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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF STANISLAUS

MICHAEL ANDREW CASTRO, an
individual and on behalf of all others
similarly situated,

Plaintiff,

v.

TITAN NEWMAN, INC., a California
corporation; STEVEN MUSCARELLA, an
individual; and DOES 1 through 100,
inclusive

Defendants.

CASE NO.: CV-24-002332

Related to Case No.: CV-24 004265

[Assigned for all purposes to the Hon.
Sonny S. Sandhu, in Dept. 24]

**CLASS AND PAGA SETTLEMENT
AGREEMENT**

Action Filed: March 26, 2024

Trial Date: None Set

1 This Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement” or
2 “Settlement Agreement”) is made by and between Plaintiff MICHAEL ANDREW CASTRO
3 (“Plaintiff”) and Defendants TITAN NEWMAN, INC. and STEVEN MUSCARELLA
4 (“Defendants”). The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or
5 individually as “Party.”

6 **1. DEFINITIONS**

7 1.1. “Actions” means the Plaintiff’s wage and hour class and PAGA representative actions
8 against Defendants, captioned: *Castro v. Titan Newman, Inc., et al.*, Case No. CV-24-002332,
9 initiated on March 26, 2024, and pending in Superior Court of the State of California, County of
10 Stanislaus (“Class Action”); and separately filed representative action under PAGA captioned
11 *Castro v. Titan Newman, Inc., et al.*, Case No. CV-24-004265, initiated on May 30, 2024, and
12 pending in Superior Court of the State of California, County of Stanislaus (“PAGA Action”).

13 1.2. “Administrator” means Apex Class Action Administration, 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 Employees” means a person employed by Defendants in California and
20 classified as a non-exempt, hourly-paid employee who worked for Defendants during the PAGA
21 Period.

22 1.5. “Class” or “Settlement Class” means all persons employed by Defendants in California
23 and classified as a non-exempt, hourly-paid employee who worked for Defendants during the
24 Class Period.

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

27 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean
28 the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and

expenses, respectively, incurred to prosecute the Action.

1.8. “Class Data” means Class Member identifying information in Defendant’s custody, possession, or control, including the Class Member’s (1) name; (2) last known address(es); (3) last known telephone number(s); (4) last known Social Security Number(s); and (5) the dates of employment (i.e., hire dates, and, if applicable, re-hire date(s) and/or separation date(s)).

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

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

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

1.12. “Class Period” means the period from May 5, 2020 through February 9, 2025.

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

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

1.15. “Court” means the Superior Court of California, County of Stanislaus.

1.16. “Defendants” means named defendants Titan Newman, Inc. and Steven Muscarella.

1.17. “Defense Counsel” means Michael H. Brody and Chancellor D. Nobles of Light Gabler, LLP.

1.18. “Effective Date” means the later of: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the

1 Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members
2 objects to the Settlement, the day after the deadline for filing a notice of appeal from the
3 Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court
4 affirms the Judgment and issues a remittitur.

5 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.

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

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

10 1.22. “Gross Settlement Amount” means \$365,000.00 (Three Hundred and Sixty Five
11 Thousand Dollars and Zero Cents) which is the total amount Defendants agree to pay under the
12 Settlement, except as provided in Paragraph 8.1 below and any and all employer payroll taxes
13 owed on the Wage Portions of the Individual Class Payments. The Gross Settlement Amount
14 will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA
15 Payment, Class Counsel Fees Payment, Class Counsel Expenses Payment, Class Representative
16 Service Payment, and Administrator’s Expenses.

17 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the
18 Net Settlement Amount calculated according to the number of Workweeks worked during the
19 Class Period.

20 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of
21 the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA
22 Period.

23 1.25. “Judgment” means the judgment entered by the Court based upon Final Approval.

24 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency
25 entitled, under Labor Code section 2699, subd. (i).

26 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA
27 under Labor Code section 2699, subd. (i).

28 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following

1 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
2 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
3 Litigation Expenses Payment, and Administration Expenses Payment. The remainder is to be
4 paid to Participating Class Members as Individual Class Payments.

5 1.29. “Non-Participating Class Member” means any Class Member who opts out of the
6 Settlement by sending the Administrator a valid and timely Request for Exclusion.

7 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee was
8 employed by Defendants for at least one day during the PAGA Period, based on hire dates, re-
9 hire dates (as applicable), and termination dates (as applicable).

10 1.31. “PAGA Period” means the period from March 26, 2023 through the end of the Class
11 Period.

12 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

13 1.33. “PAGA Notice” means Plaintiff’s March 26, 2024, letter to Defendants and the LWDA,
14 providing notice pursuant to Labor Code section 2699.3 subd. (a).

15 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the
16 Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$5,000.00) and 75% to
17 the LWDA (\$15,000.00) in settlement of PAGA claims.

18 1.35. “Participating Class Member” means a Class Member who does not submit a valid and
19 timely Request for Exclusion from the Settlement.

20 1.36. “Plaintiff” means MICHAEL ANDREW CASTRO the named Plaintiff in the Action.

21 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the
22 Settlement.

23 1.38. “Preliminary Approval Order” means the proposed Order granting Preliminary Approval
24 and Approval of PAGA Settlement.

25 1.39. “Released Class Claims” means the claims being released as described in Paragraph 5.2
26 below.

27 1.40. “Released PAGA Claims” means the claims being released as described in Paragraph 5.4
28 below.

1 1.41. “Released Parties” means: Defendants, and each of their former, present and future
2 owners, parents, and subsidiaries, and all of their current, former, and future officers, directors,
3 members, managers, employees, consultants, partners, shareholders, joint venturers, agents,
4 predecessors, successors, assigns, accountants, insurers, reinsurers, and/or legal representatives.

5 1.42. “Request for Exclusion” means a Class Member’s submission of a written request to be
6 excluded from the Class Settlement signed by the Class Member.

7 1.43. “Response Deadline” means forty-five (45) days after the Administrator mails Notice to
8 Class Members and Aggrieved Employees and shall be the last date on which Class Members
9 may: (a) mail Requests for Exclusion from the Settlement, or (b) mail his or her Objection to the
10 Settlement. Class Members to whom Notice Packets are resent after having been returned
11 undeliverable to the Administrator shall have an additional 15 days beyond the Response
12 Deadline has expired.

13 1.44. “Settlement” means the disposition of the Action effected by this Agreement and the
14 Judgment.

15 1.45. “Workweek” means any week during which a Class Member worked for Defendants, for
16 at least one day during the Class Period, based on hire dates, re-hire dates (as applicable), and
17 termination dates (as applicable).

18 **2. RECITALS**

19 2.1. On March 26, 2024, Plaintiff commenced this Action by filing a Class Action Complaint
20 against Defendants alleging causes of action for: (1) failure to pay overtime wages, (2) failure to
21 pay minimum wages, (3) failure to provide compliant meal and rest periods, (4) failure to pay
22 meal and rest break premiums, (5) failure to pay all due wages upon termination, (6) failure to
23 provide accurate and timely wage statements, (7) failure to indemnify employees, and (8)
24 engaging in unfair competition (“Class Action”).

25 2.2. On March 26, 2024, Plaintiff submitted to the LWDA and served on Defendants a notice
26 under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the LWDA to
27 recover civil penalties on behalf of Aggrieved Employees for various Labor Code violations
28 (“PAGA Notice”).

2.3. On May 30, 2024, after sixty-five (65) days had passed without any action by the LWDA with respect to the Labor Code violations alleged in the PAGA Notice, Plaintiff filed a separate representative action under PAGA against Defendants for the Labor Code violations set out in the PAGA Notice (“PAGA Action”).

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

2.5. Prior to the mediation, Plaintiff obtained, through informal discovery: (a) all internal policy documents related to Plaintiff’s claims; (b) Plaintiff’s personnel file; and (c) a sampling of time and wage records for the putative class members.

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

2.7. On January 9, 2025, the Parties participated in an all-day mediation presided over by Marc Feder, Esquire. The mediation was successful, and the Parties agreed to resolve all class and PAGA claims in the Action. As part of this Agreement, the Parties agree to stipulate to Plaintiff’s filing of a First Amended Complaint in the Class Action, adding all allegations brought in the PAGA Action, and request for dismissal without prejudice of the PAGA Action, thereby effectively consolidating the two actions for purposes of Settlement (hereinafter, the “Action”). The First Amended Complaint is the operative complaint in the action (“Operative Complaint”).

2.8. The Court has not granted class certification.

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

3. MONETARY TERMS

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8.1 below, Defendants promise to pay \$365,000.00 as the Gross Settlement Amount, unless increased pursuant to Paragraph 8.1 of this Agreement, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated

1 in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement
2 Amount without asking or requiring Participating Class Members or Aggrieved Employees to
3 submit any claim as a condition of payment. None of the Gross Settlement Amount will revert
4 to Defendants.

5 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct
6 the following payments from the Gross Settlement Amount, in the amounts specified by the Court
7 in the Final Approval:

8 3.2.1. To Plaintiff: Class Representative Service Payment to Plaintiff Michael Andrew
9 Castro of not more than \$7,500.00, in addition to any Individual Class Payment and any
10 Individual PAGA Payment Plaintiff is entitled to receive as a Participating Class
11 Member. Defendants will not oppose Plaintiff's request for a Class Representative
12 Service Payment that does not exceed this amount. As part of the motion for Class
13 Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek
14 Court approval for any Class Service Payment prior to the Final Approval Hearing. If
15 the Court approves a Class Representative Service Payment less than the amount
16 requested, the Administrator will retain the remainder in the Net Settlement Amount
17 and shall be distributed to Participating Class Members as part of their Individual
18 Settlement Payment. The Administrator will pay the Class Representative Service
19 Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for
20 any applicable employee taxes owed on the Class Representative Service Payment.

21 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than thirty-five
22 percent (35%) of the Gross Settlement Amount, which, unless escalated pursuant to
23 Paragraph 8.1 of this Agreement, is currently estimated to be \$127,750.00 and a Class
24 Counsel Litigation Expenses Payment of not more than \$30,000.00. Defendants will
25 not oppose requests for these payments provided that do not exceed these amounts.
26 Plaintiff and/or Class Counsel will endeavor to file a motion for Class Counsel Fees
27 Payment and Class Litigation Expenses Payment prior to the Final Approval Hearing.
28 If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation

Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assume full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments. There will be no additional charge of any kind to either the Settlement Class Members or request for additional consideration from Defendants for such work unless, Defendants materially breach this Agreement, including any term regarding funding, and further efforts are necessary from Class Counsel to remedy said breach, including, without limitation, moving the Court to enforce the Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

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

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

3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax

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

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

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

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

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

4. SETTLEMENT FUNDING AND PAYMENTS

4.1. Class Workweeks and PAGA Pay Periods. Based on a review of its records to date,

Defendants estimate there are 68 Class Members who collectively worked a total of 5,850 Workweeks, and 34 Aggrieved Employees who worked a total of 1,529 PAGA Pay Periods.

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

4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator no later than fourteen (14) days after the Effective Date.

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

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

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. The
3 Administrator will cancel all checks not cashed by the void date. The Administrator
4 will send checks for Individual Settlement Payments to all Participating Class Members
5 (including those for whom Class Notice was returned undelivered). The Administrator
6 will send checks for Individual PAGA Payments to all Aggrieved Employees including
7 Non-Participating Class Members who qualify as Aggrieved Employees (including
8 those for whom Class Notice was returned undelivered). The Administrator may send
9 Participating Class Members a single check combining the Individual Class Payment
10 and the Individual PAGA Payment in each installment. Before mailing any checks, the
11 Settlement Administrator must update the recipients' mailing addresses using the
12 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 Legal Aid at Work, 180
25 Montgomery St., Suite 600, San Francisco, California 94104 for use in Stanislaus
26 County.

27 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall
28 not obligate Defendants to confer any additional benefits or make any additional

1 payments to Class Members (such as 401(k) contributions or bonuses) beyond those
2 specified in this Agreement.

3 **5. RELEASE OF CLAIMS**

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

8 5.1. Plaintiff's Release. Plaintiff and his respective former and present spouses,
9 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
10 and discharge Released Parties from all claims, transactions, or occurrences, including, but not
11 limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts
12 contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could
13 have been, alleged based on facts contained in the Operative Complaint and Plaintiff's PAGA
14 Notice. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to
15 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
16 benefits, social security benefits, workers' compensation benefits that arose at any time, or based
17 on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts
18 or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to
19 be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all
20 respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

21 5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
22 purposes of Plaintiff's Release only, Plaintiff expressly waives and relinquish the
23 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,
24 which reads:

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

1 5.2. Release of Class Claims: For the duration of the Class Period, all Participating Class
2 Members, on behalf of themselves and their respective former and present representatives,
3 agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all
4 claims that were alleged, or reasonably could have been alleged, based on the facts stated in the
5 Operative Complaint including all claims for: (1) failure to pay overtime wages, (2) failure to pay
6 minimum wages, (3) failure to provide compliant meal periods or pay related premiums, (4)
7 failure to provide compliant rest breaks or pay related premiums, (5) failure to pay all due wages
8 upon termination, (6) failure to provide accurate and timely wage statements, (7) failure to timely
9 pay wages, (8) failure to indemnify employees for business expenses incurred, (9) failure to pay
10 interest on deposits, (10) failure to provide employees with compensation at their final rate of
11 pay for unused vested vacation days, and (11) engaging in unfair competition.

12 5.3. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not
13 release any other claims, including claims for vested benefits, wrongful termination, violation of
14 the Fair Employment and Housing Act, unemployment insurance, disability, social security,
15 workers' compensation, or claims based on facts occurring outside the Class Period.

16 5.4. Release of PAGA Claims: For the duration of the PAGA Period, all Aggrieved
17 Employees are deemed to release, on behalf of themselves and their respective former and present
18 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released
19 Parties from all claims for PAGA penalties that were alleged, or reasonably could have been
20 alleged, based on the facts stated in the Operative Complaint and the PAGA Notice.

21 **6. MOTION FOR PRELIMINARY APPROVAL**

22 The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion
23 for Preliminary Approval") that complies with the Court's current checklist for Preliminary
24 Approvals.

25 6.1. Defendants' Declaration in Support of Preliminary Approval. Within 7 days of full
26 execution of this Agreement, Defendants will prepare and deliver to Class Counsel a signed
27 declaration from Defendants and Defense Counsel disclosing all facts relevant to any actual or
28 potential conflicts of interest with the Administrator and Cy Pres Recipient.

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

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

26 6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
27 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
28 Defense Counsel will expeditiously work together on behalf of the Parties by meeting and

1 conferring, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary
2 Approval or conditions Preliminary Approval on any material change to this Agreement, Class
3 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by
4 meeting and conferring, and in good faith, to modify the Agreement and otherwise satisfy the
5 Court's concerns.

6 **7. SETTLEMENT ADMINISTRATION**

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

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

16 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
17 the requirements of a Qualified Settlement Fund ("QSF") under U.S. Treasury Regulation section
18 468B-1.

19 7.4. Notice to Class Members

20 7.4.1. No later than three (3) business days after receipt of the Class Data, the
21 Administrator shall notify Class Counsel that the list has been received and state the
22 number of Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the
23 Class Data.

24 7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14
25 days after receiving the Class Data, the Administrator will send to all Class Members
26 identified in the Class Data, via first-class United States Postal Service ("USPS") mail,
27 the Class Notice with Spanish translation, substantially in the form attached to this
28 Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the

dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

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

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

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

7.5. Requests for Exclusion (Opt-Outs).

7.5.1. Class Members who wish to exclude themselves from (opt-out of) the Class Settlement must send the Administrator, by mail, a signed written Request for Exclusion

1 not later than 45 days after the Administrator mails the Class Notice (plus an additional
2 15 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion
3 is a letter from a Class Member or his/her representative, signed by the Class Member,
4 that reasonably communicates the Class Member's election to be excluded from the
5 Settlement and includes the Class Member's name, signature, the last four digits of their
6 Social Security Number, address, and email address or telephone number. To be valid,
7 a Request for Exclusion must be timely postmarked by the Response Deadline.

8 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it
9 fails to contain all the information specified in the Class Notice. The Administrator
10 shall accept any Request for Exclusion as valid if the Administrator can reasonably
11 ascertain the identity of the person as a Class Member and the Class Member's desire
12 to be excluded. The Administrator's determination shall be final and not appealable or
13 otherwise susceptible to challenge. If the Administrator has reason to question the
14 authenticity of a Request for Exclusion, the Administrator may demand additional proof
15 of the Class Member's identity. The Administrator's determination of authenticity shall
16 be final and not appealable or otherwise susceptible to challenge.

17 7.5.3. Every Class Member who does not submit a timely and valid Request for
18 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled
19 to all benefits and bound by all terms and conditions of the Settlement, including the
20 Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement,
21 regardless whether the Participating Class Member actually receives the Class Notice or
22 objects to the Settlement.

23 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a
24 Non-Participating Class Member and shall not receive an Individual Class Payment or
25 have the right to object to the class action components of the Settlement. Because future
26 PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-
27 Participating Class Members who are Aggrieved Employees are deemed to release the
28 claims identified in Paragraph 5.4 of this Agreement and are eligible for an Individual

1 PAGA Payment.

2 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after
3 the Administrator mails the Class Notice (plus an additional 15 days for Class Members whose
4 Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods
5 (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge
6 the allocation by communicating with the Administrator via mail. The Administrator must
7 encourage the challenging Class Member to submit supporting documentation. In the absence
8 of any contrary documentation, the Administrator is entitled to presume that the Workweeks
9 contained in the Class Notice are correct so long as they are consistent with the Class Data. The
10 Administrator's determination of each Class Member's allocation of Workweeks and/or Pay
11 Periods shall be final and not appealable or otherwise susceptible to challenge. The
12 Administrator shall promptly provide copies of all challenges to calculation of Workweeks
13 and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination
14 the challenges.

15 7.7. Objections to Settlement

16 7.7.1. Only Participating Class Members may object to the class action components of
17 the Settlement and/or this Agreement, including contesting the fairness of the
18 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
19 Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

20 7.7.2. Participating Class Members may send written objections to the Administrator, by
21 mail. In the alternative, Participating Class Members may appear in Court (or hire an
22 attorney to appear in Court) to present verbal objections at the Final Approval Hearing.
23 A Participating Class Member who elects to send a written objection to the
24 Administrator must do so not later than 45 days after the Administrator's mailing of the
25 Class Notice (plus an additional 15 days for Class Members whose Class Notice was re-
26 mailed).

27 7.7.3. Non-Participating Class Members have no right to object to any of the class action
28 components of the Settlement.

1 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
2 performed or observed by the Administrator contained in this Agreement or otherwise.

3 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will maintain
4 and use an internet website to post information of interest to Class Members including
5 the date, time and location for the Final Approval Hearing and copies of the Settlement
6 Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class
7 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment,
8 Class Counsel Litigation Expenses Payment and Class Representative Service Payment,
9 the Final Approval and the Judgment. The Administrator will also maintain and monitor
10 an email address and a toll-free telephone number to receive Class Member calls and
11 emails.

12 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
13 promptly review on a rolling basis Requests for Exclusion to ascertain their validity.
14 Not later than 5 days after the expiration of the deadline for submitting Requests for
15 Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel
16 containing (a) the names and other identifying information of Class Members who have
17 timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and
18 other identifying information of Class Members who have submitted invalid Requests
19 for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted
20 (whether valid or invalid).

21 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written
22 reports to Class Counsel and Defense Counsel that, among other things, tally the number
23 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for
24 Exclusion (whether valid or invalid) received, objections received, challenges to
25 Workweeks and/or Pay Periods received and/or resolved, and checks mailed for
26 Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The
27 Weekly Reports must include provide the Administrator’s assessment of the validity of
28 Requests for Exclusion and attach copies of all Requests for Exclusion and objections

received.

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

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

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

8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE

Based on its records, Defendants estimate that, as of the date of this Settlement Agreement, (1) there are 68 Class Members and 5,850 Total Workweeks during the Class Period and (2) there are 34 Aggrieved Employees who worked 1,529 Pay Periods during the PAGA

Period.

8.1. Increase in Workweeks. Defendants represent that there are no more than 5,850 Workweeks worked during the Class Period. In the event the number of Workweeks worked increases by more than 5%, or an additional 292 Workweeks, then the Gross Settlement shall be increased proportionally by the Workweeks in excess of 6,142 multiplied by the Workweek Value. The Workweek Value shall be calculated by dividing the originally agreed-upon Gross Settlement Amount (\$365,000.00) by 5,850, which amounts to a Workweek value of \$62.39. Thus, for example, should there be 8,000 Workweeks worked by Class Members during the Class Period, then the Gross Settlement Amount shall be increased by \$115,920 ([8,000 Workweeks – 6,142 Workweeks] x \$62.39 per Workweek.)

9. MOTION FOR FINAL APPROVAL

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

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

9.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service 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 9.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the
4 Court will retain jurisdiction over the Parties, Action, 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 are permitted by law.

7 9.4. 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 9.5. 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.

1 **10. AMENDED JUDGMENT**

2 10.1 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 **11. ADDITIONAL PROVISIONS**

5 11.1. 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 Defendants
8 that any of the allegations in the Operative Complaint have merit or that Defendants has any
9 liability for any claims asserted; nor should it be intended or construed as an admission by
10 Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class
11 certification and representative treatment is for purposes of this Settlement only. If, for any
12 reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants
13 reserve the right to contest certification of any class for any reasons, and Defendants reserve all
14 available defenses to the claims in the Action, and Plaintiff reserves the right to move for class
15 certification on any grounds available and to contest Defendants' defenses. The Settlement, this
16 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be
17 admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
18 Settlement and this Agreement).

19 11.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendants 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,
2 Defendants and Defense Counsel separately agree not to, directly or indirectly, initiate any
3 conversation or other communication, before the filing of the Motion for Preliminary Approval,
4 any with third party regarding this Agreement or the matters giving rise to this Agreement except
5 to respond only that “the matter was resolved,” or words to that effect. This paragraph does not
6 restrict Class Counsel’s communications with Class Members in accordance with Class
7 Counsel’s ethical obligations owed to Class Members.

8 11.3. 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 11.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
14 together with its attached exhibits shall constitute the entire agreement between the Parties
15 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or
16 inducements made to or by any Party.

17 11.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
18 represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate
19 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
20 its terms, and to execute any other documents reasonably required to effectuate the terms of this
21 Agreement including any amendments to this Agreement.

22 11.6. Cooperation. The Parties and their counsel will cooperate with each other and use their
23 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
24 Settlement Agreement, submitting supplemental evidence and supplementing points and
25 authorities as requested by the Court. In the event the Parties are unable to agree upon the form
26 or content of any document necessary to implement the Settlement, or on any modification of the
27 Agreement that may become necessary to implement the Settlement, the Parties will seek the
28 assistance of a mediator and/or the Court for resolution.

1 11.7. No Prior Assignments. The Parties separately represent and warrant that they have not
2 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
3 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
4 action, or right released and discharged by the Party in this Settlement.

5 11.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense Counsel are
6 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
7 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR
8 Part 10, as amended) or otherwise.

9 11.9. Modification of Agreement. This Agreement, and all parts of it, may be amended,
10 modified, changed, or waived only by an express written instrument signed or agreed to by all
11 Parties or their representatives, and approved by the Court. Plaintiff and Defendants expressly
12 agree that should the Parties agree to amend, modify, change, or waive this Agreement, or any
13 part of it, Class Counsel and Defense Counsel are authorized to submit to the Court any
14 amendments of this Agreement, amended Agreements, or amendments to the Agreement, on
15 behalf of the Parties once fully executed, which includes, but is not limited to, authorization of
16 the use of signatures previously provided by the Parties.

17 11.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to
18 the benefit of, the successors of each of the Parties.

19 11.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
20 governed by and interpreted according to the internal laws of the State of California, without
21 regard to conflict of law principles.

22 11.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
23 this Agreement. This Agreement will not be construed against any Party on the basis that the
24 Party was the drafter or participated in the drafting

25 11.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
26 during Action and in this Agreement relating to the confidentiality of information shall survive
27 the execution of this Agreement

28 11.14. Use of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code

1 §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants
2 in connection with the mediation, other settlement negotiations, or in connection with the
3 Settlement, may be used only with respect to this Settlement, and no other purpose, and may not
4 be used in any way that violates any existing contractual agreement, statute, or rule of court.

5 11.15. Headings. The descriptive heading of any section or paragraph of this Agreement is
6 inserted for convenience of reference only and does not constitute a part of this Agreement.

7 11.16. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall
8 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
9 weekend or federal legal holiday, such date or deadline shall be on the first business day
10 thereafter.

11 11.17. Execution in Counterparts. This Agreement may be executed in one or more counterparts
12 by facsimile, electronically (i.e., DocuSign, AdobeSign, or similar), or email which for purposes
13 of this Agreement shall be accepted as an original. All executed counterparts and each of them
14 will be deemed to be one and the same instrument if counsel for the Parties will exchange between
15 themselves signed counterparts. Any executed counterpart will be admissible in evidence to
16 prove the existence and contents of this Agreement.

17 11.18. Stay of Litigation. The Parties agree that upon the execution of this Agreement the
18 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
19 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend
20 the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
21 process.

22 11.19. Severability. In the event that one or more of the provisions contained in this Agreement
23 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,
24 illegality, or unenforceability shall in no way effect any other provision if Defendants’ Counsel
25 and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing
26 to proceed as if such invalid, illegal, or unenforceable provision had never been included in this
27 Agreement.

28 **IT IS SO AGREED:**

1
2 *Michael Castro*

3 Plaintiff, MICHAEL ANDREW CASTRO

For Defendant, TITAN NEWMAN, INC.

4
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6 For Defendant, STEVEN MUSCARELLA

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8 **AGREED AS TO FORM ONLY:**

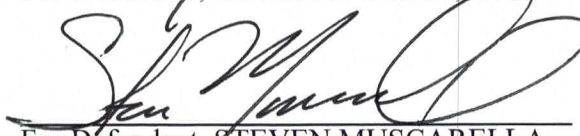
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11 DAVID D. BIBIYAN
VEDANG J. PATEL
12 Counsel for Plaintiff

MICHAEL H. BRODY
13 CHANCELLOR D. NOBLES
14 Counsel for Defendants
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Plaintiff, MICHAEL ANDREW CASTRO

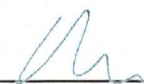

For Defendant, TITAN NEWMAN, INC.


For Defendant, STEVEN MUSCARELLA

AGREED AS TO FORM ONLY:

David Bibiyan

DAVID D. BIBIYAN
VEDANG J. PATEL
Counsel for Plaintiff



MICHAEL H. BRODY
CHANCELLOR D. NOBLES
Counsel for Defendants