

## AMENDED CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Amended Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Terrance Austin and Defendant the Alliance for Community Wellness.

### 1. DEFINITIONS.

In addition to the other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- 1.1. “Action” means: Plaintiff’s putative class action lawsuit alleging wage and hour violations captioned, *Terrance Austin v. The Alliance for Community Wellness*, Alameda County Superior Court Case No. 23CV057867, which was initiated on September 15, 2023.
- 1.2. “Administrator” means Apex Class Action Administration, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount as reimbursement for its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with preliminary approval of the Settlement.
- 1.4. “Aggrieved Employees” means all non-exempt employees who were employed by Defendant in the State of California during the PAGA Period.
- 1.5. “Class” means all individuals who were employed by Defendant in the State of California and classified as non-exempt employees during the Class Period.
- 1.6. “Class Counsel” means Kane Moon and Daniel Park of Moon Law Group, P.C.
- 1.7. “Class Counsel Fees Payment” means the amount allocated to Class Counsel for reimbursement of reasonable attorneys’ fees incurred to prosecute the Action.
- 1.8. “Class Counsel Litigation Expenses Payment” means the amount allocated to Class Counsel for reimbursement of its litigation expenses incurred in prosecuting the Action.
- 1.9. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, and dates of employment and/or number of Class Period Workweeks and PAGA Pay Periods.
- 1.10. “Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

- 1.11. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members
- 1.12. “Class Notice” means the Court approved “Notice of Class Action Settlement and Hearing Date for Final Court Approval,” to be mailed to Class Members in English, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.13. “Class Period” means the period from September 15, 2019, through December 3, 2024.
- 1.14. “Class Period Workweeks” (sometimes referred to herein as “Workweeks”) means any week during which a Class Member worked for Defendant for at least one day during the Class Period.
- 1.15. “Class Representative Service Payment” means the payment to Plaintiff for initiating the Action and providing service in support of the Action.
- 1.16. “Court” means the Superior Court of California, County of Alameda.
- 1.17. “Defendant” means The Alliance for Community Wellness, which also does business as “La Familia” in the State of California.
- 1.18. “Defense Counsel” means Susan Bishop and Milan Neda of Berliner Cohen, LLP.
- 1.19. “Effective Date” means the date when both of the following have occurred:
  - (a) thirty (30) days after the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and
  - (b) the Judgment is final.

The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after (i) such objections are withdrawn or the deadline for filing a notice of appeal from the Judgment; or (ii) if a timely appeal from the Judgment is filed and not withdrawn, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.20. “Final Approval Order” means the Court’s order granting final approval of the Settlement.
- 1.21. “Final Approval Hearing” means the Court’s hearing on the motion for final approval of the Settlement.
- 1.22. “Gross Settlement Amount” means Six Hundred and Twenty-Five Thousand Dollars and Zero Cents (\$625,000.00), which is the total amount Defendant agrees to pay

under the Settlement except as provided in Paragraph 4.1 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Plaintiff Enhancement Award, and the Administration Expenses Payment.

- 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Class Period Workweeks worked during the Class Period.
- 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.
- 1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval Order.
- 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699(i).
- 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699(i).
- 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment aka Plaintiff Enhancement Award, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. “Operative Complaint” means the Complaint filed by Plaintiff on September 15, 2023.
- 1.31. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.32. “PAGA Period” means the period from September 9, 2022, to the date of preliminary approval.
- 1.33. “PAGA” means the Private Attorneys General Act, Labor Code sections 2698, *et seq.*
- 1.34. “PAGA Notice” means Plaintiff’s September 9, 2023, letter to the LWDA providing notice pursuant to Labor Code section 2699.3(a).

- 1.35. "PAGA Penalties" means the total amount of Twenty Thousand Dollars and Zero Cents (\$20,000.00) in PAGA civil penalties to be paid from the Gross Settlement Amount, allocated: 25% to the Aggrieved Employees [Five Thousand Dollars and Zero Cents (\$5,000.00)] and 75% to the LWDA [Fifteen Thousand Dollars and Zero Cents (\$15,000.00)] in settlement of PAGA claims.
- 1.36. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.37. "Parties" means Plaintiff and Defendant collectively. Each are sometimes referred to individually herein as "Party."
- 1.38. "Plaintiff" means Terrance Austin, the named plaintiff in the Action.
- 1.39. "Preliminary Approval Order" means the Court's order granting preliminary approval of this Settlement.
- 1.40. "Released Class Claims" means the claims being released as described in Paragraph 5.2 below.
- 1.41. "Released PAGA Claims" means the claims being released as described in Paragraph 5.2 below.
- 1.42. "Released Parties" means: (i) Defendant The Alliance for Community Wellness; (ii) any parent, subsidiary, or affiliate of Defendant; (iii) any past or present officer, director or employee of the entities described in (i)-(ii), in their individual and official capacities; and (iv) any past or present predecessors, parents, subsidiaries, affiliates, owners, shareholders, members, managers, benefit plans, operating units, divisions, agents, representatives, officers, directors, partners, employees, fiduciaries, insurers, attorneys, successors or assigns of the entities described in this Paragraph.
- 1.43. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Settlement signed by the Class Member.
- 1.44. "Response Deadline" means forty-five (45) days after the Administrator mails the Class Notice to Class Members and Aggrieved Employees and will be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Class Notices are resent after having been returned undeliverable to the Administrator will have an additional fourteen (14) days beyond the Response Deadline has expired.
- 1.45. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

## 2. RECITALS.

2.1. On September 15, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action for: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to indemnify necessary business expenses; (6) failure to timely pay final wages at termination; (7) failure to provide accurate itemized wage statements; and (8) Unfair Business Practices.

2.2. Plaintiff intends to file a First Amended Complaint adding a cause of action for civil penalties under PAGA prior to filing his Motion for Preliminary Approval (defined *infra*). Defendant disputes whether Plaintiff's PAGA Notice was timely. In entering into this Agreement, Defendant reserves all available defenses to the claims in the Action, and does not waive its right to challenge the cause of action for civil penalties under PAGA as time-barred or on any other appropriate basis.

2.3. On December 3, 2024, the Parties participated in an all-day mediation with Doug Leach, which led to this Agreement to settle the Action.

2.4. Prior to mediation, Defendant informally provided Class Counsel with information regarding Class Members and Aggrieved Employees (including without limitation, the number of current and former nonexempt employees/putative and Class Members, the Class Period Workweeks, the PAGA Pay Periods, the average hourly rate paid to the putative Class Members, the estimated total amount paid in meal and rest period premium wages during the Class Period, *etc.*), payroll and time records for Plaintiff and a statistically significant sample of the Class Members, and Defendant's policies and procedures which applied to Class Members during the Class Period. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

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

## 3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 4.1 below, Defendant agrees to pay Six Hundred and Twenty-Five Thousand Dollars and Zero Cents (\$625,000.00) and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

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

- 3.2.1. To Plaintiff. Payment to Plaintiff of not more than Ten Thousand Dollars and Zero Cents (\$10,000.00) (“Enhancement Award” or “Class Representative Service Payment”) (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member and Aggrieved Employee, if applicable). Defendant will not oppose Plaintiff’s request for Class Representative Service Payments, provided the request for such payment does not exceed \$10,000. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves the Class Representative Service Payment for less than the amounts requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payments.
- 3.2.2. To Class Counsel. A Class Counsel Fees Payment of not more than one-third of the Gross Settlement Amount, which is currently estimated to be Two Hundred and Eight Thousand Three Hundred and Thirty-Three Dollars and Thirty-Three Cents (\$208,333.33) and a Class Counsel Litigation Expense Payment of not more than Twenty Thousand Dollars and Zero Cents (\$20,000.00) Defendant will not oppose requests for the Class Counsel Fees Payment and Class Counsel Litigation Expense Payment provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than twenty-eight (28) days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties will have no liability to Class Counsel or any other plaintiff’s Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of the Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment.
- 3.2.3. To the Administrator. An Administrator Expenses Payment not to exceed Nine-Thousand Dollars and Zero Cents (\$9,000.00) except for a showing of

good cause and as approved by the Court. To the extent the Administration Expenses Payment is less, or the Court approves payment less than \$9,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

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

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

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

3.2.5. To the LWDA and Aggrieved Employees. PAGA Penalties in the amount of Twenty Thousand Dollars and Zero Cents (\$20,000.00) to be paid from the Gross Settlement Amount, with 75% [Fifteen Thousand Dollars and Zero Cents (\$15,000.00)] allocated to the LWDA PAGA Payment and 25% [Five Thousand Dollars and Zero Cents (\$5,000.00)] allocated to the Individual PAGA Payments.

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

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

#### 4. SETTLEMENT FUNDING AND PAYMENTS

4.1. Class Period Workweeks and Escalator Clause. Based on a review of its records to data, Defendant estimates that there are approximately Five Hundred and Seventy-Six (576) Class Members who worked approximately Forty-Four Thousand Three Hundred and Four (44,304) Class Period Workweeks between September 15, 2019, to December 3, 2024. In the event the number of Class Period Workweeks exceeds 44,304 by more than 15%, or an additional Six Thousand, Six Hundred and Forty-Six (6,646) Workweeks (*i.e.*, exceeds 50,950) between September 15, 2019, to December 3, 2024, Defendant at its sole discretion, will increase the Gross Settlement Amount by 1% for every 1% increase of workweeks over the 15% threshold (*i.e.*, if there is a 16% increase in the number of workweeks between September 14, 2019, to December 3, 2024, the Gross Settlement Amount will increase by 1%).

4.2. Class Data. Not later than thirty (30) days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. The Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendant will fully fund the Gross Settlement Amount and fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no sooner than December 10, 2025 (twelve months from the date of acceptance of the Mediator's Proposal).

4.4. Payments from the Gross Settlement Amount. Within fourteen (14) days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Enhancement Award Payment will not precede disbursement of Individual Class Payments and Individual PAGA Payments.

- 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check will prominently state the date [not less than one hundred eighty (180) days after the date of mailing] when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
- 4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator will promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
- 4.4.3. For any Class Member whose Individual Class Payment check and/or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator will transmit the funds represented by such checks to Legal Aid at Work leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure section 384(b).
- 4.4.4. The payment of Individual Class Payments and/or Individual PAGA Payments will not obligate Defendant to confer any additional benefits or make any additional payments to Class Members and/or Aggrieved Employees (*e.g.*, 401(k) contributions, bonuses, *etc.*) beyond those specified in this Agreement.

## **5. RELEASE OF CLAIMS.**

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, Aggrieved Employees, and Class Counsel will release claims against all Released Parties as follows:

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

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

***A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.***

5.2. Release by Participating Class Members Who Are Not Aggrieved Employees. All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts and claims alleged in the Operative Complaint and and ascertained in the course of the Action, including the following claims for relief: (i) failure to pay minimum and straight wages; (ii) failure to pay overtime wages; (iii) failure to provide meal periods; (iv) failure to authorize and permit rest periods; (v) failure to timely pay final wages during employment and at termination; (vi) failure to provide accurate itemized wage statements; (vii) failure to indemnify employees for expenditures; (viii) unfair business practices; (ix) unlawful time rounding; (x) failure to pay overtime, break premiums, and sick pay at the regular rate of pay; (xi) alleged violation of Labor Code sections 201, 202, 203, 204, 204b, 210, 216, 218, 218.5, 218.6, 223, 226, 226.3, 226.7, 432, 510, 512, 551, 552, 558, 1174, 1174.5, 1771, 1774, 1776, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2800, 2802, 2804, and any applicable Industrial Welfare Commission Wage Orders; (xii) an alleged violation of Business & Professions Code section 17200, *et seq.*; and (xiii) all claims for damages, penalties, interest, attorneys' fees, costs, injunctive relief, restitution, and any other equitable relief in California statute, ordinance, regulation, common law, or other source of law. Participating Class Members do not release any other claims, including claims for

vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.3. **LWDA PAGA Release Through the Named Plaintiff.** Pursuant to the authority delegated by the California Labor & Workforce Development Agency ("LWDA") through the PAGA Notice, the named Plaintiff, acting as the LWDA's authorized proxy, releases the Released Parties from all claims for civil penalties under PAGA that were alleged in the PAGA Notice, and only those claims. The scope of this release is strictly limited to the facts, theories, and Labor Code violations identified in the PAGA Notice and does **not** extend to any claims beyond those expressly noticed to the LWDA. No Participating or Non-Participating Class Member releases PAGA claims in an individual capacity, as PAGA claims are enforceable solely by the LWDA through its designated representative.

5.4. Agreement to Releases. The Parties understand and specifically agree that the scope of the foregoing releases was a material part of the consideration for this Agreement; was critical in justifying the agreed upon economic value of this Settlement, and without it Defendant would not have agreed to the consideration provided. The Parties further understand and specifically agree that the foregoing releases are narrowly drafted and necessary to ensure that Defendant's peace of mind regarding the resolution of claims that were or could have been alleged based on the facts, causes of action, and legal theories contained in the PAGA Notice and Operative Complaint.

## 6. MOTION FOR PRELIMINARY APPROVAL.

The Parties agree to cooperate in preparing a motion seeking Preliminary Approval of the Settlement ("Motion for Preliminary Approval") that complies with the Court's requirements for Preliminary Approvals.

6.1. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699(f)(2); (ii) a draft proposed Preliminary Approval Order; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve, competency, operative procedures for protecting the security of Class Data, amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance, all facts relevant to any actual or potential conflicts of interest with Class Members, and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members and the Administrator; (v) a signed declaration from Class Counsel attesting to their competency to represent the Class Members, their timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3(a), Operative Complaint (Labor Code section 2699(l)(1), this Agreement (Labor Code section 2699(l)(2); and (vi) all facts relevant to any actual or

potential conflict of interest with Class Members, the Administrator and/or a *Cy Pres* Recipient, if applicable.

6.2. Responsibilities of Counsel. Defense Counsel agrees to cooperate and provide comment and proposed revisions where necessary or appropriate. After sending the draft to Defense Counsel and affording Defense Counsel a reasonable opportunity to review, comment, revise, and approve, Class Counsel is responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than thirty (30) days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval Order to the Administrator.

6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by conferring in writing or meeting by telephone, and in good faith, to resolve the disagreement. If the Court does not grant preliminary approval or conditions preliminary approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by conferring in writing or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

## **7. SETTLEMENT ADMINISTRATION.**

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

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

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

### 7.4. Notice to Class Members.

7.4.1. No later than three (3) business days after receipt of the Class Data, the Administrator will notify Class Counsel that the list has been received and state

the number of Class Members, Aggrieved Employees, Class Period Workweeks, and PAGA Pay Periods in the Class Data.

- 7.4.2. Using best efforts to perform as soon as possible, and in no event later than fourteen (14) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice, substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice will prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Class Period Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator will update Class Member addresses using the National Change of Address database.
- 7.4.3. Not later than three (3) business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator will re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator will conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 7.4.4. The deadlines for Class Members’ written objections, challenges to Class Period Workweeks and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) days beyond the forty-five (45) days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.4.5. If the Administrator, the Parties, Class Counsel, or Defense Counsel are contacted by or otherwise discover any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, to determine whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever occurs later.

7.5. Requests for Exclusion (Opt-Outs).

- 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than forty-five (45) days after the Administrator mails the Class Notice [plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed]. A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator will accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination will be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity will be final and not appealable or otherwise susceptible to challenge.
- 7.5.3. Each Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits, and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 7.5.4. Each Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and will not receive an Individual Class Payment or have the right to object to the Settlement. Because PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

7.6. Challenges to Calculation of Class Period Workweeks and PAGA Pay Periods. Each Class Member will have forty-five (45) days after the Administrator mails the Class Notice [plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed] to challenge the number of Class Period Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email, or mail. The Administrator must encourage the challenging Class

Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Class Period Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Class Period Workweeks and/or PAGA Pay Periods will be final and not appealable or otherwise susceptible to challenge. The Administrator will promptly provide copies of all challenges to calculation of Class Period Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination regarding the challenges.

7.7. Objections to Settlement.

7.7.1. Only Participating Class Members may object to the class action components of the Settlement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payments.

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

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

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

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

7.8.2. Requests for Exclusion (opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five (5) days after the expiration of the deadline for

submitting Requests for Exclusion, the Administrator will email a list to Class Counsel and Defense Counsel containing: (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

- 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Class Period Workweeks and/or PAGA Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”).
- 7.8.4. Class Period Workweek and/or PAGA Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Class Period Workweeks and/or PAGA Pay Periods. The Administrator’s decision will be final and not appealable or otherwise susceptible to challenge.
- 7.8.5. Administrator’s Declaration. Not later than fourteen (14) days before the date by which Plaintiffs are required to file the motion for final approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.
- 7.8.6. Final Report by Settlement Administrator. Within ten (10) days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fifteen (15) days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court

attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

## **8. DEFENDANT'S RIGHT TO WITHDRAW.**

If the number of valid Requests for Exclusion identified in the Exclusion List exceeds five percent (5%) of the total of all Class Members, Defendant may, but is not obligated to, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement will be void *ab initio*, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all expenses incurred by the Administrator to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than seven (7) days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

## **9. MOTION FOR FINAL APPROVAL.**

Not later than twenty-eight (28) days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699(l), a proposed Final Approval Order, and a proposed Judgment (collectively, "Motion for Final Approval"). Plaintiff will provide drafts of these documents to Defense Counsel not later than seven (7) days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

- 9.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court
- 9.2. Duty to Cooperate. If the Court does not grant final approval or conditions final approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain final approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment will not constitute a material modification to the Agreement within the meaning of this paragraph.
- 9.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of: (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters; and (iii) addressing such post-Judgment matters as are permitted by law.

- 9.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
- 9.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement will be null and void. The Parties will nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain final approval of the Settlement and entry of Judgment. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payments or any payments to Class Counsel will not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

## **10. AMENDED JUDGMENT.**

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

## **11. ADDITIONAL PROVISIONS.**

- 11.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval or Final Approval of the Settlement and/or does not enter Judgment, class certification will immediately be set aside, and the Class will be decertified (subject to further proceedings on a motion of any Party to certify or oppose or deny certification thereafter). Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification

on any grounds available and to contest Defendant's defenses. The Parties' willingness to stipulate to class certification as part of the Settlement will have no bearing on, and will not be admissible in, or considered in connection with, the issue of whether a class should be certified in a non-settlement context in this Action or in any context in any other lawsuit. Additionally, the Settlement, this Agreement, and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and/or this Agreement).

- 11.2. Benefits of Settlement to Plaintiff and Class Members. Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to litigate their disputes through trial and through any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant's defenses thereto, and the difficulties in establishing damages for the Class Members and Aggrieved Employees. Plaintiff and Class Counsel have also taken into account the extensive settlement negotiations conducted. Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members and Aggrieved Employees.
- 11.3. Defendant's Reasons for Settlement. Defendant has concluded that any further defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of time and resources of Defendant have been and, unless this Settlement is approved, will continue to be devoted to the defense of the claims asserted by Plaintiff and Class Members. Defendant has also taken into account the risks of further litigation in reaching its decision to enter into this Agreement. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no action taken to carry out this Agreement may be construed or used as an admission by or against Defendant as to the merits or lack thereof of the claims asserted. The monies being paid as part of the Settlement are genuinely disputed and the Parties agree that the provisions of Labor Code section 206.5 are not applicable to this Settlement.
- 11.4. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal

government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

- 11.5. Publicization or Disclosure Release. Plaintiff and Class Counsel agree not to issue a press release or otherwise notify the media about the terms of the Settlement or advertise or market any of the terms of the Settlement through written, recorded, or electronic communications. Plaintiff and Class Counsel agree that, if they are contacted regarding this Action, they will only state that the Action exists and has been resolved. This provision is not intended to, and does not, limit Class Counsel from responding to questions from and providing advice to the Class Members regarding the Settlement after Preliminary Approval.
- 11.6. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph will be construed to restrict Class Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.
- 11.7. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits will constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 11.8. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 11.9. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to

implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

- 11.10. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 11.11. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant, nor Defense Counsel are providing any advice regarding taxes or taxability, nor will anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 11.12. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 11.13. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 11.14. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 11.15. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 11.16. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information will survive the execution of this Agreement.
- 11.17. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code section 1152, and all copies and summaries of the Class Data provided to Class Counsel by in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than ninety (90) days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff will destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

- 11.18. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 11.19. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement will be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline will be on the first business day thereafter.
- 11.20. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:  
Kane Moon  
kmoon@moonlawgroup.com  
Daniel Park  
dpark@moonlawgroup.com  
MOON LAW GROUP  
725 S. Figueroa St., Ste. 3100  
Los Angeles, California 90017  
Telephone: (213) 232-3128

To Defendant:  
Susan Bishop  
susan.bishop@berliner.com  
Milan Neda  
milan.neda@berliner.com  
BERLINER COHEN, LLP  
10 Almaden Blvd., 11<sup>th</sup> Floor  
San Jose, California 95113  
Telephone: (408) 286-5800

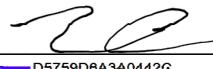
- 11.21. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement will be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 11.22. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation will be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section

583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

- 11.23. Fair Settlement. The Parties, Class Counsel, and Defense Counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, considering all relevant factors, both current and potential.

**SIGNATURES FOLLOW ON THE NEXT PAGE**

Dated: 12/19/2025

Signed by: 

Plaintiff Terrance Austin

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name & Title:  
The Alliance for Community Wellness

Dated: 12/19/2025

**MOON LAW GROUP**

By:   
\_\_\_\_\_  
Kane Moon  
Daniel Park

*Attorneys for Plaintiff, individually and on behalf of all others  
similarly situated*

Dated: \_\_\_\_\_

**BERLINER COHEN, LLP**

By: \_\_\_\_\_  
Susan Bishop  
Milan Neda

*Attorneys for Defendant*