the matters giving rise to this Agreement except
17 to respond only that "the matter was resolved," or words to that effect. This paragraph does not
18 restrict Class Counsel's communications with Class Members in accordance with Class
19 Counsel's ethical 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. The Parties and their counsel agree that they will not issue
7 any press releases, initiate any contact with the press, respond to any press inquiry, or have any
8 communication with the press about the fact, amount, or terms of the Settlement prior to the
9 Settlement being preliminarily approved by the Court. In addition, the Parties and their counsel
10 agree that they will not engage in any advertising or distribute any marketing materials relating
11 to the Settlement of this case prior to the Settlement being preliminarily approved by the Court,
12 including, but not limited to, any postings on any websites maintained by Class Counsel. Any
13 communication about the Settlement to Class Members prior to the Settlement being
14 preliminarily approved by the Court will be limited to a statement that a settlement has been
15 reached and the details will be communicated in a forthcoming Court-approved notice. Nothing
16 set forth herein, however, shall prohibit: (a) Defendant from providing truthful disclosure about
17 the Settlement, including its amount, in its periodic filings on Form 10-Q or Form 10-K with
18 the United States Securities and Exchange Commission; or (b) the Parties from providing this
19 Agreement to the Court in connection with the Parties' efforts to seek the Court's approval of
20 this Settlement. Neither Plaintiffs nor Class Counsel shall hold a press conference or otherwise
21 seek to affirmatively contact the media about the Settlement. If contacted by the media
22 regarding the Settlement, Class Counsel will direct any media inquiries to the public records of
23 the Action on file with the Court. Also, neither Plaintiffs nor Class Counsel will disparage the
24 Settlement.

25 11.14. Use of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code
26 §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant
27 in connection with the mediation, other settlement negotiations or in connection with the
28 Settlement, may be used only with respect to this Settlement and no other purpose, and may not

1 be used in any way that violates any existing contractual agreement, statute, or rule of court.

2 11.15. Headings. The descriptive heading of any section or paragraph of this Agreement is
3 inserted for convenience of reference only and does not constitute a part of this Agreement.

4 11.16. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall
5 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
6 weekend or federal legal holiday, such date or deadline shall be on the first business day
7 thereafter.


8 11.17. Execution in Counterparts. This Agreement may be executed in one or more counterparts
9 by facsimile, electronically (i.e., DocuSign) or email, which, for purposes of this Agreement,
10 shall be accepted as an original. All executed counterparts and each of them will be deemed to
11 be one and the same instrument if counsel for the Parties will exchange between themselves
12 signed counterparts. Any executed counterpart will be admissible in evidence to prove the
13 existence and contents of this Agreement.

14 11.18. Stay of Litigation. The Parties agree that upon the execution of this Agreement the
15 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
16 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend
17 the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
18 process.

19 11.19. Severability. In the event that one or more of the provisions contained in this Agreement
20 shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity,
21 illegality or unenforceability shall in no way effect any other provision if Defense Counsel and
22 Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to
23 proceed as if such invalid, illegal or unenforceable provision had never been included in this
24 Agreement.

25 **IT IS SO AGREED:**

26 Date: 07/12/2024
27 _____

28 

Paula Juarez
Paula juarez marin (Jul 12, 2024 15:49 PDT)

1 Date: _____
2
3

Kyochon USA Inc.

4

By: _____
5

Title: _____
6

7 **APPROVED AS TO FORM BY:**
8

9 Dated: July 12, 2024
10

BIBIYAN LAW GROUP, P.C.

11 By: Vedang J. Patel
12 DAVID D. BIBIYAN
13 VEDANG J. PATEL
14 BRANDON M. CHANG
Attorneys for Plaintiff PAULA JUAREZ on
behalf of herself and all others similarly
situated

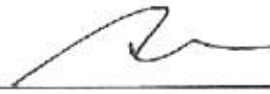
15 Dated: July _____, 2024
16

PETTIT KOHN INGRASSIA LUTZ & DOLIN PC

17 By: _____
18 SHANNON R. FINLEY
19 GREGORY A. FELDMAN
Attorneys for Defendant KYOCHON USA
INC.
20
21
22
23
24
25
26
27
28

1 Date: 7/15/2024

Kyochon USA Inc.

2
3 

4 By: Young Gon Kim

5 Title: CEO

6
7 **APPROVED AS TO FORM BY:**

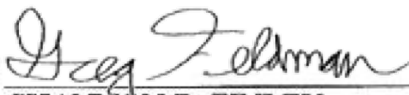
8
9 Dated: July ____, 2024

BIBIYAN LAW GROUP, P.C.

10
11 By: _____
12 DAVID D. BIBIYAN
13 VEDANG J. PATEL
14 BRANDON M. CHANG
Attorneys for Plaintiff PAULA JUAREZ on
behalf of herself and all others similarly
situated

15 Dated: July 15, 2024

PETTIT KOHN INGRASSIA LUTZ & DOLIN PC

16
17 By: 
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