

1 **MELMED LAW GROUP P.C.**
 Jonathan Melmed (SBN 290218)
 2 jm@melmedlaw.com
 Laura Supanich (SBN 314805)
 3 lms@melmedlaw.com
 Trishta Dordi (SBN 351883)
 4 td@melmedlaw.com
 5 1801 Century Park East, Suite 850
 Los Angeles, California 90067
 6 Phone: (310) 824-3828
 7 Fax: (310) 862-6851

8 Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees

9 *Additional Counsel Listed on Next Page*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 11 **FOR THE COUNTY OF SAN BERNARDINO**

12 ALDO OLIVERA FLORES, an individual, on
 13 behalf of himself, the State of California, as a
 14 private attorney general, and on behalf of all
 15 others similarly situated,

16 Plaintiff,

17 v.

18 OPTIMUM, INC., a California non-profit
 19 corporation; and DOES 1 TO 50,

20 Defendants.
21

Case No.: CIVSB2331827

**Settlement Agreement and Release of Class
Action**

1 **FENNEMORE LLP**
2 Kevin J. Abbott (SBN 281312)
3 kabbott@fennemorelaw.com
4 550 E. Hospitality Lane, Suite 350
5 San Bernardino, CA 92408
6 Phone: (909) 890-449
7 Fax: (909) 890-9877
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Attorneys for Defendant Optimum, Inc.

SETTLEMENT AGREEMENT AND RELEASE OF CLASS ACTION

This Settlement Agreement and Release of Class Action (“Settlement Agreement”) is made and entered into by: **(1)** Plaintiff Aldo Olivera Flores (“Plaintiff”), individually and in his representative capacity on behalf of the Settlement Class, as defined below, and as a private attorney general on behalf of the State of California; and **(2)** Defendant Optimum, Inc. (“Defendant”). Plaintiff and Defendant are collectively referred to herein as the “Parties.” This Settlement Agreement is subject to the approval of the Court, pursuant to California Rules of Court, rule 3.769, subdivisions (c), (d), and (e), and is made for the sole purpose of attempting to consummate settlement of the action on a class-wide basis subject to the following terms and conditions. As detailed below, if the Court does not enter an order granting final approval of this Settlement Agreement or the conditions precedent are not met for any reason, this Settlement Agreement is void and of no force or effect whatsoever.

1. DEFINITIONS

As used in this Settlement Agreement, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Settlement Agreement are not specifically defined below, but are defined elsewhere in this Settlement Agreement, they are incorporated by reference into this definition section.

1.1. ACTION

“Action” shall mean the following civil action: *Aldo Olivera Flores v. Optimum, Inc.*, case number CIVSB2331827, currently pending before the Superior Court of the State of California for the County of San Bernardino.

1.2. ADMINISTRATIVE EXPENSES

“Administrative Expenses” shall include all costs and expenses associated with and paid to the third-party settlement administrator, which are estimated not to exceed \$25,000.00.

1.3. APPLICABLE WAGE ORDER

“Applicable Wage Order” shall mean the California Industrial Welfare Commission (“IWC”) Wage Order applicable to the facts of this case, including IWC Wage Order 16-2001 and others that may be applicable. (Cal. Code of Regs., tit. 8, § 11160.)

1 **1.4. CLAIMS**

2 “Claims” shall mean the claims asserted in the Action.

3 **1.5. CLASS ATTORNEY FEES AND EXPENSES**

4 “Class Attorney Fees and Expenses” shall mean the portion of the Gross Settlement Amount
5 attributable to attorney fees and litigation expenses. The Parties agree that the fee-portion of the Class
6 Attorney Fees and Expenses shall be up to one-third of the Gross Settlement Amount (i.e.,
7 \$150,000.00), as approved by the Court, and the award of costs and expenses shall be up to an
8 additional \$30,000.00. If the Escalator Provision described below is triggered so as to increase the
9 Gross Settlement Amount, the Parties agree that the fee portion of the Class Attorney Fees and
10 Expenses will increase proportionally such that the total amount of attorneys’ fees remains one-third
11 of the Gross Settlement Amount *after* the upward adjustment required by the Escalator Provision is
12 implemented.

13 **1.6. CLASS COUNSEL**

14 “Class Counsel” shall mean Jonathan Melmed and Laura Supanich of Melmed Law Group P.C.

15 **1.7. CLASS MEMBER**

16 “Class Member” shall mean any person who is a prospective member of the Settlement Class,
17 or, if such person is incompetent or deceased, the person’s legal guardian, executor, heir, or successor-
18 in-interest.

19 **1.8. CLASS NOTICE**

20 “Class Notice” shall mean the *Notice of Proposed Class Action Settlement*, as set forth in the
21 form of **Exhibit 1** attached hereto, or as otherwise approved by the Court, which is to be mailed to
22 Class Members along with the Share Form.

23 **1.9. CLASS PARTICIPANTS**

24 “Class Participants” shall mean all Class Members who do not timely request exclusion from
25 the Class Settlement.

26 **1.10. CLASS PERIOD**

27 “Class Period” shall mean the period from December 7, 2019, through January 1, 2025.
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1 **1.11. CLASS REPRESENTATIVE**

2 “Class Representative” shall mean Plaintiff Aldo Olivera Flores.

3 **1.12. CLASS SETTLEMENT**

4 “Class Settlement” shall mean the settlement embodied in this Settlement Agreement, which is
5 subject to Court approval.

6 **1.13. COMPLAINT**

7 “Complaint” shall mean the currently-operative complaint in the Action.

8 **1.14. COURT**

9 “Court” shall mean the Superior Court of the State of California for the County of San
10 Bernardino.

11 **1.15. DEFENDANT**

12 “Defendant” shall mean Defendant Optimum, Inc..

13 **1.16. DEFENSE COUNSEL**

14 “Defense Counsel” shall mean the attorneys representing Defendant.

15 **1.17. EFFECTIVE DATE**

16 “Effective Date” shall be the date when all of the following events have occurred: **(a)** this
17 Settlement Agreement has been executed by all Parties and by Class Counsel and Defense Counsel;
18 **(b)** the Court has given preliminary approval to the Class Settlement; **(c)** notice has been given to the
19 Settlement Class providing them with an opportunity to request exclusion from the Class Settlement;
20 **(d)** the Court has held a Final Approval and Fairness Hearing and entered a final order and judgment
21 certifying the Settlement Class and approving this Settlement Agreement; and **(e)** the later of the
22 following events: **(i)** the expiration of the period for filing any appeal, writ, or other appellate
23 proceeding opposing the Class Settlement has elapsed without any appeal, writ, or other appellate
24 proceeding having been filed; **(ii)** the dismissal of any appeal, writ, or other appellate proceeding
25 opposing the Class Settlement with no right to pursue further remedies or relief; or **(iii)** any appeal,
26 writ, or the issuance of such other final appellate order upholding the Court’s final order with no right
27 to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Class
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1 Settlement shall not become effective until the Court's order approving the Class Settlement is
2 completely final and there is no further recourse by an appellant or objector who seeks to contest the
3 Class Settlement. If no objections are filed, the Effective Date shall be after steps (a) through (d) are
4 completed (i.e., the date that the court has entered a final order and judgment certifying the Settlement
5 Class and approving this Settlement Agreement).

6 **1.18. EMPLOYEE'S TAXES AND REQUIRED WITHHOLDING**

7 "Employee's Taxes and Required Withholding" shall mean the employee's share of any and all
8 applicable federal, state, or local payroll taxes, including those collected under authority of the Federal
9 Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and/or the State
10 Unemployment Tax Act (SUTA) on the portion of any Class Participant's Individual Settlement
11 Amount that constitutes wages. The Employee's Taxes and Required Withholdings will be withheld
12 from and paid out of the Individual Settlement Amounts paid from the Net Settlement Amount.

13 **1.19. EMPLOYER'S TAXES**

14 "Employer's Taxes" shall mean and refer to Defendant's share of payroll taxes (e.g.,
15 Unemployment Insurance, Employment Training Tax, Social Security, and Medicare taxes) that is
16 owed on the portion of any Class Participant's Individual Settlement Amount that constitutes wages.
17 The Employer's Taxes shall be separately paid by Defendant and shall not be paid from the Gross
18 Settlement Amount or Net Settlement Amount.

19 **1.20. FINAL APPROVAL AND FAIRNESS HEARING**

20 "Final Approval and Fairness Hearing" shall mean the final hearing held to ascertain the
21 fairness, reasonableness, and adequacy of the Class Settlement.

22 **1.21. GROSS SETTLEMENT AMOUNT**

23 "Gross Settlement Amount" is the agreed upon non-reversionary settlement amount totaling
24 \$450,000.00 to be paid by Defendant in full settlement of the Released Claims asserted in this case,
25 inclusive of the Administrative Expenses, the Employee's Taxes and Required Withholdings, the Class
26 Attorney Fees and Expenses, the Incentive Award, and PAGA Payment. Defendant shall separately
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1 pay its share of the Employer’s Taxes in addition to the Gross Settlement Amount on the portion of
2 each Individual Settlement Amount allocated as wages.

3 **1.22. HEARING ON PRELIMINARY APPROVAL**

4 “Hearing on Preliminary Approval” shall mean the hearing held on the motion for preliminary
5 approval of the Class Settlement.

6 **1.23. INCENTIVE AWARD**

7 “Incentive Award” shall mean any additional monetary payment provided to the Class
8 Representative for his efforts and risks on behalf of the Settlement Class in this Action.

9 **1.24. INDIVIDUAL SETTLEMENT AMOUNT**

10 “Individual Settlement Amount” shall mean the amount which is ultimately distributed to each
11 Class Participant, less any Employee’s Taxes and Required Withholdings. The Individual Settlement
12 Amount does not include any portion of the PAGA Payment.

13 **1.25. NET SETTLEMENT AMOUNT**

14 “Net Settlement Amount” shall mean the Gross Settlement Amount minus: Administrative
15 Expenses; Class Attorney Fees and Expenses; the PAGA Payment; and Plaintiff’s Incentive Award.

16 **1.26. OPT OUT**

17 “Opt Out” shall refer to the process of submitting a timely and valid request for exclusion from
18 the Class Settlement in accordance with the terms of the Class Notice and no later than the Response
19 Deadline.

20 **1.27. OPT-OUTS**

21 “Opt-Outs” shall mean all persons who timely and validly request exclusion from the Class
22 Settlement in accordance with the terms of the Class Notice and no later than the Response Deadline.

23 **1.28. PAGA PAYMENT**

24 “PAGA Payment” means the penalties pursuant to PAGA that the Parties have agreed is a
25 reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is
26 \$20,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699
27 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA and
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1 twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class. Class Counsel shall give
2 timely notice of this Settlement Agreement to the LWDA pursuant to Labor Code section 2699,
3 subdivision (l)(2).

4 **1.29. PAGA PERIOD**

5 “PAGA Period” shall mean the period from March 7, 2022, through January 1, 2025.

6 **1.30. PAGA SETTLEMENT CLASS**

7 “PAGA Settlement Class” shall mean all individuals who are or were employed by Defendants
8 as non-exempt employees in California during the PAGA Period. Defendant represents that the PAGA
9 Settlement Class consists of approximately 175 employees that worked during the PAGA Period.

10 **1.31. PARTIES**

11 “Parties” shall mean Plaintiff and Defendant.

12 **1.32. PLAINTIFF**

13 “Plaintiff” shall mean Plaintiff Aldo Olivera Flores.

14 **1.33. PRELIMINARY APPROVAL DATE**

15 “Preliminary Approval Date” shall mean the date upon which the Court enters an order
16 preliminarily approving this Settlement Agreement.

17 **1.34. RELEASED CLAIMS**

18 “Released Claims” shall mean those claims arising out of or related to the allegations set forth
19 in the operative complaint and/or PAGA notice to the California Labor and Workforce Development
20 Agency that arose during the Class Period and/or PAGA Period, including claims for: **(1)** failure to pay
21 minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the
22 applicable IWC Wage Order(s); **(2)** failure to pay proper overtime wages in violation of Labor Code
23 sections 510, 1197, and 1198, and the applicable IWC Wage Order(s); **(3)** failure to provide compliant
24 rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the
25 applicable IWC Wage Order(s); **(4)** failure to provide compliant meal periods and pay missed meal
26 period premiums in violation of Labor Code sections 226.7 and 512, and the applicable IWC Wage
27 Order(s); **(5)** failure to maintain accurate employment records in violation of Labor Code section 1174;
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1 (6) failure to pay timely wages during employment in violation of Labor Code sections 204, 210;
2 (7) failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202,
3 and 203; (8) failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804;
4 (9) failure to provide complete and accurate wage statements in violation of Labor Code sections 226
5 and 226.3; (10) deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing
6 in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210);
7 (11) statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-2699.6); and
8 (12) all claims for liquidated damages, penalties, interest, fees, costs based on the foregoing.

9 No other claims are released other than those claims specifically plead in the Complaint or
10 otherwise specifically identified herein. This Settlement Agreement will not release any person, party,
11 or entity from claims, if any, by Class Members for workers compensation, unemployment, or disability
12 benefits of any nature. Nor does it release any claims, actions, or causes of action which may be
13 possessed by Class Members under state or federal discrimination statutes, including, without
14 limitation, the California Fair Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh
15 Civil Rights Act (Civ. Code, § 51); the California Constitution; Title VII of the Civil Rights Act of
16 1964 (42 U.S.C. § 2000, et seq.); the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the
17 Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their
18 implementing regulations and interpretive guidelines.

19 **1.35. RELEASED PARTIES**

20 “Released Parties” shall mean Defendant and all of Defendant’s subsidiaries, affiliates,
21 shareholders, members, agents, predecessors, successors, and assigns.

22 **1.36. RELEASING PARTIES**

23 “Releasing Parties” shall mean every Class Participant and all persons purporting to act on their
24 behalf or purporting to assert a claim under or through them, including, but not limited to, their
25 dependents, heirs, assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees,
26 conservators, guardians, personal representatives, and successors-in-interest, whether individual, class,
27 representative, legal, equitable, direct or indirect, or any other type or in any other capacity.
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1 **1.37. RESPONSE DEADLINE**

2 “Response Deadline” shall mean the date forty-five (45) days following the date on which the
3 Settlement Administrator first mails Class Notice to the Class Members and the last day on which Class
4 Members may submit a request for exclusion and/or objection to Class Settlement.

5 **1.38. SETTLEMENT ADMINISTRATOR**

6 “Settlement Administrator” shall mean Apex Class Action Administration which the Parties
7 have agreed will be responsible for administration of the Class Settlement and related matters.

8 **1.39. SETTLEMENT CLASS**

9 “Settlement Class” shall mean all individuals who are or were employed by Defendants as non-
10 exempt employees in California during the Class Period. Defendant represents that the Settlement Class
11 consists of approximately 255 Class Members that worked a total of approximately 20,000 workweeks
12 during the Class Period.

13 **1.40. SHARE FORM**

14 “Share Form” shall mean the *Class Action Settlement Share Form*, as set forth in the form of
15 **Exhibit 2** attached hereto, or as otherwise approved by the Court, which is to be mailed to Class
16 Members along with the Class Notice.

17 **2. FACTUAL AND PROCEDURAL BACKGROUND**

18 **2.1. PLAINTIFF’S CLAIMS**

19 Plaintiff, individually and in his representative capacity on behalf of the Settlement Class, and
20 as a private attorney general on behalf of the State of California, has alleged the following violations:

- 21 **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and
22 1194.2, and the Applicable Wage Order; **(2)** failure to pay proper overtime wages in violation of Labor
23 Code sections 510, 1197, and 1198, and the Applicable Wage Order; **(3)** failure to provide compliant
24 rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the
25 Applicable Wage Order; **(4)** failure to provide compliant meal periods and pay missed meal period
26 premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage Order;
27 **(5)** failure to maintain accurate employment records in violation of Labor Code section 1174;

1 (6) failure to pay timely wages during employment in violation of Labor Code sections 204, 210;
 2 (7) failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202,
 3 and 203; (8) failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804;
 4 (9) failure to provide complete and accurate wage statements in violation of Labor Code sections 226
 5 and 226.3; (10) deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing
 6 in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); and
 7 (11) statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698–2699.6).

8 **2.2. DISCOVERY, INVESTIGATION, RESEARCH, AND MEDIATION**

9 Class Counsel has conducted significant informal discovery during the prosecution of the
 10 Action. This discovery, investigation, and prosecution has included, among other things, (a) over a
 11 dozen telephonic conferences with Plaintiff; (b) inspection and analysis of hundreds of pages of
 12 documents and other information produced by Plaintiff and Defendant; (c) analysis of employment
 13 data from a sample of Class Members; (d) an analysis of the legal positions taken by Defendant;
 14 (d) investigation into the viability of class treatment of the claims asserted in the Action; (e) analysis
 15 of potential class-wide damages, including information sufficient to understand Defendant’s potential
 16 defenses to Plaintiff’s claims; (f) research of the applicable law with respect to the claims asserted in
 17 the Complaint and the potential defenses thereto; and (g) assembling and analyzing of data for
 18 calculating damages.

19 Class Counsel and the Class Representative have vigorously prosecuted this case, and
 20 Defendant has vigorously contested it. The Parties have engaged in sufficient investigation and
 21 discovery to assess the relative merits of the claims of the Class Representative and of the defenses to
 22 them. After such discovery, investigation, and prosecution, the Parties attended a full-day mediation
 23 with an experienced employment law mediator, which culminated in a settlement in principle, the terms
 24 of which are elaborated in this Settlement Agreement.

1 **2.3. ALLEGATIONS OF THE CLASS REPRESENTATIVE AND BENEFITS OF**
2 **CLASS SETTLEMENT**

3 The document and data exchange in this matter, as well as discussions between counsel, have
4 been adequate to give the Class Representative and Class Counsel a sound understanding of the merits
5 of their positions and to evaluate the value of the claims of the Settlement Class. The informal discovery
6 conducted in this Action and the information exchanged by the Parties through pre-mediation
7 discussions are sufficient to reliably assess the merits of the Parties' respective positions and to
8 compromise the issues on a fair and equitable basis.

9 The Class Representative and Class Counsel believe that the claims, causes of action,
10 allegations, and contentions asserted in the Action have merit. However, the Class Representative and
11 Class Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings
12 necessary to prosecute the Action against Defendant through trial and through appeals. Class Counsel
13 has taken into account the uncertain outcome of the litigation, the risk of continued litigation in complex
14 actions such as this, as well as the difficulties and delays inherent in such litigation, and the potential
15 difficulty of obtaining certification of the Settlement Class as well as trying the claims of the class.
16 Class Counsel is mindful of the potential problems of proof under, and possible defenses to, the claims
17 alleged in the Action.

18 The Class Representative and Class Counsel believe that the settlement set forth in this
19 Settlement Agreement confers substantial benefits upon Plaintiff and the Settlement Class and that an
20 independent review of this Settlement Agreement by the Court in the approval process will confirm
21 this conclusion. Based on their own independent investigation and evaluation, Class Counsel has
22 determined that the settlement set forth in this Settlement Agreement is in the best interests of Plaintiff
23 and the Class Members.

24 **2.4. DEFENDANT'S DENIALS OF WRONGDOING AND LIABILITY**

25 Defendant has denied and continues to deny all allegations, claims, and contentions alleged by
26 Plaintiff in the Action. Defendant has expressly denied and continues to deny all charges of wrongdoing
27 or liability against it arising out of any of the conduct, statements, acts, or omissions alleged in the
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1 Action. Defendant contends that it complied with California and federal wage and hour laws and has
2 dealt legally and fairly with Plaintiff and the Class Members.

3 Defendant further denies that, for any purpose other than settling this Action, these claims are
4 appropriate for class or representative treatment. Nonetheless, Defendant has concluded that further
5 proceedings in the Action would be protracted and expensive and that it is desirable that the Action be
6 fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement
7 Agreement to dispose of burdensome and protracted litigation, to permit the operation of Defendant's
8 respective businesses without further expensive litigation and the distraction and diversion of their
9 personnel with respect to matters at issue in the Action. Defendant has also taken into account the
10 uncertainty and risks inherent in any litigation, especially in complex cases such as the Action.
11 Defendant has, therefore, determined that it is desirable and beneficial to it that the Action be settled
12 in the manner and upon the terms and conditions set forth in this Settlement Agreement.

13 **2.5. INTENT OF THE CLASS SETTLEMENT**

14 The Class Settlement set forth herein intends to achieve the following: **(1)** entry of an order
15 approving the Class Settlement; **(2)** entry of judgment of the Action; **(3)** discharge of the Released
16 Parties from liability for any and all of the Released Claims; and **(4)** discharge of Defendant from
17 liability for any and all claims arising out of the Action.

18 **3. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

19 For the purposes of this Settlement Agreement and the Class Settlement of this Action only, the
20 Parties agree to conditional class certification of the Settlement Class. Defense Counsel believes this
21 conditional certification is appropriate because the Released Claims are being compromised without
22 need to establish the elements of those claims on which liability turns. The certification of the
23 Settlement Class shall not constitute, in this or any other proceeding, an admission of any kind by
24 Defendant, including without limitation, that certification of a class for trial purposes is or would be
25 warranted, appropriate or proper; or that Plaintiff could establish any of the requisite elements for class
26 treatment of any of the claims in the Action.

1 If the Settlement Agreement is not finally approved by the Court, the Effective Date is not
2 achieved, or the Class Settlement is rejected, terminated, or otherwise rendered null and void as set
3 forth herein, then certification of the Settlement Class shall be automatically vacated, shall be void *ab*
4 *initio*, of no force or effect, and shall not constitute evidence or a binding determination that the
5 requirements for certification of a class for trial purposes in this Action or in any other action which
6 have been, are or can be, satisfied. Further, if the Agreement does not reach the Effective Date, Plaintiff
7 agrees that Plaintiff will not argue, claim, reference, or otherwise raise any preliminary approval of the
8 Settlement Class in connection with any later proceeding before the Court.

9 **4. APPOINTMENT OF CLASS COUNSEL**

10 For purposes of this Settlement Agreement and subject to the Court's approval, the Parties agree
11 to the appointment of Class Counsel as counsel for the Settlement Class and the effectuation of the
12 Class Settlement pursuant to this Settlement Agreement.

13 **5. CONSIDERATION**

14 **5.1. SETTLEMENT AMOUNT**

15 The Parties agree to settle this Action for the Gross Settlement Amount of \$450,000.00. There
16 shall be no reversion to Defendant. Defendant shall pay the Gross Settlement Amount in full. The Gross
17 Settlement Amount and other actions and forbearances taken by Defendant shall constitute adequate
18 consideration for the Class Settlement and will be made in full and final settlement of: the Released
19 Claims, the Class Attorney Fees and Expenses, Administrative Expenses, the Incentive Award, the
20 PAGA Payment (and any payments to individual PAGA Class Members resulting from the PAGA
21 Payment), and any other obligation of Defendant under this Settlement Agreement (other than the
22 Employer's Taxes on the portion of the Net Settlement Amount allocated to the payment of wages).

23 After the Court issues an order preliminarily approving this Class Settlement, the Settlement
24 Administrator will distribute the Class Notice to the Class Members, which shall describe the terms of
25 the Class Settlement and procedures to Opt Out, object, or participate in the Class Settlement as well
26 as the Share Form, which shall identify the Class Member, the number of workweeks worked by each
27 Class Member ("Workweeks"), as well as the estimated amount of the Individual Settlement Amount
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1 the Class Member can expect to receive once the Class Settlement becomes effective on the Effective
2 Date. Class Members shall be given the opportunity to challenge their Workweeks information.

3 **5.2. INCENTIVE AWARD FOR PLAINTIFF**

4 Plaintiff may petition the Court to approve an Incentive Award in an amount up to \$7,500.00
5 for Aldo Olivera Flores to acknowledge his efforts on behalf of the Settlement Class in this Action,
6 including assisting in the investigation and consulting with Class Counsel and providing crucial
7 documents to Class Counsel. Defendant shall not oppose any request by Plaintiff for an Incentive
8 Award in such an amount. Any Incentive Award approved by the Court shall be paid to Plaintiff from
9 the Gross Settlement Amount and shall be in addition to any distribution to which he may otherwise
10 be entitled as a Class Participant. Any Incentive Award approved by the Court shall not be considered
11 wages, and the Settlement Administrator shall issue to Plaintiff an IRS Form 1099 reflecting such
12 payment. Plaintiff shall be responsible for the payment of all taxes with respect to any Incentive Award
13 approved by the Court and shall hold Defendant harmless from all liability with regard thereto.

14 **5.3. PAYMENT TO CLASS PARTICIPANTS**

15 Each Class Participant shall be eligible to receive payment of the Individual Settlement
16 Amount, which is a share of the Net Settlement Amount based on the pro rata number of weeks worked
17 by the Class Members during the Class Period as a proportion of all weeks worked by all Class
18 Members. Each Class Participant, including Plaintiff, shall be responsible for the payment of the
19 Employee's Taxes and Required Withholding with respect to his or her Individual Settlement Amount
20 and shall hold Defendant harmless from any and all liability with regard thereto.

21 **5.4. PAYMENT TO PAGA SETTLEMENT CLASS**

22 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA
23 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have
24 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which
25 is \$20,000.00. The PAGA Payment must be approved by the Court pursuant to Labor Code section
26 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA
27 and twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class. The portion of the
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1 PAGA Payment allocated to the PAGA Settlement Class shall be distributed to the PAGA Settlement
 2 Class based on the pro rata number of weeks worked by each particular PAGA Settlement Class
 3 member during the PAGA Period as a proportion of all weeks worked by all members of the PAGA
 4 Settlement Class.

5 **5.5. TAX TREATMENT AND PAYMENT**

6 For the purpose of calculating Employee’s Taxes and Required Withholding for the Individual
 7 Settlement Amounts for Class Participants (including any payments to the Class Representative but
 8 exclusive of his Incentive Award), the Parties agree that 20% of each Individual Settlement Amount
 9 shall constitute payment in the form of wages (and each Class Participant will be issued an IRS Form
 10 W-2 for such payment to him or her), and 80% of each Individual Settlement Amount shall constitute
 11 penalties and interest (and the Settlement Administrator shall issue to each Class Participant an IRS
 12 Form 1099 for such payment to him or her). Prior to final distribution, the Settlement Administrator
 13 shall calculate the total Employee’s Taxes and Required Withholding due as a result of the wage portion
 14 of Class Participants’ anticipated Individual Settlement Amounts and such actual amount will be
 15 deducted from the Net Settlement Amount. Additionally, prior to the funding of the Gross Settlement
 16 Amount and final distribution, the Settlement Administrator shall calculate the total Employer’s Taxes
 17 due on the wage portion of the Class Participants’ Individual Settlement Amounts and issue instructions
 18 to Defendant to separately fund these tax obligations/withholdings. The Parties understand that Plaintiff
 19 and the Class Participants who receive any payment pursuant to this Settlement Agreement shall be
 20 solely responsible for all other individual tax obligations.

21 With respect to the PAGA Payment and any payments made to individual members of the
 22 PAGA Settlement Class, all such payments shall be treated as payments owing for penalties and interest
 23 thereon and shall not be considered wages. The Settlement Administrator shall issue to members of the
 24 PAGA Settlement Class an IRS Form 1099 reflecting such payment. Members of the PAGA Settlement
 25 Class shall be solely responsible for the payment of all taxes with respect to any PAGA payments made
 26 to them.

1 **5.6. NO EFFECT ON EMPLOYEE BENEFIT PLANS**

2 Neither the Class Settlement nor any amounts paid under the Class Settlement will modify any
3 previously credited hours, days, or weeks of service under any employee benefit plan, policy or bonus
4 program sponsored by Defendant. Such amounts will not form the basis for additional contributions to,
5 benefits under, or any other monetary entitlement under Defendant’s sponsored benefit plans, policies,
6 or bonus programs. The payments made under the terms of this Settlement Agreement shall not be
7 applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other
8 form of compensation for the purposes of any of Defendant’s benefit plan, policy, or bonus program.
9 Defendant retains the right to modify the language of its benefits plans, policies, and bonus programs
10 to reflect this intent and to make clear that any amounts paid pursuant to this Settlement Agreement are
11 not for “weeks worked,” “weeks paid,” “weeks of service,” or any similar measuring term as defined
12 by applicable plans, policies, and bonus programs for purpose of eligibility, vesting, benefit accrual, or
13 any other purpose, and that additional contributions or benefits are not required by this Settlement
14 Agreement. Defendant does not consider the Class Settlement payments “compensation” for purposes
15 of determining eligibility for, or benefit accrual within, any benefit plans, policies, or bonus programs,
16 or any other plan sponsored by Defendant.

17 **5.7. CLASS ATTORNEY FEES AND EXPENSES**

18 As part of the motion for final approval of the Class Settlement, Class Counsel may apply for
19 an award of Class Attorney Fees and Expenses with the fee portion not to exceed one-third of the Gross
20 Settlement Amount (i.e., \$150,000.00) and the award of costs and expenses up to an additional
21 \$30,000.00. Defendant agrees to not object to any such fee, cost, or expense application in those
22 amounts.

23 As a condition of this Class Settlement, Class Counsel has agreed to pursue fees only in the
24 manner reflected by this subsection. Any Class Attorney Fees and Expenses awarded by the Court shall
25 be paid from the Gross Settlement Amount prior to arriving at the Net Settlement Amount and shall
26 not constitute payment to any Class Members. If Class Counsel voluntarily reduces the request for
27 Class Attorney Fees and Expenses or the Court’s award of Class Attorney Fees and Expenses is less
28

1 than set forth above, the Net Settlement Amount shall be recalculated to reflect the actual Class
2 Attorney Fees and Expenses awarded.

3 The Class Attorney Fees and Expenses approved by the Court shall reflect: **(a)** all work
4 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
5 represent the Settlement Class through the date of this Settlement Agreement; **(b)** all work to be
6 performed and costs to be incurred in connection with approval by the Court of the Class Settlement;
7 **(c)** all work to be performed and costs and expenses, if any, incurred in connection with administering
8 the Class Settlement through the Effective Date and dismissal of the Action with prejudice; and **(d)** may
9 be based on the “catalyst theory” and/or the “common fund doctrine.”

10 **6. SETTLEMENT ADMINISTRATION**

11 **6.1. COSTS AND EXPENSES**

12 All costs and expenses due to the Settlement Administrator in connection with its administration
13 of the Class Settlement, including, but not limited to, providing the Class Notice, locating Class
14 Members, processing Opt Out requests and objections, distributing the portion of the PAGA Payment
15 payable to the LWDA, distributing the portion of the PAGA Payment payable to the members of the
16 PAGA Settlement Class, and calculating, administering and distributing Individual Settlement
17 Amounts to the Class Participants and related tax forms, shall be paid from the Gross Settlement
18 Amount, and is not expected to exceed \$25,000.00.

19 **6.2. PAYMENT BY DEFENDANT**

20 Defendant shall deposit the Gross Settlement Amount in a lump sum payment plus the
21 employer-side payroll taxes to the Settlement Administrator within ninety (90) days of the Effective
22 Date. In no event shall Defendant be obligated to pay or deposit with the Settlement Administrator
23 more than \$450,000.00 plus the Employer’s Taxes, except where the Escalator Provision is triggered.

24 **7. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS**

25 **7.1. THE SETTLEMENT ADMINISTRATOR**

26 The Settlement Administrator will be responsible for: mailing the Class Notice and Share Form
27 (**Exhibit 1** and **Exhibit 2**, respectively) to Class Members; posting notice of entry of final order and
28

1 judgment certifying the Class Settlement and approving this Settlement Agreement; handling inquiries
2 from Class Members concerning the Class Notice; determining Individual Settlement Amounts;
3 determining individual payments to members of the PAGA Settlement Class; maintaining the
4 settlement funds in an appropriate interest-bearing account; preparing, administrating, and distributing
5 Individual Settlement Amounts to Class Participants; preparing, administrating, and distributing
6 individual payments to members of the PAGA Settlement Class; distributing the portion of the PAGA
7 Payment payable to the LWDA; issuing a final report and performing such other duties as the Parties
8 may direct. Additionally, the Settlement Administrator will handle all tax document preparation and
9 reporting, including state and federal tax forms, if any.

10 On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and
11 Defense Counsel with summary information updating them as to the number of validated and timely
12 objections and Opt Out requests. The Settlement Administrator will serve on Class Counsel and
13 Defense Counsel via e-mail date-stamped copies of the original Opt Out requests and objections no
14 later than seven (7) days after their receipt. The Settlement Administrator will provide Class Counsel
15 with proof of mailing of the Class Notice, without listing individual Class Member names which the
16 Settlement Administrator will file with the Court at the time Class Counsel files its motion in support
17 of the Court's Final Approval and Fairness Hearing.

18 No later than thirty (30) days prior to the Final Approval and Fairness Hearing, the Settlement
19 Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary
20 information regarding: **(a)** the total amount of final Individual Settlement Amounts of each Class
21 Participant, without any identifying personal information; **(b)** the number of Class Participants to
22 receive such payments, and **(c)** the final number of Opt-Outs and objections.

23 Administrative Expenses are not anticipated to exceed \$25,000.00. Prior to the calculation and
24 distribution of the Individual Settlement Amounts, the Settlement Administrator shall calculate the
25 total Administrative Expenses through the conclusion of their services and such actual amount will be
26 deducted from the Gross Settlement Amount prior to the final calculation of the Individual Settlement
27 Amounts.

7.2. NOTICE TO CLASS MEMBERS

Notice shall be provided to Class Members in the following manner: Within fourteen (14) days after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with an updated list of Class Members and members of the PAGA Settlement Class containing names, social security numbers, dates of employment, last-known addresses, phone numbers, and weeks worked for each Class Member and/or member of the PAGA Settlement Class (the “Database”). The Database shall be marked “Confidential – Settlement Administrator’s Eyes Only.” Class Counsel shall not receive a copy of this list.

Within twenty-eight (28) days following the Preliminary Approval Date, the Settlement Administrator shall send each Class Member the Class Notice via first-class, United States mail. The Class Notice shall also contain an easily-understood statement alerting the Class Members that, unless they elect to Opt Out of the Class Settlement, the Class Member is releasing and waiving all Released Claims against the Released Parties.

The Class Notice will inform Class Members of their estimated share of the settlement and the number of workweeks they worked during the Class Period. Class Members may dispute their workweeks if they believe they worked more weeks in the Class Period than Defendant’s records show by submitting information to the Settlement Administrator no later than forty-five (45) days after being mailed the Class Notice and Share Form by the Settlement Administrator, which is the defined Response Deadline. The Settlement Administrator will jointly work with Plaintiff and Defendant to resolve the dispute in good faith. If Plaintiff and Defendant cannot agree over the workweeks to be credited, the Settlement Administrator shall make the final decision based on the information presented by the Class Member and Defendant.

7.3. OPT OUT PROCEDURE

Class Members who do not timely Opt Out of the Class Settlement will be deemed to participate in the Class Settlement and shall become Class Participants without having to submit a claim form or take any other action. To Opt Out of the Class Settlement, the Class Member must submit a letter or postcard to the Settlement Administrator by the Response Deadline. The Opt Out request must state

1 the Class Member’s name, address, telephone number, and signature. The Opt Out request should state
 2 something to the effect of:

3 “I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *ALDO*
 4 *OLIVERA FLORES V. OPTIMUM, INC.* LAWSUIT. I UNDERSTAND THAT IF I
 5 ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT
 6 RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT OF THIS LAWSUIT
 7 AND WILL NOT BE RELEASING ANY CLAIMS I MIGHT HAVE.”
 8

9 Any Opt Out request that is not postmarked by the Response Deadline will be invalid. If prior
 10 to the Response Deadline any Class Notice mailed to a Class Member is returned as having been
 11 undelivered by the United States Postal Service, the Settlement Administrator shall perform a skip trace
 12 search and seek an address correction for such Class Members, and a second Class Notice will be sent
 13 to any new or different address obtained.

14 It will be presumed that, if an envelope containing the Class Notice has not been returned within
 15 thirty (30) days of the mailing, the Class Member received the Class Notice. At least twenty-one (21)
 16 days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class
 17 Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard
 18 to the mailing of the Class Notice and its attempts to locate Class Members. The declaration shall
 19 specify the number of Class Members to whom the Class Notice was sent and the number of Class
 20 Members to whom the Class Notice was not delivered, as well as information relating to the number
 21 of Opt-Outs and objectors. Class Counsel shall file this declaration with the Court.

22 If the Settlement Administrator determines that an Opt Out request returned by a Class Member
 23 before the Response Deadline is deficient, then the Settlement Administrator shall mail a deficiency
 24 letter to that Class Member identifying the problem. If a Class Member submits both a dispute and an
 25 Opt Out request, the Settlement Administrator shall make reasonable attempts to clarify as if the Opt
 26 Out request were deficient. If the Class Member fails to cure the deficiency, the Opt Out request shall
 27 be disregarded and the claim will be paid, and the Class Member will become bound by the judgment.
 28

1 Class Participants will be bound by the Release of Released Claims set forth in the definition
2 of “Released Claims” provided in this Settlement Agreement.

3 A request to Opt Out of the Class Settlement shall *not* serve to exclude the Class Member from
4 participation in the PAGA Settlement Class. Opt-Outs shall still be entitled to their share of the PAGA
5 Payment. Class Members who are also members of the PAGA Settlement Class shall have no right or
6 ability to opt out of the portion of this Settlement Agreement releasing PAGA claims.

7 **7.4. OBJECTION PROCEDURE**

8 The Class Notice shall inform the Class Members of their right to object to the Class Settlement
9 if they do not Opt Out. Any Class Participants who wish to object to the Class Settlement may submit
10 a written objection to the Settlement Administrator no later than the Response Deadline. Only Class
11 Participants may object to the Settlement. The objection should include the case name and number and
12 must set forth, in clear and concise terms, a statement of the reasons why the objector believes that the
13 Court should find that the proposed Class Settlement is not in the best interest of the Settlement Class
14 and the reasons why the Class Settlement should not be approved, including the legal and factual
15 arguments supporting the objection. If an objector also wishes to appear at the Final Approval and
16 Fairness Hearing, in person or through an attorney, they may do so. The Settlement Administrator will
17 promptly serve copies of any objection or notice of intention to appear on Class Counsel and Defense
18 Counsel. Class Members wishing to make an objection may appear at the Final Approval and Fairness
19 Hearing, either in person or through a lawyer retained at their own expense.

20 **7.5. NOTICE OF FINAL JUDGMENT**

21 Within seven (7) days after the Court has held a Final and Fairness Approval Hearing and
22 entered a final order certifying the Class for settlement purposes only and approving the Class
23 Settlement, the Settlement Administrator will give notice of judgment to Class Members pursuant to
24 rule 3.771(b) of the California Rules of Court, by posting a copy of said order and final judgment on
25 its website at a web address to be included in the Class Notice.
26
27
28

1 **8. CLASS SETTLEMENT FUNDING AND DISTRIBUTION**

2 **8.1. ALLOCATION OF THE GROSS SETTLEMENT AMOUNT**

3 The claims of all Class Members are settled for the Gross Settlement Amount of \$450,000.00,
4 which will be allocated as follows:

- 5 1. The Administrative Expenses, estimated not to exceed \$25,000.00;
- 6 2. Class Counsel’s attorney fees not to exceed \$150,000.00;
- 7 3. Class Counsel’s litigation costs and expenses not to exceed \$30,000.00;
- 8 4. The Incentive Award, not to exceed \$7,500.00; and
- 9 5. PAGA Payment of \$20,000.00.

10 The remaining Net Settlement Amount will be allocated as provided herein. For purposes of
11 calculating the estimated Individual Settlement Amounts, the Settlement Administrator shall calculate
12 the estimated Net Settlement Amount based on the estimated values provided above prior to sending
13 Notice to the Class Members. Prior to final distribution, the Settlement Administrator shall recalculate
14 the final Net Settlement Amount based on the actual values of the amounts in each category.

15 **8.2. CALCULATION OF THE INDIVIDUAL SETTLEMENT AMOUNTS FOR**
16 **CLASS PARTICIPANTS**

17 Individual Settlement Amounts to be paid to Class Participants shall be paid from the Net
18 Settlement Amount. The portion of the Net Settlement Amount shall be distributed pro rata on a
19 “checks cashed” basis based on the proportional number of weeks worked by each Class Member
20 during the Class Period.

21 Defendant will provide any reasonably required information the Settlement Administrator
22 requests to perform the calculations required under this Settlement Agreement. Defendant shall have
23 no responsibility for deciding the validity of the Individual Settlement Amounts or any other payments
24 made pursuant to this Settlement Agreement, shall have no involvement in or responsibility for the
25 determination or payment of Employee’s Taxes and Required Withholding, and shall have no liability
26 for any errors made with respect to such Employee’s Taxes and Required Withholding. Although the
27 Settlement Administrator will calculate and pay the standard Employee’s Taxes and Required
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1 Withholding on the portion of the Individual Settlement Amounts constituting wages on their behalf,
2 Plaintiff and Class Participants represent and understand that they shall be solely responsible for any
3 and all tax obligation associated with their respective Individual Settlement Amounts and Incentive
4 Awards.

5 **8.3. CALCULATION OF THE PAYMENTS FOR INDIVIDUAL MEMBERS OF**
6 **THE PAGA SETTLEMENT CLASS**

7 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA
8 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have
9 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which
10 is \$20,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section
11 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA
12 and twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class.

13 The portion of the PAGA Payment allocated to the PAGA Settlement Class shall be distributed
14 to the PAGA Settlement Class based on the pro rata number of weeks worked by each particular PAGA
15 Settlement Class member during the PAGA Period as a proportion of all weeks worked by all PAGA
16 Settlement Class members during the PAGA Period. Each member of the PAGA Settlement Class,
17 including Plaintiff, shall be responsible for the payment of the Employee's Taxes and Required
18 Withholding with respect to their share of the PAGA Payment and shall hold Defendant harmless from
19 any and all liability with regard thereto.

20 Defendant will provide the Settlement Administrator with any reasonably required information
21 the Settlement Administrator requests to perform the calculations required under this Settlement
22 Agreement. Defendant shall have no responsibility for deciding the validity of the individual payment
23 amounts allocated to each member of the PAGA Settlement Class or any other payments made pursuant
24 to this Settlement Agreement, shall have no involvement in or responsibility for the determination or
25 payment of Employee's Taxes and Required Withholding, and shall have no liability for any errors
26 made with respect to such Employee's Taxes and Required Withholding.

1 The members of the PAGA Settlement Class shall be solely responsible for any and all tax
2 obligation associated with their respective shares of the PAGA Payment.

3 **8.4. TIME FOR PAYMENT OF ATTORNEY FEES AND EXPENSES**

4 The Settlement Administrator shall distribute to Class Counsel any attorney fees and expenses
5 approved by the Court no later than one hundred (100) days after the Effective Date.

6 **8.5. TIME FOR PAYMENT OF INCENTIVE AWARD**

7 The Settlement Administrator shall distribute to Plaintiff the Incentive Award approved by the
8 Court no later than one hundred (100) days after the Effective Date.

9 **8.6. TIME FOR PAYMENT OF PAGA PAYMENT TO THE LWDA**

10 The Settlement Administrator shall distribute to the LWDA the portion of the PAGA Payment
11 due to it and approved by the Court no later than one hundred (100) days after the Effective Date.

12 **8.7. TIME FOR PAYMENT OF TAXES AND REQUIRED WITHHOLDING AND**
13 **INDIVIDUAL SETTLEMENT AMOUNTS**

14 The Settlement Administrator shall make every effort to pay the Employee's Taxes and
15 Required Withholding associated with each Class Participant's Individual Settlement Amount and mail
16 the Individual Settlement Amount to each Class Participant, by first-class United States mail, to the
17 last-known address no later than one hundred (100) days after the Effective Date. If the Settlement
18 Administrator is not able to do so within the time period set forth above, it shall so inform Class Counsel
19 and Defense Counsel and provide an approximate date by which the Employee's Taxes and Required
20 Withholding shall be paid and the Individual Settlement Amounts will be mailed. Under no
21 circumstances shall the Settlement Administrator distribute checks to Class Participants until all
22 Individual Settlement Amounts have been considered, calculated, and accounted for, and all of the
23 remaining monetary obligations have been calculated and accounted for.

24 Within two hundred ten (210) days of mailing the Individual Settlement Amounts to Class
25 Participants, the Settlement Administrator shall file with the Court and provide to Class Counsel a
26 declaration of payment. If any Class Participant is deceased, payment shall be made payable to the
27 estate of that Class Member and delivered to the executor or administrator of that estate, unless the
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1 Settlement Administrator has received an affidavit or declaration pursuant to California Probate Code
 2 section 13101, in which case payment shall be made to the affiant(s) or declarant(s).

3 **8.8. NON-CASHED SETTLEMENT CHECKS**

4 Any funds associated with checks that have not been cashed within one hundred eighty (180)
 5 days, will become void and the Individual Settlement Amount associated with the uncashed check will
 6 be remitted pursuant to Code of Civil Procedure section 384 to the California State Controller for
 7 deposit in the Unclaimed Property Fund in the name of the individual whose check was uncashed. The
 8 Parties agree that this disposition results in no “unpaid residue” within the meaning of California Civil
 9 Procedure Code section 384, as the entire Net Settlement Amount will be paid out to Class Participants,
 10 whether or not they all cash their Individual Settlement Amount checks. Therefore, Defendant shall not
 11 be required to pay any interest on said amount. For the purposes of determining whether Defendant has
 12 met their financial obligation to pay the Individual Settlement Payment, Defendant will be deemed to
 13 have fulfilled its obligation upon the mailing of the check to the Class Member, regardless of whether
 14 such Class Member subsequently negotiates the check.

15 **8.9. DISPUTES REGARDING CLASS MEMBER WORKWEEKS DATA OR**
 16 **PAYMENT OF INDIVIDUAL SETTLEMENT SHARES**

17 The number of Class Member Workweeks and the corresponding Individual Settlement
 18 Amount presumptively shall be deemed to be full, complete, and accurate for purposes of this
 19 Settlement Agreement. To overcome that presumption, any Class Member objecting to the accuracy of
 20 the number of Workweeks or amount of the Individual Settlement Amount must submit documentary
 21 evidence, such as pay stubs or other written employment records, to the Settlement Administrator. Each
 22 Class Member may dispute the number of Workweeks or their estimated Individual Settlement Amount
 23 contained on their Class Notice (“Workweeks Dispute”). Any such Workweeks Dispute must be mailed
 24 or faxed to the Settlement Administrator by the Class Member, postmarked or fax-stamped on or before
 25 the Response Deadline. The Settlement Administrator shall immediately provide copies of all disputes
 26 to counsel for Defendant, shall inform Class Counsel of the dispute without disclosing the identity of
 27 the Class Member making the dispute, and shall immediately attempt to resolve all such disputes
 28

1 directly with relevant Class Members with the assistance of Defendant, Defense Counsel, and Class
 2 Counsel. If the dispute cannot be resolved, it shall be submitted to the Settlement Administrator for its
 3 final, non-appealable decision. The Settlement Administrator shall use its best efforts to resolve all
 4 such disputes prior to the Effective Date. If, however, a dispute arises or is not resolved until after the
 5 Settlement Amount has been distributed, the initial calculation shall stand (as Defendant shall be under
 6 no obligation to pay any amounts in excess of the Gross Settlement Amount under this Settlement
 7 Agreement).

8 **9. NULLIFICATION OF THIS SETTLEMENT AGREEMENT**

9 **9.1. NON-APPROVAL OF THIS SETTLEMENT AGREEMENT**

10 The Class Settlement and conditional class certification shall be considered null and void, and
 11 neither the Class Settlement, conditional class certification, nor any of the related negotiations or
 12 proceedings, shall be of any force or effect, and all Parties to the Class Settlement shall stand in the
 13 same position, without prejudice, as if the Class Settlement had been neither entered into nor filed with
 14 the Court, if any of the following occur: **(a)** the Court should for any reason fail to approve this
 15 Settlement Agreement in the form agreed to by the Parties; **(b)** the Court should for any reason fail to
 16 enter a judgment with prejudice of the Action, or **(c)** the approval of the Class Settlement and judgment
 17 is reversed, modified, or declared or rendered void. Notwithstanding the foregoing, the Parties may
 18 attempt in good faith to cure any perceived defects in this Settlement Agreement to facilitate approval.

19 **9.2. PARTIES' RIGHTS TO VOID CLASS SETTLEMENT; ESCALATOR**
 20 **PROVISION**

21 If 10% or more members of the Settlement Class timely submit Opt Out requests, Defendant(s)
 22 shall have the right (but not the obligation) to void the settlement described in this MOU. If the number
 23 of workweeks worked by the Class Members is greater than 10% above 20,000, then the GSA shall be
 24 increased proportionately for each additional Workweek above the 10% buffer.

1 **9.3. INVALIDATION**

2 Invalidation of any material portion of this Settlement Agreement shall invalidate the Class
3 Settlement in its entirety, unless the Parties subsequently agree in writing that the remaining provisions
4 of the Class Settlement are to remain in full force and effect.

5 **9.4. STAY ON APPEAL**

6 If a timely appeal from the approval of the Class Settlement and judgment, the judgment shall
7 be stayed, and Defendant shall not be obligated to fund the Gross Settlement Amount or take any other
8 actions required by this Settlement Agreement until all appeal rights have been exhausted by operation
9 of law.

10 **10. MOTIONS FOR COURT APPROVAL**

11 **10.1. PRELIMINARY APPROVAL**

12 As soon as practicable after execution of this Settlement Agreement, Class Counsel will submit
13 this Settlement Agreement to the Court along with a Motion for Preliminary Approval of the Class
14 Settlement. Each party shall cooperate to present the Class Settlement to the Court for preliminary
15 approval in a timely fashion.

16 **10.2. FINAL APPROVAL**

17 The Final Approval and Fairness Hearing shall be held before the Court. At the Final Approval
18 and Fairness Hearing, Plaintiff shall move the Court for the entry of the final order certifying the
19 Settlement Class for settlement purposes only and approving the Class Settlement as being fair,
20 reasonable, and adequate to the Class Participants within the meaning of California Rules of Court,
21 Rule 3.769, subdivisions (c), (d) and (e), and for the entry of a final judgment of the Action consistent
22 with the terms of the Class Settlement and rule 3.769, subdivision (h), of the California Rules of Court.
23 Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may
24 be required for the Court’s determination.

1 **11. RELEASES AND WAIVERS**

2 **11.1. RELEASE OF CLAIMS BY THE SETTLEMENT CLASS**

3 Upon the Effective Date, the Releasing Parties shall be deemed to each release the Released
4 Parties, and each of them, of and from any and all Released Claims arising during the Class Period. It
5 is the desire of the Parties and the Releasing Parties to fully, finally, and forever settle, compromise,
6 and discharge the Released Claims. Each of the Releasing Parties, including each Class Participant,
7 will be bound by the release of Released Claims as a result of the Class Settlement and to the terms of
8 the final judgment and the satisfaction of such judgment.

9 Class Participants will be deemed to have acknowledged and agreed that their claims for wages
10 and/or penalties in the Action are disputed, and that their Individual Settlement Amount constitutes
11 payment of all sums allegedly due to them. Class Participants will be deemed to have acknowledged
12 and agreed that California Labor Code section 206.5 is not applicable to the Individual Settlement
13 Amount. That section provides in pertinent part as follows:

14 “An employer shall not require the execution of a release of a claim or right on account
15 of wages due, or to become due, or made as an advance on wages to be earned, unless
16 payment of those wages has been made.”

17
18 **11.2. RELEASE OF CLAIMS BY PLAINTIFF**

19 Plaintiff, on behalf of himself and his dependents, heirs and assigns, beneficiaries, devisees,
20 legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives,
21 and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect,
22 or any other type or in any other capacity, shall and does hereby forever release, discharge and agree
23 to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities,
24 obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights,
25 demands, costs, losses, debts and expenses (including attorney fees and costs), known or unknown, at
26 law or in equity, which he may now have or may have after the signing of this Settlement Agreement,
27 arising out of or in any way connected with his employment with Defendant including, the Released
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1 Claims, claims that were asserted or could have been asserted in the Complaint, and any and all
2 transactions, occurrences, or matters between the Parties occurring prior to the date this Settlement
3 Agreement is fully executed. Without limiting the generality of the foregoing, this release shall include,
4 but not be limited to, any and all claims under: **(a)** the Americans with Disabilities Act; **(b)** Title VII
5 of the Civil Rights Act of 1964; **(c)** the Civil Rights Act of 1991; **(d)** 42 U.S.C. § 1981; **(e)** the Age
6 Discrimination in Employment Act; **(f)** the Fair Labor Standards Act; **(g)** the Equal Pay Act; **(h)** the
7 Employee Retirement Income Security Act, as amended; **(i)** the Consolidated Omnibus Budget
8 Reconciliation Act; **(j)** the Rehabilitation Act of 1973; **(k)** the Family and Medical Leave Act; **(l)** the
9 Civil Rights Act of 1966; **(m)** the California Fair Employment and Housing Act; **(n)** the California
10 Constitution; **(o)** the California Labor Code; **(p)** the California Government Code; **(q)** the California
11 Civil Code; and **(r)** any and all other federal, state, and local statutes, ordinances, regulations, rules,
12 and other laws, and any and all claims based on constitutional, statutory, common law, or regulatory
13 grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of
14 contract or implied contract, fraud, misrepresentation, promissory estoppel, or intentional infliction of
15 emotional distress, negligent infliction of emotional distress, or damages under any other federal, state,
16 or local statutes, ordinances, regulations, rules, or laws. This release is for any and all relief, no matter
17 how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses,
18 compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain
19 and suffering, and attorney fees and costs, and Plaintiff hereby forever releases, discharges and agrees
20 to hold harmless Defendant and the Released Parties from any and all claims for attorney fees and costs
21 arising out of the matters released in this Settlement Agreement.

22 Plaintiff specifically acknowledges that he is aware of and familiar with the provisions of
23 California Civil Code section 1542, which provides as follows:

24 “A general release does not extend to claims that the creditor or releasing party does not
25 know or suspect to exist in his or her favor at the time of executing the release and that,
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1 if known by him or her, would have materially affected his or her settlement with the
2 debtor or released party.”

3
4 Plaintiff, being aware of California Civil Code section 1542, hereby expressly waives and
5 relinquishes all rights and benefits he may have under section 1542 as well as any other statutes or
6 common law principles of a similar effect. Plaintiff may hereafter discover facts in addition to or
7 different from those which he now knows or believes to be true with respect to the subject matter of all
8 the claims referenced herein, but agrees that, upon the Effective Date, Plaintiff shall and hereby does
9 fully, finally, and forever settle and release any and all claims against the Released Parties, known or
10 unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or could have
11 been asserted upon any theory of law or equity without regard to the subsequent discovery of existence
12 of such different or additional facts.

13 **11.3. CIRCULAR 230 DISCLAIMER**

14 Each party to this Settlement Agreement (for purposes of this section, the “Acknowledging
15 Party”; and each party to this Agreement other than the Acknowledging Party, an “Other Party”)
16 acknowledges and agrees that **(1)** no provision of this Settlement Agreement, and no written
17 communication or disclosure between or among the parties or their attorneys and other advisers, is or
18 was intended to be, nor shall any such communication or disclosure constitute or be construed or be
19 relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31
20 C.F.R. Part 10); **(2)** the Acknowledging Party **(a)** has relied exclusively upon her or its own
21 independent legal and tax advisers for advice (including tax advice) in connection with this Settlement
22 Agreement, **(b)** has not entered into this Settlement Agreement based upon the recommendation of any
23 other party or any attorney or advisor to any other party, and **(c)** is not entitled to rely upon any
24 communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that
25 may be imposed on the Acknowledging Party; and **(3)** no attorney or adviser to any other party has
26 imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies
27 (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party
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1 of the tax treatment or tax structure of any transaction, including any transaction contemplated by this
2 Settlement Agreement.

3 **12. DUTIES OF THE PARTIES**

4 **12.1. MUTUAL FULL COOPERATION**

5 The Parties agree to cooperate fully with one another to accomplish and implement the terms
6 of this Settlement Agreement. Such cooperation shall include, but not be limited to, execution of such
7 other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms
8 of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated
9 by this Settlement Agreement and any other efforts that may become necessary by court order or
10 otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable
11 after execution of this Settlement Agreement, Class Counsel, with the cooperation of Defendant and
12 Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final approval of
13 this Settlement Agreement.

14 **12.2. DUTY TO SUPPORT AND DEFEND THE CLASS SETTLEMENT**

15 The Parties agree to abide by all of the terms of this Settlement Agreement in good faith and to
16 support the Class Settlement fully and to use their best efforts to defend this Class Settlement from any
17 legal challenge, whether by appeal or collateral attack.

18 **12.3. DUTIES PRIOR TO COURT APPROVAL**

19 Class Counsel shall promptly submit this Settlement Agreement to the Court for preliminary
20 approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly
21 upon execution of this Settlement Agreement, Class Counsel shall apply to the Court for the entry of a
22 preliminary order scheduling a hearing on the question of whether the proposed Class Settlement
23 should be approved as fair, reasonable, and adequate as to the Class Members, approving as to form
24 and content the proposed Class Notice and Share Form attached hereto as **Exhibit 1** and **Exhibit 2**,
25 respectively, and directing the mailing of the Class Notice to Class Members. While Defendant can
26 reserve its right to object to facts or assertions made in the moving papers, Defense Counsel shall file
27 a notice of non-opposition to the granting of the motion for preliminary approval or join in the motion.
28

1 **13. MISCELLANEOUS PROVISIONS**

2 **13.1. VOIDING THIS SETTLEMENT AGREEMENT**

3 Pending Court approval and other than as provided herein, if any of the conditions set forth in
 4 this Settlement Agreement are not met and satisfied, this Settlement Agreement may, at the option of
 5 either Plaintiff or Defendant, be ineffective, void, and of no further force and effect, and may not be
 6 used or be admissible in any subsequent proceeding, either in this Court or in any other court or forum.
 7 If either Party decides to void the Settlement Agreement, then the Settlement Agreement and
 8 conditional class certification shall be considered void, and neither the Settlement Agreement,
 9 conditional class certification, nor any of the related negotiations or proceedings, shall be of any force
 10 or effect, and the Parties shall stand in the same position, without prejudice, as if this Settlement
 11 Agreement had been neither entered into nor filed with the Court. Should any Party choose to void the
 12 Class Settlement under this subsection, such Party shall be responsible for all Settlement Administrator
 13 fees and costs actually incurred.

14 **13.2. DIFFERENT FACTS**

15 The Parties acknowledge that, except for matters expressly represented herein, the facts in
 16 relation to the dispute and all claims released by the terms of this Settlement Agreement may turn out
 17 to be different from the facts now known by each party and/or its counsel, or believed by such Party or
 18 counsel to be true, and each Party therefore expressly assumes the risk of the existence of different or
 19 presently unknown facts, and agrees that this Settlement Agreement shall be in all respects effective
 20 and binding despite such difference.

21 **13.3. NO PRIOR ASSIGNMENTS**

22 The Parties represent, covenant, and warrant that they have not directly or indirectly assigned,
 23 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any
 24 portion of any liability, claim, demand, action, cause of action, or right herein released and discharged
 25 except as set forth herein.

1 **13.4. NON-ADMISSION**

2 Nothing in this Settlement Agreement shall be construed as or deemed to be an admission by
3 any Party of any liability, culpability, negligence, or wrongdoing toward any other Party, or any other
4 person, and the Parties specifically disclaim any liability, culpability, negligence, or wrongdoing
5 toward each other or any other person. Each of the Parties has entered into this Settlement Agreement
6 with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses,
7 and contingencies. Nothing herein shall constitute any admission by Defendant of wrongdoing or
8 liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute any
9 admission by Defendant regarding the merits of the Claims in this Action, including but not limited to
10 claims for unpaid wages or violations under California or federal law. Nothing herein shall constitute
11 an admission by Defendant that the Action was properly brought as a class or representative action
12 other than for settlement purposes. To the contrary, Defendant has denied and continues to deny each
13 and every material factual allegation and all Claims. To this end, the Class Settlement of the Action,
14 the negotiation and execution of this Settlement Agreement, and all acts performed or documents
15 executed pursuant to or in furtherance of this Settlement Agreement or the Class Settlement are not,
16 shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or
17 liability on the part of Defendant or of the truth of any of the factual allegations in the Complaint in the
18 Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence of
19 any fault or omission on the part of Defendant in any civil, criminal, or administrative proceeding in
20 any court, administrative agency, or other tribunal.

21 **13.5. NON-EVIDENTIARY USE**

22 Neither this Agreement nor any of its terms, nor any statements or conduct in the negotiation
23 or drafting of it, shall be offered or used as evidence by Plaintiff, any Class Member (including any
24 individual who requested to be excluded from the Settlement Class), Defendant, or its, her, his, or their
25 respective counsel, in the Action, except as is reasonably necessary to effectuate the Settlement
26 Agreement's purpose and terms. This Settlement Agreement may, however, be used by Defendant and
27
28

1 the Released Parties to prove or defend against any claim released herein by any Class Member in any
2 judicial, quasi-judicial, administrative, or governmental proceeding.

3 **13.6. MEDIA OR PRESS**

4 Plaintiff and Defendant, and their respective counsel, recognize, accept, and agree that the
5 Parties to this Settlement Agreement desire that the terms of this Settlement Agreement, the fact of the
6 Class Settlement embodied in this Settlement Agreement, the disposition of the Action, the Action, and
7 all matters relating to the litigation of the Action, including discovery proceedings therein, and evidence
8 obtained during the course of the Action, shall not be discussed with or presented to the media or press.

9 **13.7. NON-RETALIATION**

10 Defendant understands and acknowledges that it has a legal obligation to not retaliate against
11 any Class Member who elects to participate in the Class Settlement or elects to Opt Out of the Class
12 Settlement. Defendant will refer any inquiries regarding this Class Settlement to the Settlement
13 Administrator or Class Counsel and will not discourage Class Members who are employees, directly
14 or indirectly, from making claims, opting out, or objecting to the Class Settlement. None of the Parties,
15 or their respective attorneys or agents, shall solicit or encourage any Class Members, directly or
16 indirectly, to Opt Out of the Class Settlement.

17 **13.8. CONSTRUCTION**

18 The Parties agree that the terms and conditions of this Settlement Agreement are the result of
19 lengthy, intensive, arms-length, non-collusive negotiations between the Parties and that this Settlement
20 Agreement is not to be construed in favor of or against any party by reason of the extent to which any
21 party or its counsel participated in the drafting of this Settlement Agreement. If any of the dates in this
22 Settlement Agreement fall on a weekend, bank or court holiday, the time to act shall be extended to the
23 next business day.

24 **13.9. GOVERNING LAW**

25 This Settlement Agreement is intended to and shall be governed by the laws of the State of
26 California, without regard to conflict of law principles, in all respects, including execution,
27 interpretation, performance, and enforcement.

28

1 **13.10. NOTICES**

2 Except for Class Member notices required to be made by the Settlement Administrator, all
3 notices or other communications required or permitted under this Settlement Agreement shall be in
4 writing and shall be sufficiently given if delivered in person to the party or their counsel by U.S.
5 certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed to the address of the
6 party appearing in this Settlement Agreement.

7 **13.11. CAPTIONS AND INTERPRETATIONS**

8 Section titles or captions contained herein are inserted as a matter of convenience and for
9 reference only and in no way define, limit, extend, or describe the scope of this Settlement Agreement
10 or any provision thereof.

11 **13.12. MODIFICATION**

12 This Settlement Agreement may not be changed, altered, or modified, except in writing signed
13 by the Parties or the Parties' counsel on their behalf. If preliminary or final approval of this Settlement
14 Agreement has been granted by the Court, then any such amendments or modifications to this
15 Settlement Agreement shall be approved by the Court. This Settlement Agreement may not be
16 discharged except by performance in accordance with its terms or by a writing signed by the Parties.

17 **13.13. INTEGRATION CLAUSE**

18 This Settlement Agreement contains the entire agreement between the Parties relating to the
19 Class Settlement of the Action and the transactions contemplated thereby, and all prior or
20 contemporaneous agreements, understandings, representations, and statements, whether oral or written,
21 and whether by a party or such party's legal counsel, are hereby superseded. No rights under this
22 Settlement Agreement may be waived except in writing as provided above.

23 **13.14. SUCCESSORS AND ASSIGNS**

24 This Settlement Agreement shall be binding on and inure to the benefit of the Parties and Class
25 Members (excluding only persons who timely Opt Out) and their respective present and former heirs,
26 trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees,
27 insurers, attorneys, accountants, auditors, advisors, consultants, pension plans, welfare benefit plans,
28

1 fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors,
2 successors, and assigns.

3 **13.15. CORPORATE SIGNATORIES**

4 Any person executing this Settlement Agreement or any such related document on behalf of a
5 corporate signatory or on behalf of a partnership hereby warrants and promises, for the benefit of all
6 Parties hereto, that such person has been duly authorized by such corporation or partnership to execute
7 this Settlement Agreement or any such related document.

8 **13.16. EXECUTION IN COUNTERPARTS**

9 This Settlement Agreement shall become effective upon its execution by all of the undersigned.
10 The Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall
11 have the same force and effect as if all Settling Parties had signed the same instrument.

12 **13.17. ATTORNEY FEES, COSTS, AND EXPENSES**

13 Except as otherwise specifically provided for herein, each party shall bear her or its own
14 attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising out of the Action
15 and shall not seek reimbursement thereof from any other party to this Settlement Agreement.

16 **13.18. ACTION TO ENFORCE AGREEMENT**

17 In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be
18 entitled to recover her or its attorney fees and costs.

19 **14. EXECUTION**

20 The Parties and their counsel have executed this Settlement Agreement on the date below their
21 signatures or the signature of their representatives. The date of this Settlement Agreement shall be the
22 date of the latest signature.

23 **APPROVAL AND EXECUTION BY PARTIES**

24 **CLASS REPRESENTATIVE:**

25 Dated: 4/15/2025
26 _____

DocuSigned by:

3F8A6C2F1C984AC...

Aldo Olivera Flores
Plaintiff and Class Representative

1 **DEFENDANT:**

2
3 Dated: 3.31.2025

Optimum, Inc.

4 
5 _____

6 By: Mario Acosta

7 Title: General Manager

8
9 **APPROVED AS TO FORM BY COUNSEL**

10 **CLASS COUNSEL:**

11 Dated: 4/15/2025

Melmed Law Group P.C.

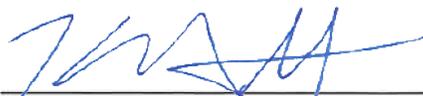
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13 _____

14 Jonathan Melmed
15 Attorneys for Plaintiff

16 **DEFENDANT'S COUNSEL:**

17
18 Dated: _____

Fennemore LLP

19 
20 _____

21 Kevin J. Abbott
22 Attorneys for Defendant

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EXHIBIT 1

Notice of Proposed Class Action Settlement

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

ALDO OLIVERA FLORES, an individual, on behalf of himself, the State of California, as a private attorney general, and on behalf of all others similarly situated,

Plaintiff,

v.

OPTIMUM, INC., a California non-profit corporation; and DOES 1 TO 50,

Defendants.

Case No.: CIVSB2331827

Notice of Proposed Class Action Settlement

A court authorized this notice. This is not a solicitation from a lawyer.

1 or otherwise unlawful business practices based on the foregoing in violation of California’s Unfair
2 Competition Law.

3 **Defendant denies all liability, denies all allegations in the Action, and has raised various**
4 **defenses to the claims.** Defendant asserts that it fully complied with all applicable wage and hour laws,
5 and contends that civil penalties under PAGA are not warranted. Defendant also denies that the Action
6 is suitable for class certification. Defendant has entered into the Settlement solely for purposes of
7 resolving this dispute to avoid costly, disruptive, and time-consuming litigation and does not admit to
8 any wrongdoing or liability.

9 The Court has not ruled on the merits in the Action. By approving the Settlement and issuing
10 this notice, the Court is *not* suggesting which side would win or lose the case if it went to trial or
11 whether the claims are suitable for class certification. To avoid the additional expense, inconvenience,
12 and risk of continued litigation, however, Plaintiff and Defendant (the “Parties”) have concluded that
13 it is in their respective best interests and the interests of the Class Members to settle the Action on the
14 terms summarized in this notice. The Settlement was reached after Defendant provided extensive
15 information and documents to Plaintiff’s counsel, and after lengthy arms-length non-collusive
16 negotiations between the Parties, including mediation with an experienced and well-respected mediator
17 in California. In these negotiations, both sides recognized the substantial risk of the Court deciding
18 against them at trial and determined that the Settlement was a fair, reasonable, and adequate way to
19 resolve the disputed claims.

20 Plaintiff and Plaintiff’s counsel—Jonathan Melmed and Laura Supanich of Melmed Law Group
21 P.C. (“Class Counsel”)—support the Settlement. Among the reasons for support are the defenses to
22 liability potentially available to Defendant, the risk of denial of class certification, the inherent risk of
23 trial on the merits, and the delays and uncertainties associated with litigation. Plaintiff and Class
24 Counsel believe that the settlement described in this notice is fair, adequate, reasonable, and in the best
25 interests of Plaintiff and the Class Members.

26 Under the Settlement, the following settlement class will be certified under California law: *all*
27 *individuals who are or were employed by Defendants as non-exempt employees in California during*
28 *the Class Period.* The “Class Period” is defined as the period from December 7, 2019, through January

1 1, 2025. The Settlement provides for a gross settlement amount of \$450,000.00, a share of which is to
2 be distributed to the Class Members based on the pro rata number of weeks worked by the Class
3 Members during the Class Period as a proportion of all weeks worked by all Class Members. In
4 exchange for their share of the settlement amount, all participating Class Members will be deemed to
5 have released Defendant from liability on the terms described in this notice.

6 On [date of preliminary approval], the Court preliminarily approved the Settlement and
7 conditionally certified the settlement class. This notice is being sent to you because Defendant's records
8 indicate that you worked for Defendant during the Class Period and that you meet the definition
9 required to be treated as a Class Member.

10 **2. IF YOU ARE STILL EMPLOYED BY DEFENDANT, THIS SETTLEMENT WILL**
11 **NOT AFFECT YOUR EMPLOYMENT.**

12 California law strictly prohibits retaliation. Further, Defendant is prohibited by law from taking
13 any adverse action against or otherwise target, retaliate, or discriminate against any Class Member
14 because of the Class Member's participation or decision not to participate in the Settlement.

15 **3. TERMS OF THE SETTLEMENT**

16 Defendant has agreed to pay \$450,000.00 (the "Gross Settlement Amount") to resolve the
17 claims in the Action. The Parties agreed to the following payments from the Gross Settlement Amount:

- 18 1. **Settlement Administration Costs.** The Court has approved Apex Class Action
19 Administration to act as the "Settlement Administrator," who is sending this notice to
20 you and will perform many other duties relating to the Settlement. Under the Settlement,
21 up to \$25,000.00 will be paid from the Gross Settlement Amount to pay the Settlement
22 Administration Costs.
- 23 2. **Attorneys' Fees and Expenses.** Class Counsel have been prosecuting the Action on
24 behalf of the Class Members on a contingency fee basis (that is, without being paid any
25 money to date) and have been paying all litigation costs and expenses. To date, the
26 Parties have aggressively litigated many aspects of the case including investigation,
27 settlement efforts, and a full-day mediation session. The Court will determine the actual
28 amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross

1 Settlement Amount. Class Members are not personally responsible for any of Class
2 Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of one-third of
3 the Gross Settlement Amount (i.e., \$150,000.00) as reasonable compensation for the
4 work Class Counsel performed and will continue to perform in the Action. Class
5 Counsel also will ask for reimbursement of up to \$30,000.00 for the costs Class Counsel
6 incurred in connection with the Action.

7 3. **Service Payment to Class Representative.** Class Counsel will ask the Court to provide
8 a service payment to Plaintiff in the amount of \$7,500.00 for Aldo Olivera Flores to
9 compensate him for his efforts on behalf of the Class Members in the Action, including
10 assisting in the investigation and consulting with Class Counsel and providing crucial
11 documents to Class Counsel. Plaintiff also may receive a share of the Settlement as a
12 Class Member.

13 4. **PAGA Payment.** The Parties have agreed on a reasonable sum to be paid in settlement
14 of the PAGA claims included in the Action, which is \$20,000.00. The PAGA Payment
15 is to be approved by the Court pursuant to Labor Code section 2699 and is to be
16 distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA and
17 twenty-five percent (25%) (i.e., \$5,000.00) to the individuals who come within the
18 definition of an “aggrieved employee” for the purposes of the Settlement (i.e., all
19 individuals who are or were employed by Defendants as non-exempt employees in
20 California during the PAGA Period). The “PAGA Period” is defined for these purposes
21 to mean the period from March 7, 2022, through January 1, 2025.

22 After deducting the amounts above, the balance of the settlement amount will form the “Net
23 Settlement Amount” for distribution to the Class Members.

24 4. **DISTRIBUTION OF THE SETTLEMENT TO THE CLASS MEMBERS**

25 Each eligible Class Member who does not request exclusion from the Settlement will be deemed
26 a “Class Participant” and will receive a share from the Net Settlement Amount which will be distributed
27 pro rata based on the proportional number of weeks worked by each Class Member during the Class
28

1 Period (the “Individual Settlement Amount”). If any Class Member requests exclusion from the
2 Settlement, his or her share will be distributed to the remaining Class Participants.

3 Twenty percent (20%) of each Individual Settlement Amount will constitute payment in the
4 form of wages (and each Class Participant will be issued an IRS Form W-2 for such payment to him
5 or her), and Eighty percent (80%) of each Individual Settlement Amount will constitute penalties and
6 interest (and each Class Participant will be issued an IRS Form 1099 for such payment to him or her).

7 Defendant, or its proxies, shall take all usual and customary deductions from the Individual
8 Settlement Amount payments that are distributed as wages, including, but not limited to, state and
9 federal tax withholding, disability premiums, and unemployment insurance premiums. There will be
10 no deduction taken from the interest or penalty distribution—it will, however, be reported on IRS Form
11 1099 as income. Class Participants are responsible for the proper income tax treatment of their
12 Individual Settlement Amount. The Settlement Administrator, Defendant and its counsel, and Class
13 Counsel cannot provide tax advice. Accordingly, Class Members should consult with their tax advisors
14 concerning the tax consequences and treatment of payments they receive under the Settlement.

15 The workweeks you worked for Defendant during the Class Period will be calculated based on
16 Defendant’s records. If you feel that you were not credited with the correct number of workweeks
17 worked during the Class Period, you may submit evidence to the Settlement Administrator on or before
18 [Response Deadline] with documentation to establish the number of workweeks you claim to have
19 actually worked during the Class Period. **Documentation sent to the Settlement Administrator will
20 not be returned or preserved, so do not send originals.** The Parties and the Settlement Administrator
21 will promptly evaluate the evidence submitted and discuss in good faith how many workweeks should
22 be credited. The Settlement Administrator will make the final decision as to how many weeks are
23 credited and report the outcome to the Class Participant. If you are unsatisfied with the decision, you
24 may submit an objection, which is explained below.

25 Settlement checks will be mailed to all Class Participants after the Court grants final approval
26 of the Settlement and judgment is entered.

1 **5. THE RELEASE OF CLAIMS**

2 If the Court approves the Settlement, the Court will enter judgment and the Settlement will bind
3 all Class Participants. The Class Participants will then be barred from bringing any “Released Claims”
4 against the “Released Parties” as those terms are defined below.

5 The “Released Parties” are Defendant Optimum, Inc. and all of Defendant’s subsidiaries,
6 affiliates, shareholders, members, agents, predecessors, successors, and assigns.

7 The “Released Claims” are those claims arising out of or related to the allegations set forth in
8 the operative complaint and/or PAGA notice to the California Labor and Workforce Development
9 Agency that arose during the Class Period and/or PAGA Period, including claims for: **(1)** failure to pay
10 minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the
11 applicable IWC Wage Order(s); **(2)** failure to pay proper overtime wages in violation of Labor Code
12 sections 510, 1197, and 1198, and the applicable IWC Wage Order(s); **(3)** failure to provide compliant
13 rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the
14 applicable IWC Wage Order(s); **(4)** failure to provide compliant meal periods and pay missed meal
15 period premiums in violation of Labor Code sections 226.7 and 512, and the applicable IWC Wage
16 Order(s); **(5)** failure to maintain accurate employment records in violation of Labor Code section 1174;
17 **(6)** failure to pay timely wages during employment in violation of Labor Code sections 204, 210;
18 **(7)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202,
19 and 203; **(8)** failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804;
20 **(9)** failure to provide complete and accurate wage statements in violation of Labor Code sections 226
21 and 226.3; **(10)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing
22 in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210);
23 **(11)** statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-2699.6); and
24 **(12)** all claims for liquidated damages, penalties, interest, fees, costs based on the foregoing. No other
25 claims are released other than those claims specifically plead in the operative complaint in the Action.

26 The Settlement does *not* release Defendant or any person, party, or entity from claims, if any,
27 by Class Members for workers compensation, unemployment, or disability benefits of any nature. Nor
28 does it release any claims, actions, or causes of action which may be possessed by Class Members

1 under state or federal discrimination statutes, including, without limitation, the California Fair
2 Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh Civil Rights Act (Civ. Code,
3 § 51); the California Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000, et seq.);
4 the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the Employee Retirement Income
5 Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their implementing regulations and
6 interpretive guidelines.

7 Class Members who do not request exclusion from the Settlement will be deemed to have
8 acknowledged and agreed that their claims for wages and penalties in the Action are disputed, and that
9 the Settlement payments constitute payment of all sums allegedly due to them. Class Members will be
10 deemed to have acknowledged and agreed that California Labor Code section 206.5 is not applicable
11 to the Settlement payments. That section provides in pertinent part as follows:

12 “An employer shall not require the execution of a release of a claim or right on account
13 of wages due, or to become due, or made as an advance on wages to be earned, unless
14 payment of those wages has been made.”
15

16 **6. YOUR OPTIONS**

17 **6.1. DO NOTHING AND RECEIVE YOUR PORTION OF THE SETTLEMENT**

18 If you do nothing, you will be automatically included as a Class Participant in the Settlement
19 and will receive a settlement payment. You do *not* have to take any further action to receive your
20 settlement payment. It is, however, the responsibility of all Class Members to ensure that the Settlement
21 Administrator has your current address on file, or you may not receive important information or a
22 settlement payment. The estimated amount of your settlement payment if you do nothing is included
23 on the attached *Class Action Settlement Share Form*.

24 **6.2. REQUEST EXCLUSION FROM THE CLASS AND THE SETTLEMENT**

25 If you do *not* wish to take part in the class action portion of the Settlement (the “Class
26 Settlement”), you may exclude yourself (i.e., opt out of the Class Settlement) by sending the Settlement
27 Administrator a letter or card postmarked no later than [Response Deadline] that specifically requests
28

1 exclusion from the Class Settlement in this case. The request for exclusion must include your name,
2 address, telephone number, and signature, and it should state:

3 “I wish to be excluded from the settlement class in the case of *Aldo Olivera Flores v.*
4 *Optimum, Inc.*. I understand that if I ask to be excluded from the settlement class, I will
5 not receive any money from the settlement of this lawsuit and will not be releasing any
6 claims I might have.”
7

8 Send the request for exclusion directly to the Settlement Administrator at the following address
9 **by no later than [Response Deadline]:**

10 [Insert Settlement Administrator Address]

11 Any person who submits a timely request for exclusion from the Class Settlement shall, upon
12 receipt, no longer be a Class Member, shall be barred from participating in the Class Settlement, and
13 shall receive no benefits from the class action portion of the Settlement. If you want confirmation of
14 receipt of your request for exclusion, please send it by United States certified mail, return receipt
15 requested, or contact the Settlement Administrator.
16

17 **Importantly**, Class Members who timely and validly request exclusion from the Class
18 Settlement will *not* be excluded from their share of the PAGA Payment. Requesting exclusion from
19 the Class Settlement applies solely to the Class Members’ entitlement to the class action portion of the
20 Settlement and not their entitlement to the PAGA Payment. If you request exclusion from the Class
21 Settlement you will still be entitled to your share, if any, of the PAGA Payment.

22 **6.3. OBJECT TO THE SETTLEMENT**

23 You have the right to object to the terms of the Settlement if you do not request exclusion. If,
24 however, the Court rejects your objection, you will still be bound by the terms of the Settlement. If you
25 wish to object to the Settlement, or any portion of it, you may file with the Settlement Administrator
26 and the Court a written objection stating your name, address, telephone number, dates of employment
27 with Defendant, the case name and number, each specific reason in support of your objection, and any
28 legal support for each objection. Objections in writing must be mailed to the Settlement

1 Administrator—[Insert Settlement Administrator Address]—by no later than [Response Deadline] to
2 be considered. **Objections that do not include all required information, or that are not timely**
3 **submitted, might not be considered by the court.**

4 If you choose to object to the Settlement, you may also appear to speak at the final approval
5 and fairness hearing scheduled for [Final Approval Hearing Date], at [Final Approval Hearing Time]
6 in Department [Court Department] of the Superior Court of the State of California for the County of
7 San Bernardino, located at [Court Location]. You have the right to appear either in person or through
8 your own attorney at this hearing.

9 If you object to the Settlement, you will remain a Class Member, and if the Court approves the
10 Settlement, you will receive payment and be bound by the terms of the Settlement in the same way as
11 Class Members who do not object. Any Class Member who does not object in the manner provided
12 above shall have waived any objection to the Settlement, whether by appeal or otherwise.

13 The Court may, at the time of the final approval and fairness hearing, have certain social
14 distancing requirements or procedures for attendance at hearings. If you wish to object to the Settlement
15 by speaking at the final approval and fairness hearing, you may contact Class Counsel, whose
16 information is provided below, for more information about the Court’s current social distancing
17 procedures. You may also review the Court’s website for the most current information.

18 **7. HOW TO UPDATE OR CHANGE YOUR ADDRESS**

19 If you move after receiving this notice or if it was misaddressed, please contact the Settlement
20 Administrator, [Settlement Administrator], at [Settlement Administrator Phone] or by email at
21 [Settlement Administrator Email], as soon as possible. **This is important to ensure that future notices**
22 **and/or the Settlement payment reach you.**

23 **8. NOTICE OF FINAL JUDGMENT IF THE SETTLEMENT IS APPROVED**

24 Within seven (7) days after the Court has held a final and fairness approval hearing and entered
25 a final order approving the Settlement, if it chooses to do so, the Settlement Administrator will post a
26 copy of that order and final judgment on its website at the following website address:

27 [Case-Specific Settlement URL (to be added by Settlement Administrator)]
28

1 **9. IF THE SETTLEMENT IS NOT APPROVED**

2 If the Settlement is not approved by the Court, or if any of its conditions are not satisfied, the
3 Settlement may be voided, in which case no money will be paid, and the case will return to litigation.
4 If that happens, there is no assurance: **(1)** that the class will be certified by the Court; **(2)** that any
5 decision at trial would be in favor of Class Members; **(3)** that a trial decision, if any, would be as
6 favorable to the Class Members as the Settlement; or **(4)** that any favorable trial decision would be
7 upheld if an appeal was filed.

8 **10. QUESTIONS OR COMMENTS**

9 **PLEASE DO NOT CALL OR CONTACT THE COURT.** If you have any questions about
10 the settlement, you may contact the Settlement Administrator at: [Settlement Administrator Phone] or
11 by e-mail at [Settlement Administrator Email]. You may also contact Class Counsel at the addresses
12 or phone numbers listed below.

13
14 **Lawyers Representing Plaintiff and the Class Members**

15 **MELMED LAW GROUP P.C.**

16 Jonathan Melmed
jm@melmedlaw.com
17 Laura Supanich
lms@melmedlaw.com
18 1801 Century Park East, Suite 850
19 Los Angeles, California 90067
20 Phone: (310) 824-3828
Fax: (310) 862-6851

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EXHIBIT 2

Class Action Settlement Share Form

CLASS ACTION SETTLEMENT SHARE FORM

Aldo Olivera Flores v. Optimum, Inc.

Case Number CIVSB2331827

Superior Court of the State of California for the County of San Bernardino

The proposed class action settlement agreement (the “Settlement”) described in the accompanying *Notice of Proposed Class Action Settlement* resolves disputed claims against Defendant Optimum, Inc. (“Defendant”) arising out of its compensation practices during the period from December 7, 2019, through January 1, 2025 (the “Class Period”) as applied to all individuals who are or were employed by Defendants as non-exempt employees in California during the Class Period (“Class Members”).

You are receiving this form because you are believed to be a Class Member. **According to Defendant’s records, you worked [REDACTED] workweeks for Defendant during the Class Period. Accordingly, your share of the Settlement is currently estimated to be \$ [REDACTED]**, which is an estimate of your allocated portion the Net Settlement Amount, as that term is defined in the accompanying *Notice of Proposed Class Action Settlement*. Your estimated share of the Settlement may increase depending on factors such as, but not limited to, the number of Class Members who effectively exclude themselves from the Settlement.

You do not need to do anything to receive money under the Settlement.

If you believe the information provided above as to the number of your workweeks is incorrect and wish to dispute it, please contact the Settlement Administrator no later than **[Response Deadline]** at:

[Settlement Administrator Contact Information]

If you dispute the information stated above, the information Defendant provided to the Settlement Administrator will control unless you are able to provide documentation that establishes otherwise. Any disputes, along with supporting documentation, must be postmarked no later than **[Response Deadline]**.

Do not send originals; documentation sent to the claims administrator will not be returned or preserved.