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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

IRENE AVALOS on behalf of herself and all others similarly situated and aggrieved,

Plaintiff,

v.

NEWBASIS LLC, a Texas Limited Liability Company; ANGEL TOPETE, an individual; and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: CVRI2204793

[Related to Case No. CVRI2300086]

[Assigned for all purposes to the Hon. Harold Hopp in Dept. 1]

CLASS AND PAGA SETTLEMENT AGREEMENT

Action Filed: November 3, 2022

Trial Date: None Set

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1 This Class Action and PAGA Settlement Agreement (“**Settlement**,” “**Agreement**” or
2 “**Settlement Agreement**”) is made by and between Plaintiff IRENE AVALOS (“**Plaintiff**”) and
3 Defendant NEWBASIS LLC (“**Defendant**”). The Agreement refers to Plaintiff and Defendant
4 collectively as “Parties,” or individually as “Party.”

5 **1. DEFINITIONS**

6 1.1. “**Action**” or “**Actions**” means Plaintiff’s lawsuit alleging wage and hour violations on a
7 class action basis, captioned *Irene Avalos v. NewBasis LLC et. al.*, Case No. CVRI2204793,
8 initiated on November 3, 2022, and pending in Superior Court of the State of California, County
9 of Riverside (“**Class Action**”); and Plaintiff’s lawsuit alleging civil penalties under California
10 Private Attorneys’ General Act of 2004, California Labor Code § 2698 et seq. (“PAGA”)
11 captioned *Irene Avalos v. NewBasis LLC et. al.*, Case No. CVRI2300086, initiated on January 6,
12 2023, and pending in Superior Court of the State of California, County of Riverside (“**PAGA**
13 **Action**”), which is to be consolidated by amended complaint in the Class Action.

14 1.2. “**Administrator**” means Apex Class Action Administration, the neutral entity the Parties
15 have agreed to appoint to administer the Settlement.

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

20 1.4. “**Aggrieved Employees**” means all persons employed by Defendant in California and
21 classified as a non-exempt, hourly-paid employee at any time during the PAGA Period.

22 1.5. “**Class**” means all persons employed by Defendant in California and classified as a non-
23 exempt, hourly-paid employee at any time 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**”
27 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees
28 and expenses, respectively, incurred to prosecute the Actions.

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 Social Security Number(s); and (4) number of Class Period Workweeks and
4 PAGA Pay Periods.

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
9 for 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 AND
13 REPRESENTATIVE ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT
14 APPROVAL, to be mailed to Class Members in English and Spanish in the form, without
15 material variation, attached as Exhibit A and incorporated by reference into this Agreement.

16 1.12. “**Class Period**” means the period from December 3, 2020, through November 24, 2024.

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
20 Representative for initiating the Actions and providing services in support of the Actions.

21 1.15. “**Court**” means the Superior Court of California, County of Riverside.

22 1.16. “**Defendant**” means named Defendant NewBasis LLC.

23 1.17. “**Defense Counsel**” means Edson K. McClellan, Peter Hering and Jonas Trevethan of
24 Rutan & Tucker, LLP.

25 1.18. “**Effective Date**” means the later of: (i) if no Participating Class Member objects to the
26 Settlement, the day the Court enters the Final Approval Order and Judgment; or (ii) if one or
27 more Participating Class Member objects to the Settlement, the day after the deadline for filing
28 a notice of appeal from the Judgment; or, if a timely appeal from the Judgment is filed, the day

1 after the Final Approval Order and Judgment is affirmed or the appeal, review, or writ is
2 dismissed or denied, and the Approval Order and Judgment is no longer subject to further judicial
3 review.

4 1.19. “**Final Approval**” means the Court’s order granting final approval of the Settlement.

5 1.20. “**Final Approval Hearing**” means the Court’s hearing on the Motion for Final Approval
6 of the Settlement.

7 1.21. “**Final Judgment**” means the Judgment entered by the Court based upon the Final
8 Approval.

9 1.22. “**Funding Date**” means the date by which Defendant must fully-fund the Gross
10 Settlement Amount pursuant to Paragraph 4.3.

11 1.23. “**Gross Settlement Amount**” means \$875,000.00 (Eight Hundred and Seventy Five
12 Thousand Dollars and Zero Cents) which is the total amount Defendant agrees to pay under the
13 Settlement, except as provided in Paragraph 8.1 below and any and all employer payroll taxes
14 owed on the Wage Portions of the Individual Class Payments. The Gross Settlement Amount
15 will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA
16 Payment, Class Counsel Fees Payment, Class Counsel Expenses Payment, Class Representative
17 Service Payment, and Administrator’s Expenses.

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

21 1.25. “**Individual PAGA Payment**” means the Aggrieved Employee’s pro rata share of 25%
22 of the PAGA Penalties calculated according to the number of Workweeks worked during the
23 PAGA 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 the Net
5 Settlement Amount, which shall be paid to Participating Class Members as Individual Class
6 Payments.

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

9 1.31. **“Operative Complaint”** means the consolidated Second Amended Complaint in the
10 Class Action.

11 1.32. **“PAGA Pay Period”** means any pay period during which an Aggrieved Employee
12 worked for Defendant for at least one day during the PAGA Period.

13 1.33. **“PAGA Period”** means the period from November 2, 2021 through the end of the Class
14 Period.

15 1.34. **“PAGA”** means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

16 1.35. **“PAGA Notice”** means Plaintiff’s November 2, 2022, letter to Defendant, Topete, and the
17 LWDA, providing notice pursuant to Labor Code section 2699.3 subd. (a).

18 1.36. **“PAGA Penalties”** means the total amount of PAGA civil penalties to be paid from the
19 Gross Settlement Amount in the amount of \$87,500.00, allocated 25% to the Aggrieved
20 Employees (\$21,875.00) and 75% to the LWDA (\$65,625.00) in settlement of PAGA claims.

21 1.37. **“Participating Class Member”** means a Class Member who does not submit a valid and
22 timely Request for Exclusion from the Settlement.

23 1.38. **“Plaintiff”** means Irene Avalos, the named Plaintiff in the Actions.

24 1.39. **“Preliminary Approval”** means the Court’s Order Granting Preliminary Approval of the
25 Settlement.

26 1.40. **“Preliminary Approval Order”** means the proposed Order granting Preliminary
27 Approval and Approval of PAGA Settlement.

28 1.41. **“Released Class Claims”** means any and all claims against Defendant and the Released

1 Parties that have been asserted against Defendant, or could have been based on the facts asserted
2 in the Operative Complaint in the Action, including, without limiting the foregoing: claims for
3 failing to accurately track and/or pay for all minutes worked, including for time spent performing
4 pre-shift, post-shift, and other off-the-clock work, donning and doffing, attending off-the-clock
5 company meetings; undergoing security screenings or temperature checks, and waiting in line to
6 clock in; detrimental rounding and manipulation or editing of employee time entries; failure to
7 pay split-shift premiums and reporting time pay; failure to pay all overtime wages; failure to pay
8 all minimum wages; failure to include all forms of remuneration in employees' regular rate of
9 pay; failure to pay all wages owed; failure to provide meal periods or additional pay in lieu
10 thereof; failure to provide rest breaks or additional pay in lieu thereof; inaccurate itemized wage
11 statements; preventing employees from taking cooldown rest periods or providing additional pay
12 in lieu thereof; failure to reimburse for all necessary business expenses (including but not limited
13 to cell phones, personal vehicles, mileage and gas, uniforms, shoes, laundry costs, and tools and
14 safety equipment); failure to reimburse deposits made, including uniform deposit; failure to
15 timely pay all wages owed during employment and upon separation; unlawful deductions; failure
16 to maintain accurate timekeeping, payroll, and personnel records; failure to furnish employment
17 records (including timekeeping, payroll, and personnel records) and provide employees the
18 opportunity to inspect the same; failure to provide notice of material terms of employment; failure
19 to provide paid sick leave, COVID-19 supplemental sick leave, and notice of the same to
20 employees; failure to provide notice of COVID-19 exposure to local public health agencies;
21 failure to pay all vacation time and paid time off upon separation; failure to provide suitable
22 seating; failure to furnish and use safety devices and safeguards; failure to provide and maintain
23 a healthy and safe work environment; failure to do everything reasonably necessary to protect
24 the life, safety, and health of employees; failure to give sufficient and proper notice of COVID-
25 19 exposure and maintain records relating to the same; failure to provide adequate and readily
26 accessible sanitation facilities, cleaning schedules, an adequate number of cleansing agents, and
27 a sufficient number of toilets to be used; requiring employees to unlawfully waive protections of
28 the FEHA or the Labor Code; preventing employees from using or disclosing the skills,

1 knowledge, and experience they obtained from their employment for purposes of competing with
2 Defendant; preventing employees from disclosing violations of state and federal law, information
3 about unsafe or discriminatory working conditions, or any other unlawful conduct; preventing
4 employees from engaging in lawful conduct during non-work hours; unlawful background
5 checks; asking employees or inquiring into impermissible questions, including conviction and
6 arrest history; relying on applicant's salary history; restraints on competition, whistleblowing,
7 and freedom of speech; and claims for violation of California Business and Professions Code §
8 17200 et seq.

9 1.42. **“Released PAGA Claims”** means all claims for civil penalties under the PAGA, which
10 arose during the PAGA Period, and were asserted against Defendant and Topete in the Operative
11 Complaint and PAGA Notice, or that could have been asserted based on the facts alleged in the
12 Operative Complaint and PAGA Notice, for purposes of civil penalties under PAGA.

13 1.43. **“Released Parties”** means: Defendant, and all of its current, former, and future officers,
14 directors, members, employees, and agents, and Topete.

15 1.44. **“Request for Exclusion”** means a Class Member's timely submission of a written request
16 to be excluded from the Class Settlement signed by the Class Member pursuant to Paragraph 7.5
17 below.

18 1.45. **“Response Deadline”** means forty-five (45) days after the Administrator mails Notice to
19 Class Members and Aggrieved Employees and shall be the last date on which Class Members
20 may: (a) mail Requests for Exclusion from the Settlement, or (b) mail his or her Objection to the
21 Settlement. Class Members to whom Notice Packets are resent after having been returned
22 undeliverable to the Administrator shall have an additional 15 days beyond the date the Response
23 Deadline has expired.

24 1.46. **“Settlement”** means the disposition of the Actions effected by this Agreement and the
25 Judgment.

26 1.47. **“Topete”** means co-defendant Angel Topete.
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1 1.48. “**Workweek**” means any week during which a Class Member was employed by
2 Defendant for at least one day in a non-exempt, hourly-paid position during the Class Period in
3 California.

4 **2. RECITALS**

5 2.1. On November 2, 2022, Plaintiff filed the PAGA Notice with the LWDA and served it on
6 Defendant and Topete .

7 2.2. On November 3, 2022, Plaintiff commenced the Class Action by filing a class action
8 complaint against Defendant and Topete for: (1) failure to pay overtime wages, (2) failure to pay
9 minimum wages, (3) failure to provide meal periods, (4) failure to provide rest periods, (5)
10 waiting time penalties, (6) wage statement violations, (7) failure to pay timely wages, (8) failure
11 to indemnify, and (9) unfair competition. Plaintiff filed a First Amended Complaint in the Class
12 Action on April 11, 2023.

13 2.3. On January 6, 2023, after sixty-five (65) days had passed without any action by the
14 LWDA with respect to the Labor Code violations alleged in the PAGA Notice, Plaintiff filed a
15 separate representative action under PAGA against Defendant and Topete in Riverside Superior
16 Court, Case No. CVRI2300086, for the Labor Code violations set out in the PAGA Notice.

17 2.4. Thereafter, the Parties agreed to exchange informal discovery and attend mediation.

18 2.5. Prior to the mediation, Plaintiff obtained, through informal discovery: (a) time and payroll
19 records for approximately 30% of Class Members through mediation; (b) a class list reflecting
20 the number of workweeks and pay periods worked, as well as rates of pay for approximately 30%
21 of Class Members; (c) wage and hour policy documents; and (d) all documents pertaining to
22 Plaintiff available to Defendant.

23 2.6. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in
24 *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker*
25 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“***Dunk/Kullar***”).

26 2.7. On September 19, 2024, the Parties participated in an all-day mediation presided over by
27 Marc Feder, Esquire. The mediation was successful, and the Parties agreed to globally resolve
28 all class and PAGA claims in the Actions. As part of this Agreement, the Parties agree to stipulate

1 to Plaintiff's filing of a Second Amended Complaint in the Class Action, adding all allegations
2 brought in the PAGA Action, and Plaintiff will thereafter request dismissal without prejudice of
3 the PAGA Action, thereby effectively consolidating the two actions for purposes of Settlement
4 (hereinafter, the "**Action**"). The Second Amended Complaint is the Operative Complaint in the
5 Action.

6 2.8. The Court has not granted class certification.

7 2.9. The Parties, Class Counsel, and Defense Counsel represent that they are not aware of any
8 other pending matter or action asserting claims that will be extinguished or affected by the
9 Settlement.

10 **3. MONETARY TERMS**

11 3.1. Gross Settlement Amount. Defendant promises to pay \$875,000.00 as the Gross
12 Settlement Amount, unless increased pursuant to Paragraph 8.1 of this Agreement, and to
13 separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual
14 Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll
15 taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will
16 disburse the entire Gross Settlement Amount without asking or requiring Participating Class
17 Members or Aggrieved Employees to submit any claim as a condition of payment. None of the
18 unclaimed funds from the Gross Settlement Amount will revert to Defendant.

19 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct
20 the following payments from the Gross Settlement Amount, in the amounts specified by the Court
21 in the Final Approval:

22 3.2.1. To Plaintiff: A Class Representative Service Payment to Plaintiff in the amount
23 of \$7,500.00, in addition to any Individual Class Payment and any Individual PAGA
24 Payment Plaintiff is entitled to receive as a Participating Class Member. Defendant will
25 not oppose Plaintiff's request for a Class Representative Service Payment that does not
26 exceed this amount. As part of the motion for Class Counsel Fees Payment and Class
27 Litigation Expenses Payment, Plaintiff will seek Court approval for any Class
28 Representative Service Payment prior to the Final Approval Hearing. If the Court

1 approves a Class Representative Service Payment less than the amount requested, the
2 Administrator will retain the remainder in the Net Settlement Amount and shall be
3 distributed to Participating Class Members as part of their Individual Settlement
4 Payment. The Administrator will pay the Class Representative Service Payment using
5 IRS Form 1099. Plaintiff assumes full responsibility and liability for any applicable
6 employee taxes owed on the Class Representative Service Payment.

7 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third
8 (1/3) of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph
9 8.1 of this Agreement, is currently estimated to be \$291,666.67 and a Class Counsel
10 Litigation Expenses Payment of not more than \$30,000.00. Defendant will not oppose
11 requests for these payments provided that do not exceed these amounts. Plaintiff and/or
12 Class Counsel will endeavor to file a motion for Class Counsel Fees Payment and Class
13 Litigation Expenses Payment prior to the Final Approval Hearing. If the Court
14 approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses
15 Payment less than the amounts requested, the Administrator will allocate the remainder
16 to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel
17 or any other Plaintiff's Counsel arising from any claim to any portion of any Class
18 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The
19 Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses
20 Payment using one or more IRS 1099 Forms. Class Counsel assume full responsibility
21 and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel
22 Litigation Expenses Payment and hold Defendant and the Released Parties harmless,
23 and indemnify Defendant and the Released Parties from any dispute or controversy
24 regarding any division or sharing of any of these Payments.

25 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
26 \$11,780.00 except for a showing of good cause and as approved by the Court. To the
27 extent the Administration Expenses are less, or the Court approves payment less than
28 \$11,780.00, the Administrator will retain the remainder in the Net Settlement Amount.

1 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated
2 by (a) dividing the Net Settlement Amount by the total number of Workweeks worked
3 by all Participating Class Members during the Class Period and (b) multiplying the
4 result by each Participating Class Member's Workweeks.

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

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

19 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
20 \$87,500.00 to be paid from the Gross Settlement Amount, with 75% (\$65,625.00)
21 allocated to the LWDA PAGA Payment and 25% (\$21,875.00) allocated to the
22 Individual PAGA Payments.

23 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a)
24 dividing the amount of the Aggrieved Employees' 25% share of PAGA
25 Penalties \$21,875.00 by the total number of PAGA Period Pay Periods worked
26 by all Aggrieved Employees during the PAGA Period and (b) multiplying the
27 result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved
28 Employees assume full responsibility and liability for any taxes owed on their

1 Individual PAGA Payment.

2 3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested,
3 the Administrator will allocate the remainder to the Net Settlement Amount.
4 The Administrator will report the Individual PAGA Payments on IRS 1099
5 Forms.

6 3.2.5.3. The Parties agree that, if this Settlement Agreement is not approved, in
7 whole or in part, because the Court determines that the PAGA Penalties should
8 be increased, the Net Settlement Amount shall be decreased to account for any
9 required increase in PAGA Penalties such that the Gross Settlement Amount
10 does not exceed \$430,000.00, subject to the conditions set forth herein.

11 **4. SETTLEMENT FUNDING AND PAYMENTS**

12 4.1. Class Workweeks and PAGA Pay Periods. Based on a review of its records at the time
13 of the mediation, Defendant estimated there were 838 Class Members who collectively worked
14 a total of 28,742 Workweeks, and 609 Aggrieved Employees who worked a total of 15,587
15 PAGA Pay Periods.

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

28 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement

1 Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by
2 transmitting the funds to the Administrator no later than thirty (30) days after the Effective Date.

3 4.4. Payments from the Gross Settlement Amount. Within 15 days after Defendant funds the
4 Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments,
5 all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses
6 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and
7 the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment,
8 the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment
9 shall not precede disbursement of Individual Class Payments, and the Individual PAGA
10 Payments.

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

25 4.4.2. The Administrator must conduct a Class Member Address Search for all other
26 Class Members whose checks are returned undelivered without USPS forwarding
27 address. Within 7 days of receiving a returned check the Administrator must re-mail
28 checks to the USPS forwarding address provided or to an address ascertained through

1 the Class Member Address Search. The Administrator need not take further steps to
2 deliver checks to Class Members whose re-mailed checks are returned as undelivered.
3 The Administrator shall promptly send a replacement check to any Class Member whose
4 original check was lost or misplaced, requested by the Class Member prior to the Void
5 Date.

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

12 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall
13 not obligate Defendant to confer any additional benefits or make any additional
14 payments to Class Members (such as 401(k) contributions or bonuses) beyond those
15 specified in this Agreement.

16 **5. RELEASE OF CLAIMS**

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

21 5.1. Plaintiff's Release. Plaintiff and her respective former, present, and future spouses,
22 representatives, agents, attorneys, heirs, executors, administrators, successors, and assigns
23 generally, release, waive, acquit, and discharge Defendant and all Released Parties from all
24 claims, transactions, or occurrences (known or unknown), which she has, had, or might otherwise
25 have had against the Released Parties, from the beginning of time to the date Plaintiff signs this
26 Agreement, regarding any aspect of Plaintiff's employment, including, but not limited to: (a) all
27 claims that were, or reasonably could have been, alleged, based on the facts contained, in the
28 Operative Complaint; (b) all PAGA claims that were, or reasonably could have been, alleged

1 based on facts contained in the Operative Complaint and Plaintiff's PAGA Notice; (c) the
2 Released Class Claims; (d) the Released PAGA Claims; (e) any common law or statutory torts
3 (including invasion of privacy), any federal, state, or governmental constitution, statute,
4 regulation or ordinance, and any claim for wages, tips, or any other compensation or benefit
5 ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce
6 this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits,
7 social security benefits, workers' compensation benefits that arose at any time, or based on
8 occurrences after the date Plaintiff signs this Agreement. Plaintiff acknowledges that Plaintiff
9 may discover facts or law different from, or in addition to, the facts or law that Plaintiff now
10 knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain
11 effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery
12 of them.

13 5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
14 purposes of Plaintiff's Release only, Plaintiff expressly waives and relinquish the
15 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,
16 which reads:

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

21 5.2. Release by Participating Class Members: Each Participating Class Member who does not
22 timely submit a valid Request for Exclusion (opt-out), on behalf of themselves and their
23 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
24 and assigns, will release, for the duration of the Class Period, the Released Class Claims against
25 Defendant and the Released Parties.

26 5.3. Except as set forth in Section 5.2 of this Agreement, Participating Class Members do not
27 release any other claims, including claims for vested benefits, wrongful termination, violation of
28 the Fair Employment and Housing Act, unemployment insurance, disability, social security,

1 workers' compensation, or claims based on facts occurring outside the Class Period.

2 5.4. Release of PAGA Claims: For the duration of the PAGA Period and to the extent
3 permitted by law, the LWDA and the State of California, by and through Plaintiff as an agent
4 and proxy of the LWDA, release the Released Parties from the Released PAGA Claims.

5 5.5. Release by Class Counsel: Class Counsel release on behalf of themselves, their present
6 and former attorneys, employees, agents, successors and assigns Defendant and all Released
7 Parties from all claims for Class Fees incurred in connection with the Operative Complaint and
8 the Class Period, facts stated in the Operative Complaint and the PAGA Notice, or otherwise
9 incurred to prosecute the Actions.

10 **6. REQUEST FOR DISMISSAL OF PAGA ACTION AND MOTION FOR**
11 **PRELIMINARY APPROVAL**

12 6.1. Second Amended Complaint. The Parties hereby agree to stipulate to Plaintiff's filing of
13 a Second Amended Complaint in the Class Action, adding all allegations brought in the PAGA
14 Action and PAGA Notice, and request for dismissal of the PAGA Action, without prejudice,
15 thereby effectively consolidating the two actions for purposes of Settlement.

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

1 Members; (vi) a signed declaration from each Class Counsel firm attesting to its competency to
2 represent the Class Members; its timely transmission to the LWDA of all necessary PAGA
3 documents (PAGA Notice (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor
4 Code section 2699, subd. (1)(1)), this Agreement (Labor Code section 2699, subd. (1)(2)); and
5 (vii) all facts relevant to any actual or potential conflict of interest with Class Members and the
6 Administrator.

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

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

21 **7. SETTLEMENT ADMINISTRATION**

22 7.1. Selection of Administrator. The Parties have jointly selected Apex to serve as the
23 Administrator and verified that, as a condition of appointment, Apex agrees to be bound by this
24 Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for
25 payment of Administration Expenses. The Parties and their Counsel represent that they have no
26 interest or relationship, financial or otherwise, with the Administrator other than a professional
27 relationship arising out of prior experiences administering settlements.

28 7.2. Employer Identification Number. The Administrator shall have and use its own Employer

1 Identification Number for purposes of calculating payroll tax withholdings and providing reports
2 state and federal tax authorities.

3 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
4 the requirements of a Qualified Settlement Fund (“**QSF**”) under U.S. Treasury Regulation section
5 468B-1.

6 7.4. Notice to Class Members

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

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

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

27 7.4.4. The deadlines for Class Members’ written objections, Challenges to Workweeks
28 and/or Pay Periods, and Requests for Exclusion will be extended an additional 15 days

1 beyond the 45 days otherwise provided in the Class Notice for all Class Members whose
2 notice is re-mailed. The Administrator will inform the Class Member of the extended
3 deadline with the re-mailed Class Notice.

4 7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
5 discovers any persons who believe they should have been included in the Class Data
6 and should have received Class Notice, the Parties will expeditiously meet and confer,
7 in good faith, in an effort to agree on whether to include them as Class Members. If the
8 Parties agree, such persons will be Class Members entitled to the same rights as other
9 Class Members, and the Administrator will send, via email or overnight delivery, a Class
10 Notice requiring them to exercise options under this Agreement not later than 15 days
11 after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are
12 later.

13 7.5. Requests for Exclusion (Opt-Outs).

14 7.5.1. Class Members who wish to exclude themselves from (opt-out of) the Class
15 Settlement must send the Administrator, by mail, a signed written Request for Exclusion
16 not later than 45 days after the Administrator mails the Class Notice (plus an additional
17 15 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion
18 is a letter from a Class Member or his/her representative, signed by the Class Member,
19 that reasonably communicates the Class Member's election to be excluded from the
20 Settlement and includes the Class Member's full name, signature, the last four digits of
21 their Social Security Number, address, and email address or telephone number. To be
22 valid, a Request for Exclusion must be timely postmarked by the Response Deadline.

23 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it
24 fails to contain all the information specified in the Class Notice. The Administrator
25 shall accept any Request for Exclusion as valid if the Administrator can reasonably
26 ascertain the identity of the person as a Class Member and the Class Member's desire
27 to be excluded. The Administrator's determination shall be final and not appealable or
28 otherwise susceptible to challenge. If the Administrator has reason to question the

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

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

10 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a
11 Non-Participating Class Member and shall not receive an Individual Class Payment or
12 have the right to object to the class action components of the Settlement. Because future
13 PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-
14 Participating Class Members who are Aggrieved Employees are deemed to release the
15 claims identified in Paragraph 5.4 of this Agreement and are eligible for an Individual
16 PAGA Payment. In other words, any Class Member who worked during the PAGA
17 Period and who submits a valid and timely Request for Exclusion from the Class
18 Settlement will still be bound by the PAGA Settlement and issued an Individual PAGA
19 Payment, regardless of whether they submit a Request for Exclusion.

20 7.6. Challenges to Calculation of Workweeks and Pay Periods. Each Class Member shall
21 have 45 days after the Administrator mails the Class Notice (plus an additional 15 days for Class
22 Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and
23 PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class
24 Member may challenge the allocation by communicating with the Administrator via mail. The
25 Administrator must encourage the challenging Class Member to submit supporting
26 documentation. In the absence of any contrary documentation, the Administrator is entitled to
27 presume that the Workweeks contained in the Class Notice are correct so long as they are
28 consistent with the Class Data. The Administrator's determination of each Class Member's

1 allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise
2 susceptible to challenge. The Administrator shall promptly provide copies of all challenges to
3 calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the
4 Administrator's determination the challenges.

5 **7.7. Objections to Settlement**

6 7.7.1. Only Participating Class Members may object to the class action components of
7 the Settlement and/or this Agreement, including contesting the fairness of the
8 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
9 Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

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

17 7.7.3. Non-Participating Class Members have no right to object to any of the class action
18 components of the Settlement.

19 **7.8. Administrator Duties.** The Administrator has a duty to perform or observe all tasks to be
20 performed or observed by the Administrator contained in this Agreement or otherwise.

21 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will maintain
22 and use an internet website to post information of interest to Class Members including
23 the date, time and location for the Final Approval Hearing and copies of the Settlement
24 Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class
25 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment,
26 Class Counsel Litigation Expenses Payment and Class Representative Service Payment,
27 the Final Approval and the Judgment. The Administrator will also maintain and monitor
28 an email address and a toll-free telephone number to receive Class Member calls and

1 emails.

2 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
3 promptly review on a rolling basis Requests for Exclusion to ascertain their validity.
4 Not later than 5 days after the expiration of the deadline for submitting Requests for
5 Exclusion, the Administrator shall email a list to Defense Counsel containing (a) the
6 names and other identifying information of Class Members who have timely submitted
7 valid Requests for Exclusion (“**Exclusion List**”); (b) the names and other identifying
8 information of Class Members who have submitted invalid Requests for Exclusion; and
9 (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or
10 invalid).

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

20 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to
21 address and make final decisions consistent with the terms of this Agreement on all
22 Class Member challenges over the calculation of Workweeks and/or Pay Periods. The
23 Administrator’s decision shall be final and not appealable or otherwise susceptible to
24 challenge.

25 7.8.5. Administrator’s Declaration. Before the date by which Plaintiff is required to file
26 the Motion for Final Approval of the Settlement, the Administrator will provide to Class
27 Counsel and Defense Counsel, a declaration suitable for filing in Court attesting to its
28 due diligence and compliance with all of its obligations under this Agreement, including,

1 but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered,
2 the re-mailing of Class Notices, attempts to locate Class Members, the total number of
3 Requests for Exclusion from Settlement it received (both valid or invalid), the number
4 of written objections and attach the Exclusion List. The Administrator will supplement
5 its declaration as needed or requested by the Parties and/or the Court. Class Counsel is
6 responsible for filing the Administrator's declaration(s) in Court.

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

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

16 Based on its records, Defendant estimates that, as of the date of Mediation, (1) there were
17 838 Class Members and 28,742 Total Workweeks during the Class Period and (2) there were 609
18 Aggrieved Employees who worked 15,587 Pay Periods during the PAGA Period.

19 8.1 Increase in Workweeks. The Settlement is based on the assumption that were 28,742
20 Workweeks during the period from December 3, 2020, through September 19, 2024. In the event
21 the number of Workweeks during the Class Period increases by more than 10%, or an additional
22 2,874 Workweeks, then the Gross Settlement Amount shall be increased proportionally by the
23 Workweeks in excess of 31,616 Workweeks. The Workweek value shall be calculated by
24 dividing the Settlement amount (\$875,000) by 28,742, which amounts to a Workweek value of
25 \$30.44. Thus, for example, if there are 32,000 Workweeks during the Class Period, the Gross
26 Settlement Amount shall be increased by \$11,688.96 ((32,000 Workweeks – 31,616 Workweeks)
27 x \$30.44 per Workweek).

1 **9. DEFENDANT’S RIGHT TO WITHDRAW**

2 9.1 If the number of valid Requests for Exclusion identified in the Exclusion List exceeds ten
3 percent (10%) of all Class Members, Defendant may, but is not obligated, elect to withdraw from
4 the Settlement. The Parties agree that, if Defendant withdraw, the Settlement shall be void ab
5 initio, have no force or effect whatsoever, and that neither Party will have any further obligation
6 to perform under this Agreement; provided, however, Defendant will remain responsible for
7 paying all Settlement Administration Expenses incurred to that point. Defendant must notify
8 Class Counsel and the Court of its election to withdraw not later than seven (7) days after the
9 Administrator sends the final Exclusion List to Defense Counsel. Late elections will have no
10 effect.

11 **10. MOTION FOR FINAL APPROVAL**

12 No later than 16 court days before the calendared Final Approval Hearing, Plaintiff will
13 file in Court, a motion for final approval of the Settlement that includes a request for approval of
14 the PAGA settlement under Labor Code section 2699, subd. (1), a Proposed Final Approval Order
15 and a proposed Judgment (collectively “**Motion for Final Approval**”). Plaintiff shall provide
16 drafts of these documents to Defense Counsel prior to filing the Motion for Final Approval. Class
17 Counsel and Defense Counsel will expeditiously meet and confer, and in good faith, to resolve
18 any disagreements concerning the Motion for Final Approval.

19 10.1. Response to Objections. Each Party retains the right to respond to any objection raised
20 by a Participating Class Member, including the right to file responsive documents in Court no
21 later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or
22 accepted by the Court.

23 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
24 Approval on any material change to the Settlement (including, but not limited to, the scope of
25 release to be granted by Class Members), the Parties will expeditiously work together in good
26 faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final
27 Approval. The Court’s decision to award less than the amounts requested for the Class
28 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation

1 Expenses Payment, and Administrator Expenses Payment shall not constitute a material
2 modification to the Agreement within the meaning of this paragraph.

3 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the
4 Court will retain jurisdiction over the Parties, Actions, and the Settlement solely for purposes of
5 (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters,
6 and (iii) addressing such post-Judgment matters as permitted by law.

7 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
8 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class
9 Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
10 respective counsel, and all Participating Class Members who did not object to the Settlement as
11 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
12 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
13 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver
14 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
15 Parties' obligations to perform under this Agreement will be suspended until such time as the
16 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
17 the amount of the Net Settlement Amount.

18 10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
19 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material
20 modification of this Agreement (including, but not limited to, the scope of release to be granted
21 by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
22 expeditiously work together in good faith to address the appellate court's concerns and to obtain
23 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
24 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
25 the Court's award of the Class Representative Service Payment or any payments to Class Counsel
26 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
27 as long as the Gross Settlement Amount remains unchanged.

28

1 **11. AMENDED JUDGMENT**

2 11.1 If any amended judgment is required under the Code of Civil Procedure section 384, the
3 Parties will work together in good faith to jointly submit a proposed amended judgment.

4 **12. ADDITIONAL PROVISIONS**

5 12.1. No Admission of Liability, Class Certification or Representative Manageability for Other
6 Purposes. This Agreement represents a compromise and settlement of highly disputed claims.
7 Nothing in this Agreement is intended or should be construed as an admission by Defendant that
8 any of the allegations in the Operative Complaint have merit or that Defendant has any liability
9 for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that
10 Defendant’s defenses in the Actions have merit. The Parties agree that class certification and
11 representative treatment is for purposes of this Settlement only. If, for any reason the Court does
12 not grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right
13 to contest certification of any class for any reasons, and Defendant reserves all available defenses
14 to the claims in the Actions, and Plaintiff reserves the right to move for class certification on any
15 grounds available and to contest Defendant’s defenses. The Settlement, this Agreement and
16 Parties’ willingness to settle the Actions will have no bearing on, and will not be admissible in
17 connection with, any litigation (except for proceedings to enforce or effectuate the Settlement
18 and this Agreement).

19 12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and
20 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement
21 is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit
22 another person to disclose, disseminate or publicize, any of the terms of the Agreement directly
23 or indirectly, specifically or generally, to any person, corporation, association, government
24 agency, or other entity except: (1) to the Parties’ attorneys, accountants, or spouses, all of whom
25 will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the
26 extent necessary to report income to appropriate taxing authorities; (4) in response to a court
27 order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
28 government agency. Each Party agrees to immediately notify each other Party of any judicial or

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

8 12.3. No Solicitation. The Parties separately agree that they and their respective counsel and
9 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal
10 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s
11 ability to communicate with Class Members in accordance with Class Counsel’s ethical
12 obligations owed to Class Members.

13 12.4. Effective Date Of Defendant’s Obligations Under This Agreement. Defendant’s
14 obligations under this Agreement will become final and effective only upon the occurrence of
15 the Effective Date. In the event that any of the conditions specified in this Agreement are not
16 satisfied, or in the event that this Settlement does not obtain preliminary or final approval of the
17 Court for any reason, all matters covered by this Agreement will be null and void. In such event,
18 neither this Agreement, nor any negotiations leading to this Settlement, will be used or construed
19 by or against any Party as a determination, admission, or concession of any issue of law or fact
20 in the litigation; and the Parties do not waive, and instead expressly reserve, their respective
21 rights regarding the prosecution and defense of the Actions, including all available defenses and
22 affirmative defenses, and to challenge any claim, as if this Agreement never existed.

23 12.5. Nullification. If: (1) the Court should for any reason fail to enter the Final Approval Order
24 and Judgment; or (2) the Court’s Final Approval Order and Judgment is reversed or modified as
25 to any material term as defined above, or declared or rendered void as to any material term as
26 defined above, then (a) the Agreement shall become null and void; and (b) the Parties will revert
27 to their respective positions immediately prior to reaching the settlement.

28 12.6. Invalidation. Invalidation of any material term of this Settlement Agreement will

1 invalidate this Agreement in its entirety unless the Parties subsequently agree in writing that the
2 remaining provisions will remain in full force and effect.

3 12.7. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
4 together with its attached exhibits shall constitute the entire agreement between the Parties
5 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or
6 inducements made to or by any Party.

7 12.8. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
8 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate
9 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
10 its terms, and to execute any other documents reasonably required to effectuate the terms of this
11 Agreement including any amendments to this Agreement.

12 12.9. Cooperation. The Parties and their counsel will cooperate with each other and use their
13 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
14 Settlement Agreement, submitting supplemental evidence and supplementing points and
15 authorities as requested by the Court. In the event the Parties are unable to agree upon the form
16 or content of any document necessary to implement the Settlement, or on any modification of the
17 Agreement that may become necessary to implement the Settlement, the Parties will seek the
18 assistance of mediator Marc Feder and/or the Court for resolution.

19 12.10. No Prior Assignments. The Parties separately represent and warrant that they have not
20 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
21 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
22 action, or right released and discharged by the Party in this Settlement.

23 12.11. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are
24 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
25 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR
26 Part 10, as amended) or otherwise.

27 12.12. Modification of Agreement. This Agreement, and all parts of it, may be amended,
28 modified, changed, or waived only by an express written instrument signed by all Parties or their

1 representatives, and approved by the Court.

2 12.13. Agreement Binding on Successors. This Agreement will be binding upon, and inure to
3 the benefit of, the successors of each of the Parties.

4 12.14. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
5 governed by and interpreted according to the internal laws of the State of California, without
6 regard to conflict of law principles.

7 12.15. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
8 this Agreement. This Agreement will not be construed against any Party on the basis that the
9 Party was the drafter or participated in the drafting

10 12.16. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
11 during the Actions and in this Agreement relating to the confidentiality of information shall
12 survive the execution of this Agreement. In addition, other than information necessary to secure
13 Court approval of this settlement, Plaintiff and Class Counsel agree that the terms of this
14 Settlement Agreement (including, but not limited to, the Gross Settlement Amount), the
15 negotiations leading to the execution of this Settlement Agreement, the MOU, and the Settlement
16 Agreement itself, shall not be discussed with or publicized or promoted to the media (including,
17 without limitation, legal periodicals and publications such as “Jury Verdicts,” disclosure of the
18 Settlement Agreement on any web site of Class Counsel or any other website, or on any blogs,
19 articles, or on any social media platforms or channels), or the public at large, without the advance
20 written consent of Defendant. The Parties intend this Paragraph 11.16 to prohibit Plaintiff and
21 Class Counsel from discussing, answering questions about, promoting or publicizing the
22 Settlement Agreement, its terms, or the negotiations leading to the Settlement Agreement with
23 anyone other than the Court or those individuals necessary to effectuate the terms of the
24 Agreement. Notwithstanding the foregoing, Plaintiff and Class Counsel (1) may tell the public
25 in general only that certain claims “have been resolved by the Parties;” and (2) may disclose the
26 terms of the Settlement Agreement (a) in appropriate filings with the Court in this case; (b) where
27 required by law (e.g., income tax returns); and (c) to accountants or other tax professionals for
28 the purpose of preparing tax returns. In addition, Class Counsel may respond to questions

1 received from, and discuss any aspect of this Agreement with Class Members. Nothing herein
2 shall prevent Class Counsel from referring to the Actions in any declaration before the courts
3 relating to the adequacy or in future applications by Class Counsel for approval of attorneys'
4 fees.

5 12.17. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal.
6 Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by
7 Defendant in connection with the mediation, other settlement negotiations, or in connection with
8 the Settlement, may be used only with respect to this Settlement, and no other purpose, and may
9 not be used in any way that violates any existing contractual agreement, statute, or rule of court.
10 Not later than 90 days after the date when the Court discharges the Administrator's obligation to
11 provide a Declaration confirming the final payout of all Settlement funds, Plaintiff shall destroy,
12 all paper and electronic versions of Class Data received from Defendant unless, prior to the
13 Court's discharge of the Administrator's obligation, Defendant make a written request to Class
14 Counsel for the return, rather than the destructions, of Class Data.

15 12.18. 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 12.19. 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 12.20. Execution in Counterparts. This Agreement may be executed in one or more counterparts
22 by facsimile, electronically (i.e., DocuSign, AdobeSign, or similar), or email which for purposes
23 of this Agreement shall be accepted as an original. All executed counterparts and each of them
24 will be deemed to be one and the same instrument if counsel for the Parties will exchange between
25 himself signed counterparts. Any executed counterpart will be admissible in evidence to prove
26 the existence and contents of this Agreement.

27 12.21. 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 12.22. 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 Defense Counsel and
7 Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to
8 proceed as if such invalid, illegal, or unenforceable provision had never been included in this
9 Agreement.

10 12.23. Attorneys' Fees and Costs. Except as otherwise provided in this Agreement, the Parties
11 will bear responsibility for their own attorneys' fees and costs, taxable or otherwise, incurred by
12 them or arising out of the Action and will not seek reimbursement thereof from any Party to this
13 Settlement Agreement. In the event of a proven breach of this Agreement, the breaching party
14 will be required to pay the prevailing party's reasonable attorneys' fees and costs incurred in
15 enforcing this Agreement.

16 [SIGNATURE PAGE TO FOLLOW]
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IT IS SO AGREED:

Irene Avalos Diaz 03/03/2026

Plaintiff, Irene Avalos

For Defendant, NewBasis LLC

AGREED AS TO FORM ONLY:

David Bibiyan 03/17/2026

David D. Bibiyan
Vedang J. Patel
Megan R. Lazar
Counsel for Plaintiff

Edson K. McClellan
Peter Hering
Jonas Trevethan
Counsel for Defendant NewBasis LLC

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IT IS SO AGREED:

Irene Avalos Diaz

03/03/2026

Plaintiff, Irene Avalos

James M. Williamson
03/16/2026

JAMES M WILLIAMSON
For Defendant, NewBasis LLC

AGREED AS TO FORM ONLY:

David D. Bibiyan
Vedang J. Patel
Megan R. Lazar
Counsel for Plaintiff

Edson K. McClellan

Edson K. McClellan
Peter Hering
Jonas Trevethan
Counsel for Defendant NewBasis LLC