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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF ORANGE**

CRYSTAL ROTARU, an individual and on behalf of all others similarly situated,

Plaintiff,

v.

BLOWER-DEMPSAY CORPORATION, a California Corporation; and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 30-2024-01409012-CU-OE-CXC

[Assigned for all purposes to Honorable Layne H. Melzer in Dept. CX102]

**CLASS AND PAGA SETTLEMENT AGREEMENT**

Action Filed: June 24, 2024  
Trial Date: None Set

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and  
2 between plaintiff **Crystal Rotaru** (“Plaintiff”) and defendant **Blower-Dempsay Corporation**  
3 (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or  
4 individually as “Party.”

5 **1. DEFINITIONS**

6 1.1. “Action(s)” means the Plaintiff’s lawsuits alleging **wage and hour violations** against  
7 Defendant, captioned ***Crystal Rotaru v. Blower-Dempsay Corporation., et al.***, Case No. **30-2024-**  
8 **01409012-CU-OE-CXC**, initiated on June 24, 2024, and pending in **Superior Court of the State**  
9 **of California, County of Orange**, and for civil penalties under the California Labor Code Private  
10 Attorneys’ General Act (“PAGA”), entitled ***Crystal Rotaru v. Blower-Dempsay Corporation., et***  
11 ***al.***, Case No. 24CV089741, initiated on August 30, 2024, and pending in Superior Court of the  
12 State of California, County of Alameda.

13 1.2. “Administrator” means Apex Class Action, LLC (“Apex”), the neutral entity the Parties  
14 have agreed to appoint to administer the Settlement.

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

19 1.4. “**Aggrieved Employee**” means a person employed by Defendant in California in the **Pak**  
20 **West Paper and Packaging (“Pak West”)** division and classified as a non-exempt, hourly-paid  
21 **employee who worked for Defendant during the PAGA Period.**

22 1.5. “**Class**” means **all persons employed by Defendant as a non-exempt, hourly-paid**  
23 **employee in California in Defendant’s Pak West division during the Class Period.**

24 1.6. “**Class Counsel**” means **David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group,**  
25 **P.C.**

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

1 1.8. “Class Data” means Class Member identifying information in Defendant’s custody,  
2 possession, or control, including the Class Member’s (1) name; (2) last known address(es); (3)  
3 last known telephone number(s); (4) last known Social Security Number(s); and (5) the number  
4 of Workweeks in the Class Period and PAGA Period.

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

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

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

16 1.12. “Class Period” means the period from June 24, 2020, through May 27, 2025.

17 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the  
18 Actions seeking Court approval to serve as a Class Representative.

19 1.14. “Class Representative Service Payment” means the payment to the Class Representative  
20 for initiating the Actions and providing services in support of the Actions.

21 1.15. “Class Workweek” means any week during which a Class Member worked for Defendant  
22 at least one day during the Class Period, based on Defendant’s payroll records.

23 1.16. “Court” means the Superior Court of California, County of Orange.

24 1.17. “Defendant” means named defendant Blower-Dempsay Corporation.

25 1.18. “Defense Counsel” means Brian C. Sinclair and Kimberly A. Nayagam of Rutan &  
26 Tucker, LLP.

27 1.19. “Effective Date” means the later of: (a) the Court enters a Judgment on its Order Granting  
28 Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the

1 latest of the following occurrences: (a) if no Participating Class Member objects to the  
2 Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members  
3 objects to the Settlement, the day after the deadline for filing a notice of appeal from the  
4 Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court  
5 affirms the Judgment and issues a remittitur.

6 1.20. “Final Approval” means the Court’s order granting final approval of the Settlement.

7 1.21. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval  
8 of the Settlement.

9 1.22. “Final Judgment” means the Judgment entered by the Court based upon the Final  
10 Approval.

11 1.23. “Gross Settlement Amount” means \$288,000.00 (Two Hundred Eighty-Eight Thousand  
12 Dollars and Zero Cents), which is the total amount Defendant agrees to pay under the Settlement,  
13 except as provided in Paragraph 8.1 below and any and all employer payroll taxes owed on the  
14 Wage Portions of the Individual Class Payments. The Gross Settlement Amount will be used to  
15 pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class  
16 Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, and  
17 Administrator’s Expenses.

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

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

24 1.26. “Judgment” means the judgment entered by the Court based upon Final Approval.

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

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

1 1.29. “Net Settlement Amount” means the Gross Settlement Amount, less the following  
2 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA  
3 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel  
4 Litigation Expenses Payment, and Administration Expenses Payment. The remainder is to be  
5 paid to Participating Class Members as Individual Class Payments.

6 1.30. “Non-Participating Class Member” means any Class Member who **opts out** of the  
7 Settlement by sending the Administrator a valid and timely Request for Exclusion.

8 1.31. “Operative Complaint” means the First Amended Complaint to be filed in the Action.

9 1.32.

10 1.33. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

11 1.34. “PAGA Notice” means plaintiff’s June 20, 2024, letter to defendant and the LWDA,  
12 providing notice pursuant to Labor Code section 2699.3 subd. (a).

13 1.35. “PAGA Penalties” means the total amount allocated to the settlement of the PAGA claims  
14 to be paid from the Gross Settlement Amount (\$28,800.00), allocated 25% to the Aggrieved  
15 Employees (\$7,200.00) and the 75% to the LWDA (\$21,600.00) in settlement of PAGA claims.

16 1.36. “**PAGA Period**” means the period **from June 20, 2023, through May 27, 2025**.

17 1.37. “PAGA Workweek” means any week during which an Aggrieved Employee worked for  
18 Defendant at least one day during the PAGA Period, based on Defendant’s payroll records.

19 1.38. “Participating Class Member” means a Class Member who does not submit a valid and  
20 timely Request for Exclusion from the Settlement.

21 1.39. “Plaintiff” means Crystal Rotaru the named plaintiff in the Actions.

22 1.40. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the  
23 Settlement.

24 1.41. “Preliminary Approval Order” means the proposed Order granting Preliminary Approval  
25 and Approval of PAGA Settlement.

26 1.42. “Released Class Claims” means the claims being released as described in Paragraph 5.2  
27 below.

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1 1.43. “Released PAGA Claims” means the claims being released as described in Paragraph 5.3  
2 below.

3 1.44. “Released Parties” means: Defendant, and its former, present and future owners, parents,  
4 and subsidiaries, and all of their current, former, and future officers, directors, members,  
5 managers, employees, consultants, partners, shareholders, joint venturers, agents, predecessors,  
6 successors, assigns, accountants, insurers, reinsurers, and/or legal representatives, and any  
7 individual or entity that could be jointly liable with Defendant for the Released Class Claims and  
8 Released PAGA Claims.

9 1.45. “Request for Exclusion” means a Class Member’s submission of a written request to be  
10 excluded from the Class Settlement signed by the Class Member.

11 1.46. “Response Deadline” means forty-five (45) days after the Administrator mails Notice to  
12 Class Members and Aggrieved Employees, and shall be the last date on which Class Members  
13 may: (a) mail Requests for Exclusion from the Settlement, or (b) mail his or her Objection to the  
14 Settlement. Class Members to whom Notice Packets are resent after having been returned  
15 undeliverable to the Administrator shall have an additional 15 days beyond the Response  
16 Deadline has expired.

17 1.47. “Settlement” means the disposition of the Action effected by this Agreement and the  
18 Judgment.

19 **2. RECITALS**

20 2.1. On June 20, 2024, Plaintiff filed with the LWDA and served on Defendant a notice under  
21 Labor Code section 2699.3, stating Plaintiff intended to serve as a proxy of the LWDA to recover  
22 civil penalties, on behalf of Aggrieved Employees, for alleged Labor Code violations (“PAGA  
23 Notice”).

24 2.2. On June 24, 2024, Plaintiff filed a class action complaint against Defendant in the  
25 Superior Court of the State of California, Orange County, Case No. Case No. 30-2024-01409012-  
26 CU-OE-CXC for: failure to pay overtime and minimum wages; failure to provide meal breaks,  
27 rest breaks, or compensation in lieu thereof; waiting time penalties; wage statement violations;  
28

1 failure to timely pay wages; failure to indemnify; violation of labor code §227.3; and unfair  
2 competition (the “Class Action”).

3 2.3. On August 30, 2024, Plaintiff filed a complaint for civil penalties under PAGA against  
4 Defendant in Superior Court of the State of California, County of Alameda, Case No.  
5 24CV089741 (the “PAGA Action”), asserting a PAGA claim.

6 2.4. On October 11, 2024, the Parties agreed to exchange informal discovery and attend  
7 mediation.

8 2.5. Prior to mediation Plaintiff obtained, through informal discovery: (a) workweeks; (b)  
9 number of aggrieved employees; (c) personnel files; (d) timesheets, wage statements, and contact  
10 information of class members and aggrieved employees; (e) wage and hour policy documents;  
11 (f) randomized sampling of 20% of the punitive class’s time and pay records; and (g) employee  
12 handbooks.

13 2.6. On March 28, 2025, the Parties participated in an all-day mediation presided over by  
14 Tagore Subramaniam, Esquire. The mediation was successful, and the Parties agreed to globally  
15 resolve all class and PAGA claims in the Actions.

16 2.7. As part of this Agreement, the Parties further agree to stipulate to Plaintiff filing a First  
17 Amended Complaint in the Class Action adding Plaintiff’s claims alleged in the PAGA Action,  
18 and thereafter, filing a request for dismissal of the PAGA Action without prejudice to effectively  
19 consolidate the PAGA Action within the Class Action for the purpose of the settlement approval  
20 only (hereinafter referred to as the “Action”).

21 2.8. The Court has not granted class certification.

22 2.9. The Parties, Class Counsel, and Defense Counsel represent that other than the actions  
23 mentioned herein, they are not aware of any other pending matter or action asserting claims that  
24 will be extinguished or affected by this Settlement.

25 **3. MONETARY TERMS**

26 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8.1 below,  
27 Defendant promise to pay \$288,000.00 as the Gross Settlement Amount, unless increased  
28 pursuant to Paragraph 8.1 of this Agreement, and to separately pay any and all employer payroll

1 taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation  
2 to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in  
3 Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement  
4 Amount without asking or requiring Participating Class Members or Aggrieved Employees to  
5 submit any claim as a condition of payment. None of the Gross Settlement Amount will revert  
6 to Defendant.

7 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct  
8 the following payments from the Gross Settlement Amount, in the amounts specified by the Court  
9 in the Final Approval:

10 3.2.1. To Plaintiff: Class Representative Service Payment to Plaintiff of not more than  
11 \$7,500.00 in addition to any Individual Class Payment and any Individual PAGA  
12 Payment Plaintiff is entitled to receive as a Participating Class Member and Aggrieved  
13 Employee. Defendant will not oppose Plaintiff's request for a Class Representative  
14 Service Payment that does not exceed this amount. The Parties agree that this  
15 Agreement shall not be voided or nullified if the Court decides to award a lesser Class  
16 Representative Service Payment. As part of the motion for Class Counsel Fees Payment  
17 and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class  
18 Representative Service Payments prior to the Final Approval Hearing. If the Court  
19 approves a Class Representative Service Payment less than the amount requested, the  
20 Administrator will retain the remainder in the Net Settlement Amount. The  
21 Administrator will pay the Class Representative Service Payment using IRS Form 1099.  
22 Plaintiff assumes full responsibility and liability for employee taxes owed on the Class  
23 Representative Service Payment.

24 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 35% of the  
25 Gross Settlement Amount, which, unless escalated pursuant to Paragraph 8.1 of this  
26 Agreement, is currently estimated to be \$100,800.00 and a Class Counsel Litigation  
27 Expenses Payment of not more than \$30,000.00. Defendant will not oppose requests for  
28 these payments provided that they do not exceed these amounts. Plaintiff and/or Class

1 Counsel will file a motion for Class Counsel Fees Payment and Class Litigation  
2 Expenses Payment prior to the Final Approval Hearing. If the Court approves a Class  
3 Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than  
4 the amounts requested, the Administrator will allocate the remainder to the Net  
5 Settlement Amount. The Parties agree that this Agreement shall not be voided or  
6 nullified if the Court decides to award a lesser Class Counsel Fees Payment or Class  
7 Counsel Litigation Expenses Payment. Released Parties shall have no liability to Class  
8 Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class  
9 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The  
10 Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses  
11 Payment using one or more IRS 1099 Forms. Class Counsel assume full responsibility  
12 and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel  
13 Litigation Expenses Payment and holds Defendant harmless, and indemnifies  
14 Defendant, from any dispute or controversy regarding any division or sharing of any of  
15 these Payments. There will be no additional charge of any kind to either the Settlement  
16 Class Members or request for additional consideration from Defendant for such work,  
17 unless Defendant materially breaches its funding obligations set forth in Paragraph 4.3  
18 and such breach results in Class Counsel needing to move the Court to enforce the  
19 Agreement.

20 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed  
21 \$4,990.00 except for a showing of good cause and as approved by the Court. To the  
22 extent the Administration Expenses are less or the Court approves payment less than  
23 \$4,990.00, the Administrator will retain the remainder in the Net Settlement Amount.

24 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated  
25 by (a) dividing the Net Settlement Amount by the total number of Class Workweeks  
26 worked by all Participating Class Members during the Class Period and (b) multiplying  
27 the result by each Participating Class Member's Workweeks.

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

10           3.2.4.2.     Effect of Non-Participating Class Members on Calculation of Individual  
11                    Class Payments. Non-Participating Class Members will not receive any  
12                    Individual Class Payments.

13           3.2.5.     To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of  
14                    \$28,800.00 to be paid from the Gross Settlement Amount, with 75% (\$21,600.00)  
15                    allocated to the LWDA PAGA Payment and 25% (\$7,200.00) allocated to the Individual  
16                    PAGA Payments.

17                    3.2.5.1.     The Administrator will calculate each Individual PAGA  
18                    Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share  
19                    of PAGA Penalties \$7,200.00 by the total number of PAGA Workweeks  
20                    worked by all Aggrieved Employees during the PAGA Period and (b)  
21                    multiplying the result by each Aggrieved Employee’s PAGA Workweeks.  
22                    Aggrieved Employees assume full responsibility and liability for any taxes  
23                    owed on their Individual PAGA Payment.

24                    3.2.5.2.     If the Court approves PAGA Penalties of less than the  
25                    amount requested, the Administrator will allocate the remainder to the Net  
26                    Settlement Amount. The Administrator will report the Individual PAGA  
27                    Payments on IRS 1099 Forms.

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1           **4.       SETTLEMENT FUNDING AND PAYMENTS**

2   4.1.   Class Workweeks. Based on a review of its records as of the date of the mediation,  
3   Defendant estimates there are 90 Class Members who collectively worked a total of 14,537 Class  
4   Workweeks.

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

16   4.3.   Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement  
17   Amount, and also fund the amounts necessary to fully pay Defendant’s share of payroll taxes by  
18   transmitting the funds to the Administrator no later than 14 days after the Effective Date.

19   4.4.   Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the  
20   Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments,  
21   all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses  
22   Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and  
23   the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment,  
24   the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment  
25   shall not precede disbursement of Individual Class Payments, and the Individual PAGA  
26   Payments.

27           4.4.1.   The Administrator will issue checks for the Individual Class Payments and/or  
28           Individual PAGA Payments and send them to the Class Members via First Class U.S.

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

13 4.4.2. The Administrator must conduct a Class Member Address Search for all other  
 14 Class Members whose checks are returned undelivered without USPS forwarding  
 15 address. Within 7 days of receiving a returned check the Administrator must re-mail  
 16 checks to the USPS forwarding address provided or to an address ascertained through  
 17 the Class Member Address Search. The Administrator need not take further steps to  
 18 deliver checks to Class Members whose re-mailed checks are returned as undelivered.  
 19 The Administrator shall promptly send a replacement check to any Class Member whose  
 20 original check was lost or misplaced, requested by the Class Member prior to the Void  
 21 Date .

22 4.4.3. For any Class Member whose Individual Class Payment check or Individual  
 23 PAGA Payment check is uncashed and cancelled after the Void Date, the Administrator  
 24 shall transmit the funds represented by such checks to the California Controller’s  
 25 Unclaimed Property Fund, in the name of the Class Member, thereby leaving no “unpaid  
 26 residue” subject to the requirements of California Code of Civil Procedure Section 384,  
 27 subd. (b).

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1           4.4.4.     The payment of Individual Class Payments and Individual PAGA Payments shall  
2                     not obligate Defendant to confer any additional benefits or make any additional  
3                     payments to Class Members (such as 401(k) contributions or bonuses) beyond those  
4                     specified in this Agreement.

5                     **5.       RELEASE OF CLAIMS**

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

11           5.1.     Plaintiff's Release. Plaintiff and his or her respective former and present spouses,  
12                    representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release  
13                    and discharge Released Parties from all claims, transactions, or occurrences, including, but not  
14                    limited to: (a) all claims that were, or reasonably could have been, alleged based on the facts  
15                    contained in the Class Action and the Operative Complaint and (b) all claims that were, or  
16                    reasonably could have been, alleged based on facts contained in the PAGA Action, the Operative  
17                    Complaint, and Plaintiff's PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not  
18                    extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits,  
19                    unemployment benefits, disability benefits, social security benefits, workers' compensation  
20                    benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff  
21                    acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts  
22                    or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's  
23                    Release shall be and remain effective in all respects, notwithstanding such different or additional  
24                    facts or Plaintiff's discovery of them.

25           5.1.1.   Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For  
26                    purposes of Plaintiff's Release only, Plaintiff expressly waives and relinquish the  
27                    provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,  
28                    which reads:

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

5 5.2. Release of Class Claims: For the duration of the Class Period, all Participating Class  
 6 Members, on behalf of themselves and their respective former and present representatives,  
 7 agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all  
 8 claims that were alleged, or reasonably could have been alleged, based on the facts stated in the  
 9 Class Action and/or the Operative Complaint including: (1) all claims for failure to pay overtime  
 10 wages; (2) all claims for failure to pay minimum wages; (3) all claims for failure to provide meal  
 11 periods, or compensation in lieu thereof; (4) all claims for failure to provide compliant rest periods,  
 12 or compensation in lieu thereof; (5) waiting time penalties; (6) all claims for non-compliant wage  
 13 statements; (7) all claims for the failure to timely pay wages; (8) failure to indemnify; (9) all  
 14 violations of Labor Code § 227.3; (10) unfair competition pursuant to Business & Professions  
 15 Code section 17200, *et seq.*; and without limiting the generality of the foregoing, and in addition  
 16 to the foregoing, claims based on: Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.7,  
 17 227.3, 245 *et seq.*, 510, 511, 512, 558.1, 1194, 1194.2, 1197, 1199, 2802; all related provisions of  
 18 the California Code of Regulations; and all related provisions of the applicable IWC Wage orders.

19 5.3. Except as set forth in Section 5.2 of this Agreement, Participating Class Members do not  
 20 release any other claims, including claims for vested benefits, wrongful termination, violation of  
 21 the Fair Employment and Housing Act, unemployment insurance, disability, social security,  
 22 workers' compensation, or claims based on facts occurring outside the Class Period.

23 5.4. Release of PAGA Claims: For the duration of the PAGA Period, the LWDA and the State  
 24 of California, by and through Plaintiff as an agent and proxy of the LWDA, and to the extent  
 25 permitted by law, all Aggrieved Employees, are deemed to release, on behalf of themselves and  
 26 their respective former and present representatives, agents, attorneys, heirs, administrators,  
 27 successors, and assigns, the Released Parties from all claims for relief under PAGA that were  
 28 alleged, or reasonably could have been alleged, based on the facts stated in the PAGA Action

1 and/or the PAGA Notice, and without limiting the generality of the foregoing, and in addition to  
 2 the foregoing, PAGA claims based on: Labor Code sections 96, 98.6, 142.3, 200, 201, 201.3,  
 3 201.5, 201.7, 202, 203, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206.5, 210, 212, 213,  
 4 221, 222, 222.5, 223, 226, 226.3, 226.7, 227.3, 231, 232, 232.5, 233, 234, 245, *et seq.*, 246, 351,  
 5 353, 404, 432, 432.3, 432.5, 432.7, 432.8, 450, 510, 511, 512, 551, 552, 558, 1101, 1102, 1102.5,  
 6 1293.1, 1290, 1292, 1293, 1294.1, 1301, 1391, 1475, 1695.55, 1696.5, 1174, 1174.5, 1771, 1774,  
 7 1775, 1776, 1811, 1815, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5, 1700.31,  
 8 2673, 2800, 2802, 2810.5; all related provisions of the California Code of Regulations; and all  
 9 related provisions of the applicable IWC Wage orders (including all claims for violations of  
 10 suitable seating requirements).

11 **6. MOTION FOR PRELIMINARY APPROVAL**

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

15 6.1. Defendant’s Declaration in Support of Preliminary Approval. Within 14 days of full  
 16 execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed  
 17 declaration from Defendant and Defense Counsel disclosing all facts relevant to any actual or  
 18 potential conflicts of interest with the Administrator. At least 45 days before the first set hearing  
 19 on Plaintiff’s Motion for Preliminary Approval, Defendant will prepare and deliver to Class  
 20 Counsel a signed declaration from Defendant, or Defendant’s data analyst, attesting to the number  
 21 of Class Workweeks and PAGA Workweeks (if any) worked by each Class Member individually  
 22 and all Class Members in the aggregate, and the method Defendant used to determine the numbers.  
 23 Plaintiff may file such declaration in support of the Motion for Preliminary Approval. The  
 24 declaration will not contain any Class Member identifying information, and the Class Members  
 25 will be referred to by a unique ID number.

26 6.2. Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all  
 27 documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and  
 28 memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the

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

17 6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible  
18 for expeditiously finalizing and filing the Motion for Preliminary Approval after the full  
19 execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary  
20 Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary  
21 Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the  
22 Administrator.

23 6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for  
24 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and  
25 Defense Counsel will expeditiously work together on behalf of the Parties by meeting and  
26 conferring, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary  
27 Approval or conditions Preliminary Approval on any material change to this Agreement, Class  
28 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by

1 meeting and conferring, and in good faith, to modify the Agreement and otherwise satisfy the  
2 Court's concerns.

3 **7. SETTLEMENT ADMINISTRATION**

4 7.1. Selection of Administrator. The Parties have jointly selected Apex to serve as the  
5 Administrator and verified that, as a condition of appointment, Apex agrees to be bound by the  
6 settlement administration terms of this Agreement and to perform, as a fiduciary, all duties of the  
7 Administrator specified in this Agreement in exchange for payment of Administration Expenses.  
8 The Parties and their Counsel represent that they have no interest or relationship, financial or  
9 otherwise, with the Administrator other than a professional relationship arising out of prior  
10 experiences administering settlements.

11 7.2. Employer Identification Number. The Administrator shall have and use its own Employer  
12 Identification Number for purposes of calculating payroll tax withholdings and providing reports  
13 state and federal tax authorities.

14 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets  
15 the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section  
16 468B-1.

17 7.4. Notice to Class Members

18 7.4.1. No later than three (3) business days after receipt of the Class Data, the  
19 Administrator shall notify Class Counsel that the list has been received and state the  
20 number of Class Members, Aggrieved Employees, Class Workweeks, and PAGA  
21 Workweeks in the Class Data. Except as set forth in Paragraph 7.8.2 below, and as to  
22 that paragraph only name information should be disclosed,, the Administrator cannot, at  
23 any time, reveal the following Class Data to Plaintiff or Class Counsel, unless Defendant  
24 first provides advance written permission: (1) names; (2) last known address(es); (3) last  
25 known telephone number(s); and (4) last known Social Security Number(s).

26 7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14  
27 days after receiving the Class Data, the Administrator will send to all Class Members  
28 identified in the Class Data, via first-class United States Postal Service ("USPS") mail,

1 the Class Notice with Spanish translation, substantially in the form attached to this  
2 Agreement as Exhibit A. The Class Notice shall prominently estimate the dollar amounts  
3 of any Individual Class Payment and/or Individual PAGA Payment payable to the Class  
4 Member, and the number of Workweeks and PAGA Workweeks (if applicable) used to  
5 calculate these amounts. Before mailing Class Notices, the Administrator shall update Class  
6 Member addresses using the National Change of Address database.

7 7.4.3. Not later than 3 business days after the Administrator’s receipt of any Class Notice  
8 returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice  
9 using any forwarding address provided by the USPS. If the USPS does not provide a  
10 forwarding address, the Administrator shall conduct a Class Member Address Search,  
11 and re-mail the Class Notice to the most current address obtained. The Administrator  
12 has no obligation to make further attempts to locate or send Class Notice to Class  
13 Members whose Class Notice is returned by the USPS a second time.

14 7.4.4. The deadlines for Class Members’ written objections, Challenges to Class  
15 Workweeks, and Requests for Exclusion will be extended an additional 15 days beyond  
16 the 45 days otherwise provided in the Class Notice for all Class Members whose notice  
17 is re-mailed. The Administrator will inform the Class Member of the extended deadline  
18 with the re-mailed Class Notice.

19 7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise  
20 discovers any persons who believe they should have been included in the Class Data  
21 and should have received Class Notice, the Parties will expeditiously meet and confer,  
22 and in good faith, in an effort to agree on whether to include them as Class Members.  
23 If the Parties agree, such persons will be Class Members entitled to the same rights as  
24 other Class Members, and the Administrator will send, via email or overnight delivery,  
25 a Class Notice requiring them to exercise options under this Agreement not later than  
26 15 days after receipt of Class Notice, or the deadline dates in the Class Notice, which  
27 ever are later.

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1 7.5. Requests for Exclusion (Opt-Outs).

2 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement  
3 must send the Administrator, by mail, a signed written Request for Exclusion not later  
4 than 45 days after the Administrator mails the Class Notice (plus an additional 15 days  
5 for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter  
6 from a Class Member or his/her representative that reasonably communicates the Class  
7 Member's election to be excluded from the Settlement and includes the Class Member's  
8 name, address and email address or telephone number. To be valid, a Request for  
9 Exclusion must be timely postmarked by the Response Deadline.

10 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it  
11 fails to contain all the information specified in the Class Notice. The Administrator  
12 shall accept any Request for Exclusion as valid if the Administrator can reasonably  
13 ascertain the identity of the person as a Class Member and the Class Member's desire  
14 to be excluded. The Administrator's determination shall be final and not appealable or  
15 otherwise susceptible to challenge. If the Administrator has reason to question the  
16 authenticity of a Request for Exclusion, the Administrator may demand additional proof  
17 of the Class Member's identity. The Administrator's determination of authenticity shall  
18 be final and not appealable or otherwise susceptible to challenge.

19 7.5.3. Every Class Member who does not submit a timely and valid Request for  
20 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled  
21 to all benefits and bound by all terms and conditions of the Settlement, including the  
22 Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement,  
23 regardless whether the Participating Class Member actually receives the Class Notice  
24 or objects to the Settlement.

25 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a  
26 Non-Participating Class Member and shall not receive an Individual Class Payment or  
27 have the right to object to the class action components of the Settlement. Non-  
28 Participating Class Members who are Aggrieved Employees are deemed to release the

1 claims identified in Paragraph 5.4 of this Agreement and are eligible for an Individual  
2 PAGA Payment.

3 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after  
4 the Administrator mails the Class Notice (plus an additional 15 days for Class Members whose  
5 Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Workweeks  
6 (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge  
7 the allocation by communicating with the Administrator via mail. The Administrator must  
8 encourage the challenging Class Member to submit supporting documentation. The  
9 Administrator shall promptly provide copies of all challenges to calculation of Workweeks to  
10 Defense Counsel and Class Counsel. Should a Class Member challenge the calculation of Class  
11 Workweeks and/or PAGA Workweeks (if any), Defendant shall provide the Administrator with  
12 the payroll records for the challenging Class Member such that the Administrator may use such  
13 information to determine the validity of the Class Member challenge. Based on this information,  
14 the Administrator is entitled to presume that the Workweeks contained in the Class Notice are  
15 correct so long as they are consistent with the payroll data provided by Defendant. The  
16 Administrator shall notify Defense Counsel and Class Counsel of their determination of the  
17 validity of the Class Member challenge, and such decision shall be final and not appealable or  
18 otherwise susceptible to challenge.

19 7.7. Objections to Settlement

20 7.7.1. Only Participating Class Members may object to the class action components of  
21 the Settlement and/or this Agreement, including contesting the fairness of the  
22 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class  
23 Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

24 7.7.2. Participating Class Members may send written objections to the Administrator, by  
25 mail. In the alternative, Participating Class Members may appear in Court (or hire an  
26 attorney to appear in Court) to present verbal objections at the Final Approval Hearing.  
27 A Participating Class Member who elects to send a written objection to the  
28 Administrator must do so not later than 45 days after the Administrator's mailing of the

1 Class Notice (plus an additional 15 days for Class Members whose Class Notice was re-  
2 mailed).

3 7.7.3. Non-Participating Class Members have no right to object to any of the class action  
4 components of the Settlement.

5 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be  
6 performed or observed by the Administrator contained in this Agreement or otherwise.

7 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will maintain  
8 and use an internet website to post only the following information : the date, time and  
9 location for the Final Approval Hearing; copies of the Settlement Agreement, Motion  
10 for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for  
11 Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation  
12 Expenses Payment and Class Representative Service Payment, the Final Approval and  
13 the Judgment. The Administrator will also maintain and monitor an email address and  
14 a toll-free telephone number to receive Class Member calls and emails.

15 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will  
16 promptly review on a rolling basis Requests for Exclusion to ascertain their validity.  
17 Not later than 5 days after the expiration of the deadline for submitting Requests for  
18 Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel  
19 containing (a) the names of Class Members who have timely submitted valid Requests  
20 for Exclusion (“Exclusion List”); (b) the names of Class Members who have submitted  
21 invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement  
22 submitted (whether valid or invalid).

23 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written  
24 reports to Class Counsel and Defense Counsel that, among other things, tally the number  
25 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for  
26 Exclusion (whether valid or invalid) received, objections received, challenges to  
27 Workweeks received and/or resolved, and checks mailed for Individual Class Payments  
28 and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include

1 provide the Administrator’s assessment of the validity of Requests for Exclusion and  
2 attach copies of all Requests for Exclusion and objections received.

3 7.8.4. Workweek Challenges. The Administrator has the authority to address and make  
4 final decisions consistent with the terms of this Agreement on all Class Member  
5 challenges over the calculation of Workweeks. The Administrator’s decision shall be  
6 final and not appealable or otherwise susceptible to challenge.

7 7.8.5. Administrator’s Declaration. Before the date by which Plaintiff is required to file  
8 the Motion for Final Approval of the Settlement, the Administrator will provide to Class  
9 Counsel and Defense Counsel, a declaration suitable for filing in Court attesting to its  
10 due diligence and compliance with all of its obligations under this Agreement,  
11 including, but not limited to, its mailing of Class Notice, the Class Notices returned as  
12 undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total  
13 number of Requests for Exclusion from Settlement it received (both valid or invalid),  
14 the number of written objections and attach the Exclusion List. The Administrator will  
15 supplement its declaration as needed or requested by the Parties and/or the Court. Class  
16 Counsel is responsible for filing the Administrator’s declaration(s) in Court.

17 7.8.6. Final Report by Settlement Administrator. Within 10 days after the Administrator  
18 disburses all funds in the Gross Settlement Amount, the Administrator will provide  
19 Class Counsel and Defense Counsel with a final report detailing its disbursements by  
20 employee identification number only of all payments made under this Agreement. At  
21 least 7 days before any deadline set by the Court, the Administrator will prepare, and  
22 submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in  
23 Court attesting to its disbursement of all payments required under this Agreement. Class  
24 Counsel is responsible for filing the Administrator's declaration in Court.

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

26 Based on its records, Defendant estimated that, as of the date of the mediation, there were  
27 90 Class Members and 14,537 Total Class Workweeks during the Class Period.

28 ///

1 8.1. Increase in Workweeks. Defendant represents that there were approximately 14,537  
 2 Workweeks worked through the date of the mediation. In the event the number of Workweeks  
 3 worked by Class Members during the Class Period increases by more than 10%, or an additional  
 4 1,454 Workweeks, then at Defendant’s election, either: (i) the end of the Class Period and PAGA  
 5 Period will be moved earlier to the date the additional 1,454 Workweeks were worked; or (ii) the  
 6 Gross Settlement Amount shall be increased proportionally by the Workweeks in excess of  
 7 14,537 Workweeks multiplied by the Workweek Value. The Workweek Value shall be calculated  
 8 by dividing the Gross Settlement Amount (\$288,000.00) by 14,537, which would amount to a  
 9 Workweek Value of \$19.81. Thus, for example, should there be 16,500 Workweeks in the Class  
 10 Period, then, if Defendant elects this option, the Gross Settlement Amount shall be increased by  
 11 \$38,887.03 ((16,500 Workweeks – 14,537 Workweeks) x \$19.81 per Workweek). Alternatively,  
 12 Defendant may elect to modify the end date of the Class Period and PAGA Period to the date on  
 13 which Class Members worked a total of 15,991 (14,537 + 1,454) Workweeks. Defendant must  
 14 exercise its option to modify the end date of the Class Period at least 45 days before the first set  
 15 hearing on Plaintiff’s Motion for Preliminary Approval.

16 **9. MOTION FOR FINAL APPROVAL**

17 Prior to the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for  
 18 final approval of the Settlement that includes a request for approval of the PAGA settlement  
 19 under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed  
 20 Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these  
 21 documents to Defense Counsel prior to filing the Motion for Final Approval. Class Counsel and  
 22 Defense Counsel will expeditiously meet and confer, and in good faith, to resolve any  
 23 disagreements concerning the Motion for Final Approval.

24 9.1. Response to Objections. Each Party retains the right to respond to any objection raised  
 25 by a Participating Class Member, including the right to file responsive documents in Court no  
 26 later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted  
 27 by the Court.

28 ///

1 9.2. Duty to Cooperate. If: (1) the Court should for any reason fail to enter the Final Order  
2 and Judgment; or (2) the Court's Final Order and Judgment is reversed or modified as to any  
3 material term, or declared or rendered void as to any material term, then (a) this Settlement  
4 Agreement shall become null and void; (b) the Parties will revert to their respective positions  
5 immediately prior to reaching the settlement; and (c) the Parties will be equally responsible for  
6 any Administration Expenses Payment. Invalidation of any material term of this Settlement  
7 Agreement will invalidate this Agreement in its entirety unless the Parties subsequently agree in  
8 writing that the remaining provisions will remain in full force and effect. The Court's decision  
9 to award less than the amounts requested for the Class Representative Service Payment, Class  
10 Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Administrator  
11 Expenses Payment shall not constitute a material modification to the Agreement within the  
12 meaning of this paragraph.

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

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

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

11 **10. AMENDED JUDGMENT**

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

14 **11. ADDITIONAL PROVISIONS**

15 11.1. No Admission of Liability, Class Certification or Representative Manageability for Other  
16 Purposes. This Agreement represents a compromise and settlement of highly disputed claims.  
17 Nothing in this Agreement is intended or should be construed as an admission by Defendant that  
18 any of the allegations in the Actions or the Operative Complaint have merit or that Defendant  
19 has any liability for any claims asserted; nor should it be intended or construed as an admission  
20 by Plaintiff that Defendant’s defenses in the Actions have merit. The Parties agree that class  
21 certification and representative treatment is for purposes of this Settlement only. If, for any  
22 reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant  
23 reserves the right to contest certification of any class for any reasons, and Defendant reserve all  
24 available defenses to the claims in the Actions, and Plaintiff reserves the right to move for class  
25 certification on any grounds available and to contest Defendant’s defenses. The Settlement, this  
26 Agreement and Parties’ willingness to settle the Actions will have no bearing on, and will not be  
27 admissible in connection with, any litigation (except for proceedings to enforce or effectuate the  
28 Settlement and this Agreement).

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

18 11.3. No Solicitation. The Parties separately agree that they and their respective counsel and  
19 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal  
20 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's  
21 ability to communicate with Class Members in accordance with Class Counsel's ethical  
22 obligations owed to Class Members.

23 11.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement  
24 together with its attached exhibits shall constitute the entire agreement between the Parties  
25 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or  
26 inducements made to or by any Party.

27 11.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and  
28 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate

1 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate  
2 its terms, and to execute any other documents reasonably required to effectuate the terms of this  
3 Agreement including any amendments to this Agreement.

4 11.6. Cooperation. The Parties and their counsel will cooperate with each other and use their  
5 best efforts, in good faith, to implement the Settlement by, among other things, modifying the  
6 Settlement Agreement, submitting supplemental evidence and supplementing points and  
7 authorities as requested by the Court. In the event the Parties are unable to agree upon the form  
8 or content of any document necessary to implement the Settlement, or on any modification of the  
9 Agreement that may become necessary to implement the Settlement, the Parties will seek the  
10 assistance of a mediator and/or the Court for resolution.

11 11.7. No Prior Assignments. The Parties separately represent and warrant that they have not  
12 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or  
13 encumber to any person or entity and portion of any liability, claim, demand, action, cause of  
14 action, or right released and discharged by the Party in this Settlement.

15 11.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are  
16 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied  
17 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR  
18 Part 10, as amended) or otherwise.

19 11.9. Modification of Agreement. This Agreement, and all parts of it, may be amended,  
20 modified, changed, or waived only by an express written instrument signed or agreed to by all  
21 Parties or their representatives, and approved by the Court. Plaintiff and Defendant expressly  
22 agree that should the Parties agree to amend, modify, change, or waive this Agreement, or any  
23 part of it, Class Counsel and Defense Counsel are authorized to submit to the Court any  
24 amendments of this Agreement, amended Agreements, or amendments to the Agreement, on  
25 behalf of the Parties once fully executed.

26 11.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to  
27 the benefit of, the successors of each of the Parties.

28 ///

1 11.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be  
2 governed by and interpreted according to the internal laws of the state of California, without  
3 regard to conflict of law principles.

4 11.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of  
5 this Agreement. This Agreement will not be construed against any Party on the basis that the  
6 Party was the drafter or participated in the drafting

7 11.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered  
8 during Actions and in this Agreement relating to the confidentiality of information shall survive  
9 the execution of this Agreement

10 11.14. Use of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code  
11 §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant  
12 in connection with the mediation, other settlement negotiations, or in connection with the  
13 Settlement, may be used only with respect to this Settlement, and no other purpose, and may not  
14 be used in any way that violates any existing contractual agreement, statute, or rule of court.

15 11.15. Headings. The descriptive heading of any section or paragraph of this Agreement is  
16 inserted for convenience of reference only and does not constitute a part of this Agreement.

17 11.16. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall  
18 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a  
19 weekend or federal legal holiday, such date or deadline shall be on the first business day  
20 thereafter.

21 11.17. Execution in Counterparts. This Agreement may be executed in one or more counterparts  
22 by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall  
23 be accepted as an original. All executed counterparts and each of them will be deemed to be one  
24 and the same instrument if counsel for the Parties will exchange between themselves signed  
25 counterparts. Any executed counterpart will be admissible in evidence to prove the existence  
26 and contents of this Agreement.

27 11.18. Stay of Litigation. The Parties agree that upon the execution of this Agreement the  
28 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further

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

4 11.19. Severability. In the event that one or more of the provisions contained in this Agreement  
5 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,  
6 illegality, or unenforceability shall in no way effect any other provision if Defendant’s Counsel  
7 and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing  
8 to proceed as if such invalid, illegal, or unenforceable provision had never been included in this  
9 Agreement.

10 **IT IS SO AGREED:**

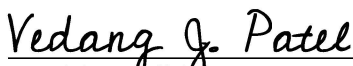
11  
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13 \_\_\_\_\_  
Plaintiff, Crystal Rotaru

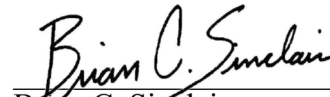
Signed by:  
  
533038900F6A454...

14 \_\_\_\_\_  
Jim Blower, CEO  
15 For Defendant, Blower-Dempsay Corporation

16  
17 **AGREED AS TO FORM ONLY:**

18 

19 \_\_\_\_\_  
David D. Bibiyan  
Vedang J. Patel  
20 Counsel for Plaintiff



21 \_\_\_\_\_  
Brian C. Sinclair  
Kimberly A. Nayagam  
22 Counsel for Defendant