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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

ARACELI FUENTES, an individual and on  
behalf of all others similarly situated,

Plaintiff,

v.

MAYFLOWER MEDICAL GROUP, INC. a  
California Corporation; and DOES 1 through  
100, inclusive,

Defendants.

CASE NO.: 22STCV28945

[Assigned to the Hon. Stuart M. Rice in  
Dept. 1]

**CLASS AND PAGA SETTLEMENT  
AGREEMENT**

Action Filed: September 6, 2022

Trial Date: None Set

This Class and PAGA Settlement Agreement (“Settlement,” “Agreement” or “Settlement Agreement”) is made by and between plaintiff Araceli Fuentes (“Plaintiff”), on one hand, and defendant Mayflower Medical Group, 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” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant, captioned *Araceli Fuentes v Mayflower Medical Group, Inc.*, Case No. 22STCV28945, initiated on September 6, 2022, and pending in Superior Court of the State of California, County of Los Angeles.

1.2. “Administrator” means Apex Class Action Administration 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 all persons currently or formerly employed by Defendant, as hourly-paid, non-exempt employees in the State of California at any time during the PAGA Period.

1.5. “Class” or “Settlement Class” means all persons currently or formerly employed by Defendant as hourly-paid, non-exempt employees in the State of California at any time during the Class Period.

1.6. “Class Counsel” means David D. Bibiyan, Jeffrey D. Klein, Sarah Cohen, 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(s); (4) 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 September 6, 2018 through September 27, 2023.

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 Mayflower Medical Group, Inc.

1.17. “Defense Counsel” means William M. Turner and Asha Dhillon of Turner Dhillon LLP.

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

1.19. "Final Approval" means the Court's order granting final approval of the Settlement.

1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.

1.21. "Final Judgment" means the Judgment entered by the Court based upon the Final Approval.

1.22. "Gross Settlement Amount" means \$475,000.00 (Four Hundred Seventy-Five Thousand Dollars and Zero Cents), which is the total amount Defendant agrees to pay under the Settlement, except as provided in Paragraph 8.1 below, and any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, and Administrator's Expenses.

1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.

1.25. "Judgment" means the judgment entered by the Court based upon Final Approval.

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

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

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

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

1.30. “Operative Complaint” means the First Amended Complaint to be filed in the Class Action.

1.31. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

1.32. “PAGA Period” means the period from September 6, 2021 through the end of the Class Period.

1.33. “PAGA” means the Private Attorneys’ General Act (Labor Code §§ 2698. *Et seq.*).

1.34. “PAGA Notice” means Plaintiff’s September 6, 2022 letter to Defendant and the LWDA, providing notice pursuant to Labor Code section 2699.3 subd. (a).

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

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

1.37. “Plaintiff” means Araceli Fuentes, the named plaintiff in the Action.

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

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

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

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

1.42. “Released Parties” means: Defendant and all its present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors,

employees, agents, attorneys, insurers, successors and assigns , and Defendant’s counsel of record in the Action.

1.43. “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.

1.44. “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.

1.45. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

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

## **2. RECITALS**

2.1. On September 6, 2022, Plaintiff filed with the LWDA and served on Defendant a notice under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the LWDA to recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code violations (“PAGA Notice”).

2.2. On September 6, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods or compensation in lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof; (5) waiting time penalties; (6) wage statement violations; (7) failure to timely pay wages; (8) failure to indemnify; (9) failure to pay interests on deposits; and (10) engaging in unfair competition (the “Class Action”). On November 10, 2022, after 65 days passed without any communication from the LWDA, Plaintiff filed a separate representative action under PAGA in the Superior Court of California for the County of

1 Los Angeles, entitled as *Araceli Fuentes v Mayflower Medical Group, Inc.*, Case Number  
2 22STCV35825, for civil penalties under Labor Code sections 210, 226.3, 558, 1174.5, 1197.1  
3 and 2699 in connection with the allegations made in the PAGA Notice (the “PAGA Action”). As  
4 part of this Settlement, the Parties agree to stipulate to Plaintiff filing a First Amended Complaint  
5 in the Class Action, and dismissing, without prejudice, the PAGA Action, to effectively  
6 consolidate the PAGA Action into the Class Action. The First Amended Complaint shall be the  
7 “Operative Complaint.” Hereinafter, the Class Action shall be referred to as the “Action.”

8 2.3. Defendant denies the allegations in the Operative Complaint, denies any failure to comply  
9 with the laws identified in the Operative Complaint, and denies any and all liability for the causes  
10 of action alleged in the Operative Complaint.

11 2.4. Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written notice to  
12 Defendant and the LWDA by sending the PAGA Notice.

13 2.5. On April 12, 2023, the parties participated in an all-day mediation presided over by Hon.  
14 Carl J. West, Esq. which led to this Agreement to settle the Action.

15 2.6. Prior to mediation, the Parties agreed to exchange informal discovery and attend an early  
16 mediation. Prior to mediation, Plaintiff obtained, through informal discovery: (1) time and  
17 payroll records for 35% of the estimated 183 Class Members; (2) class data points, including  
18 average rates of pay, total hours worked during the Class Period, the number of shifts worked  
19 during the Class Period, the number of terminated/separated Class Members eligible for waiting  
20 time penalties, the number of Aggrieved Employees (current and former), the number of hours  
21 worked, and number of pay periods in the wage statement period and/PAGA Period; (3) all of  
22 Defendant’s policy documents; and (4) Plaintiff’s personnel file. Plaintiff’s investigation was  
23 sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*  
24 (1996) 48 Cal. App. 4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App.  
25 4th 116, 129-130 (Dunk/Kullar).

26 2.7. The Court has not granted class certification.

27 2.8. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any  
28 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 \$475,000.00 as the Gross Settlement Amount, unless increased 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 seek Court approval for any Class Representative Service Payments. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third, which, unless escalated pursuant to Paragraph 8.1 of this Agreement, is currently estimated to be \$158,333.33 and a Class Counsel Litigation Expenses Payment of not



more than \$30,000.00. Defendant will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment. 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 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 \$6,990.03 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 \$6,990.03, 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.

1 3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating  
2 Class Member's Individual Class Payment will be allocated to settlement of  
3 wage claims (the "Wage Portion"). The Wage Portions are subject to tax  
4 withholding and will be reported on an IRS W-2 Form. The 80% of each  
5 Participating Class Member's Individual Class Payment will be allocated to  
6 settlement of claims for interest and penalties (the "Non-Wage Portion"). The  
7 Non-Wage Portions are not subject to wage withholdings and will be reported  
8 on IRS 1099 Forms. Participating Class Members assume full responsibility and  
9 liability for any employee taxes owed on their Individual Class Payment.

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

15 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of  
16 \$20,000.00 to be paid from the Gross Settlement Amount, with 75% (\$15,000.00)  
17 allocated to the LWDA PAGA Payment and 25% (\$5,000.00) allocated to the Individual  
18 PAGA Payments.

19 3.2.5.1. The Administrator will calculate each Individual PAGA  
20 Payment by (a) dividing the amount of the Aggrieved Employees' 25% share  
21 of PAGA Penalties (\$5,000.00) by the total number of PAGA Period Pay  
22 Periods worked by all Aggrieved Employees during the PAGA Period and (b)  
23 multiplying the result by each Aggrieved Employee's PAGA Period Pay  
24 Periods. Aggrieved Employees assume full responsibility and liability for any  
25 taxes owed on their Individual PAGA Payment.

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

### Payments on IRS 1099 Forms.

#### 4. SETTLEMENT FUNDING AND PAYMENTS

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 183 Class Members who collectively worked a total of 15,463 Workweeks, and 115 Aggrieved Employees who worked a total of 2,544 PAGA Pay Periods.

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

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 7 calendar days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 7 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and the Individual PAGA

1 Payments.

2 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or  
3 Individual PAGA Payments and send them to the Class Members via First Class U.S.  
4 Mail, postage prepaid. The face of each check shall prominently state the date (180 days  
5 after the date of mailing) when the check will be voided. The Administrator will cancel  
6 all checks not cashed by the void date. The Administrator will send checks for  
7 Individual Settlement Payments to all Participating Class Members (including those for  
8 whom Class Notice was returned undelivered). The Administrator will send checks for  
9 Individual PAGA Payments to all Aggrieved Employees including Non-Participating  
10 Class Members who qualify as Aggrieved Employees (including those for whom Class  
11 Notice was returned undelivered). The Administrator may send Participating Class  
12 Members a single check combining the Individual Class Payment and the Individual  
13 PAGA Payment. Before mailing any checks, the Settlement Administrator must update  
14 the recipients' mailing addresses using the National Change of Address Database.

15 4.4.2. The Administrator must conduct a Class Member Address Search for all other  
16 Class Members whose checks are returned undelivered without USPS forwarding  
17 address. Within 7 days of receiving a returned check the Administrator must re-mail  
18 checks to the USPS forwarding address provided or to an address ascertained through  
19 the Class Member Address Search. The Administrator need not take further steps to  
20 deliver checks to Class Members whose re-mailed checks are returned as undelivered.  
21 The Administrator shall promptly send a replacement check to any Class Member whose  
22 original check was lost or misplaced, requested by the Class Member prior to the void  
23 date.

24 4.4.3. For any Class Member whose Individual Class Payment check or Individual  
25 PAGA Payment check is uncashed and cancelled after the void date, the Administrator  
26 shall transmit the funds represented by such checks to Legal Aid at Work ("Cy Pres  
27 Recipient") for use in Los Angeles County.

28 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall

not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

## **5. RELEASE OF CLAIMS**

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

5.1. Plaintiff's Release. Plaintiff and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors and assigns generally release and discharge Released Parties from all claims, transactions or occurrences including, but not limited to: (a) all claims that were or reasonably could have been alleged based on the facts contained in the Operative Complaint; and (b) all PAGA claims that were or reasonably could have been alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 5.2 and 5.4 below ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now know or believe to be true but agree, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

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

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that

1 if known by him or her would have materially affected his or her settlement with the  
2 debtor or Released Party.

3 5.2. Release by Participating Class Members: For the duration of the Class Period, all  
4 Participating Class Members, on behalf of themselves and their respective former and present  
5 representatives, agents, attorneys, heirs, administrators, successors and assigns, release the  
6 Released Parties from all claims that were alleged or reasonably could have been alleged based  
7 on the facts stated in the Operative Complaint including: (1) all claims for failure to pay overtime  
8 wages; (2) all claims for failure to pay minimum wages; (3) all claims for failure to provide meal  
9 periods or compensation in lieu thereof; (4) all claims for failure to provide rest periods or  
10 compensation in lieu thereof; (5) all claims for waiting time penalties; (6) all claims for wage  
11 statement violations; (7) all claims for failure to timely pay wages; (8) all claims for failure to  
12 indemnify; (9) failure to pay interests on deposits; (10) failure to provide vested vacation pay;  
13 and (11) all claims asserted through California Business & Professions Code section 17200, *et*  
14 *seq.*, arising out of the Labor Code violations referenced in the Operative Complaint.

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

19 5.4. Release by Aggrieved Employees: For the duration of the PAGA Period, all Aggrieved  
20 Employees are deemed to release, on behalf of themselves and their respective former and present  
21 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released  
22 Parties from all claims for PAGA penalties that were alleged, or reasonably could have been  
23 alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, including,  
24 claims for PAGA penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, 2699  
25 and 2699 in connection with alleged violations of Labor Code sections Labor Code sections 96,  
26 98.6, 200, 201, 202, 203, 204, 226, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 1102.5,  
27 1174, 1194, 1197, 1197.5, 1198.5, 2802, and 2810.5.

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1                   **6.       MOTION FOR PRELIMINARY APPROVAL**

2                   The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion  
3 for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary  
4 Approvals.

5 6.1.   Defendant’s Declaration in Support of Preliminary Approval. Within 14 days of full  
6 execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed  
7 Declaration from Defendant and Defendant’s counsel disclosing all facts relevant to any actual or  
8 potential conflicts of interest with the Administrator and Cy Pres Recipient. In their Declarations,  
9 Defense Counsel and Defendant shall aver that they are not aware of any other pending matter or  
10 action asserting claims that will be extinguished or adversely affected by the Settlement.

11 6.2.   Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all  
12 documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and  
13 memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the  
14 Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor  
15 Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and  
16 Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from  
17 the Administrator attaching includets “not to exceed” bid for administering the Settlement and  
18 attesting to its willingness to serve; competency; operative procedures for protecting the security  
19 of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other  
20 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;  
21 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense  
22 Counsel; (v) a declaration from Plaintiff confirming willingness and competency to serve and  
23 disclosing all facts relevant to any actual or potential conflicts of interest with Class Members;  
24 (v) a declaration from each Class Counsel firm attesting to its competency to represent the Class  
25 Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice  
26 of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section  
27 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vi) all facts  
28 relevant to any actual or potential conflict of interest with Class Members and the Administrator.

1 In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware  
2 of any other pending matter or action asserting claims that will be extinguished or adversely  
3 affected by the Settlement.

4 6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible  
5 for expeditiously finalizing and filing the Motion for Preliminary Approval after the full  
6 execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary  
7 Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary  
8 Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the  
9 Administrator.

10 6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for  
11 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and  
12 Defense Counsel will expeditiously work together on behalf of the Parties by meeting and  
13 conferring, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary  
14 Approval or conditions Preliminary Approval on any material change to this Agreement, Class  
15 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by  
16 meeting and conferring, and in good faith, to modify the Agreement and otherwise satisfy the  
17 Court's concerns.

## 18 **7. SETTLEMENT ADMINISTRATION**

19 7.1. Selection of Administrator. The Parties have jointly selected Apex Class Action  
20 Administration to serve as the Administrator and verified that, as a condition of appointment,  
21 Apex Class Action Administration agrees to be bound by this Agreement and to perform, as a  
22 fiduciary, all duties specified in this Agreement in exchange for payment of Administration  
23 Expenses. The Parties and their Counsel represent that they have no interest or relationship,  
24 financial or otherwise, with the Administrator other than a professional relationship arising out  
25 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 US 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 person or by telephone and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the 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 that reasonably communicates the Class Member's election to be excluded from the Settlement<sup>18</sup> includedes the Class Member's name, 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 authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall

1 be final and not appealable or otherwise susceptible to challenge.

2 7.5.3. Every Class Member who does not submit a timely and valid Request for  
3 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled  
4 to all benefits and bound by all terms and conditions of the Settlement, including the  
5 Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement,  
6 regardless whether the Participating Class Member actually receives the Class Notice  
7 or objects to the Settlement.

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

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

27 7.7. Objections to Settlement

28 7.7.1. Only Participating Class Members may object to the class action components of

the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

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

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

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

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

7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have

1 timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and  
2 other identifying information of Class Members who have submitted invalid Requests  
3 for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted  
4 (whether valid or invalid).

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

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

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

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       Based on its records, Defendant estimates that, as of the date of the mediation, May 12,  
11       2023, (1) there were 183 Class Members and 15,463 Total Workweeks during the Class Period  
12       and (2) there were 115 Aggrieved Employees who worked 2,544 Pay Periods during the PAGA  
13       Period.

14       8.1.     Increase in Workweeks. Defendant represented that, from the beginning of the Class  
15       Period through May 12, 2023, there were approximately 15,463 Workweeks. The Parties agreed  
16       to a 10% escalator clause. Because so much time has passed since the mediation occurred, and  
17       because Defendant does not wish to pay more than the Settlement Amount, the date of the end  
18       of the Class Period is September 27, 2023, which is the date before which the Workweeks reached  
19       110% of 15,463 based on Defendant's calculations. However, the Workweek count is to be  
20       verified by the settlement administrator. Should the number of Workweeks exceed 17,010 (110%  
21       of 15,463), Defendant shall pay \$30.72 for every Workweek on a pro-rata basis over 17,010  
22       Workweeks. Thus, for example, should there be 17,011 Workweeks worked by Class members  
23       during the Class Period as calculated by the Settlement Administrator, then the Gross Settlement  
24       Amount shall be increased by \$30.72.  $((17,011 \text{ Workweeks} - 17,010 \text{ Workweeks}) \times \$30.72 \text{ per}$   
25       Workweek)

26               **9.       MOTION FOR FINAL APPROVAL**

27       Prior to the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for  
28       final approval of the Settlement that includes a request for approval of the PAGA settlement

1 under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed  
2 Judgment (collectively “Motion for Final Approval”). Class Counsel and Defense Counsel will  
3 expeditiously meet and confer, and in good faith, to resolve any disagreements concerning the  
4 Motion for Final Approval.

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

9 9.2. Duty to Cooperate. If the Court does not grant Final Approval, conditions Final Approval  
10 on any material change to the Settlement (including, but not limited to, the scope of release to be  
11 granted by Class Members) or if the Settlement is terminated by either Party in accordance with  
12 this Settlement Agreement, the Parties will request that the Court reopens the proceedings within  
13 14 days. Notwithstanding the foregoing, the Parties agree to expeditiously work together in good  
14 faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final  
15 Approval. The Court’s decision to award less than the amounts requested for the Class  
16 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation  
17 Expenses Payment and Administrator Expenses Payment shall not constitute a material  
18 modification to the Agreement within the meaning of this paragraph.

19 9.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the  
20 Court will retain jurisdiction over the Parties, Action and the Settlement solely for purposes of  
21 (i) enforcing this Agreement and/or Judgment (including pursuant to Code of Civil Procedure  
22 664.6), (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment  
23 matters as are permitted by law.

24 9.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and  
25 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class  
26 Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their  
27 respective counsel, and all Participating Class Members who did not object to the Settlement as  
28 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to

1 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions  
2 for new trial, extraordinary writs and appeals. The waiver of appeal does not include any waiver  
3 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the  
4 Parties' obligations to perform under this Agreement will be suspended until such time as the  
5 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect  
6 the amount of the Net Settlement Amount.

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

## 17 **10. AMENDED JUDGMENT**

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

## 20 **11. ADDITIONAL PROVISIONS**

21 11.1. No Admission of Liability, Class Certification or Representative Manageability for Other  
22 Purposes. This Agreement represents a compromise and settlement of highly disputed claims.  
23 Nothing in this Agreement is intended or should be construed as an admission by Defendant that  
24 any of the allegations in the Operative Complaint have merit or that Defendant has any liability  
25 for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that  
26 Defendant's defenses in the Action have merit. The Parties agree that class certification and  
27 representative treatment is for purposes of this Settlement only. If, for any reason the Court does  
28 grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to



1 contest certification of any class for any reasons, and Defendant reserves all available defenses  
2 to the claims in the Action, and Plaintiff reserves the right to move for class certification on any  
3 grounds available and to contest Defendant's defenses. The Settlement, this Agreement and  
4 Parties' willingness to settle the Action will have no bearing on, and will not be admissible in  
5 connection with, any litigation (except for proceedings to enforce or effectuate the Settlement  
6 and this Agreement). Payment of wages does not extend or alter the Class Members' or  
7 Aggrieved Employees' period of employment for any purpose.

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

25 11.3. No Solicitation. The Parties separately agree that they and their respective counsel and  
26 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal  
27 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's  
28 ability to communicate with Class Members in accordance with Class Counsel's ethical

obligations owed to Class Members.

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

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

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

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

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

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

1 11.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to  
2 the benefit of, the successors of each of the Parties.

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

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

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

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

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

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

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

1 11.18. Stay of Litigation. The Parties agree that upon the execution of this Agreement the  
2 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further  
3 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend  
4 the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement  
5 process.

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

12  
13 **IT IS SO AGREED:**

14  
15 \_\_\_\_\_  
16 \_\_\_\_\_  
17 For Plaintiff, Araceli Fuentes

\_\_\_\_\_

\_\_\_\_\_

For Defendant, Mayflower Medical Group, Inc.

18  
19 \_\_\_\_\_  
20 David D. Bibiyan  
21 Vedang J. Patel  
22 Counsel for Plaintiff, Araceli Fuentes

\_\_\_\_\_

William M. Turner  
Asha Dhillon  
Counsel for Defendant, Mayflower Medical  
Group, Inc.

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