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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

THOMAS JAMES RASMUSSEN, an
individual and on behalf of all others
similarly situated,

Plaintiff,

v.

OCEANGATE FITNESS, LLC. dba
CRUNCH FITNESS, a California Limited
Liability Company; and DOES 1 through
100, inclusive,

Defendant.

CASE NO.: 23STCV05889

[Assigned for all purposes to Hon. Carolyn
B. Kuhl in Dept. 12]

**CLASS AND PAGA SETTLEMENT
AGREEMENT**

Action Filed: March 16, 2023
Trial Date: None Set

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiff Thomas James Rasmussen and defendant Oceangate Fitness, LLC. The
3 Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

4 **1. DEFINITIONS**

5 1.1. “Action” means Plaintiff’s lawsuit alleging class claims against Defendant for: failure to
6 pay overtime and minimum wages; failure to provide meal breaks, rest breaks, or compensation
7 in lieu thereof; waiting time penalties; wage statement violations; failure to timely pay wages;
8 failure to indemnify; and unfair competition against Defendant, captioned *Thomas James*
9 *Rasmussen v. Oceangate Fitness, LLC. dba Crunch Fitness*, Case No. 23STCV05889, initiated
10 on March 16, 2023, and pending in Superior Court of the State of California, County of Los
11 Angeles.

12 1.2. “Administrator” means Apex Class Action Administration, the neutral entity the Parties
13 have agreed to appoint to administer the Settlement.

14 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid
15 from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance
16 with the Administrator’s “not to exceed” bid submitted to the Court in connection with
17 Preliminary Approval of the Settlement.

18 1.4. “Aggrieved Employee” means a person employed by Defendant in California and
19 classified as a non-exempt, hourly-paid employee who worked for Defendant during the PAGA
20 Period.

21 1.5. “Class” means all persons employed by Defendant in California and classified as a non-
22 exempt, hourly-paid employee who worked for Defendant during the Class Period.

23 1.6. “Class Counsel” means David D. Bibiyan, Vedang J. Patel, and Megan R. Lazar of
24 Bibiyan Law Group, P.C.

25 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean
26 the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
27 expenses, respectively, incurred to prosecute the Action.

28 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 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 March 16, 2019 through April 11, 2025.

1.13. "Class Representative" means Plaintiff who is seeking Court approval to serve as a class representative in the Action.

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

1.15. "Court" means the Superior Court of California, County of Los Angeles.

1.16. "Defendant" means named defendant Oceangate Fitness, LLC.

1.17. "Defense Counsel" means David G. Hoiles, Jr., Lauren R. Presser, and Phong L. Tran of Jackson Lewis. P.C.

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 Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members

1 or a third party objects to the Settlement, the day after the deadline for filing a notice of appeal
2 from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate
3 court affirms the Judgment without material modification and issues a remittitur.

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. "Gross Settlement Amount" means THREE HUNDRED THOUSAND DOLLARS AND
10 ZERO CENTS (\$300,000.00), which is the total amount Defendant agrees to pay under the
11 Settlement, except as provided in Paragraph 8.1 below and any and all employer payroll taxes
12 owed on the Wage Portion of the Individual Class Payment to be paid to each Participating Class
13 Member. The Gross Settlement Amount will be used to pay each Individual Class Payment, each
14 Individual PAGA Payment, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel
15 Expenses, Class Representative Service Payment, and Administrator's Expenses.

16 1.23. "Individual Class Payments" means the Participating Class Members' *pro rata* share of
17 the Net Settlement Amount calculated according to the number of Workweeks worked during
18 the Class Period.

19 1.24. "Individual PAGA Payments" means the Aggrieved Employees' *pro rata* share of 25%
20 of the PAGA Penalties calculated according to the number of Workweeks worked during the
21 PAGA Period.

22 1.25. "Judgment" means the judgment entered by the Court based upon Final Approval.

23 1.26. "LWDA" means the California Labor and Workforce Development Agency.

24 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA
25 under Labor Code section 2699, subd. (i).

26 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following
27 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
28 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel

1 Litigation Expenses Payment, and Administration Expenses Payment. The remainder is to be
2 paid to Participating Class Members as Individual Class Payments.

3 1.29. “Non-Participating Class Member” means any Class Member who opts out of the
4 Settlement by sending the Administrator a valid and timely Request for Exclusion. A Non-
5 Participating Class Member who is also an Aggrieved Employee will be bound by the release of
6 PAGA claims as described in Paragraph 5.3 below.

7 1.30. “Operative Complaint” means the First Amended Complaint to be filed in the Action,
8 adding all allegations brought in the PAGA Action, thereby effectively consolidating the Action
9 and the PAGA Action for purposes of Settlement.

10 1.31. “PAGA Action means Plaintiff’s separate representative action under the PAGA against
11 Defendant for the Labor Code violations set forth in the PAGA Notice, captioned *Thomas James*
12 *Rasmussen v. Oceangate Fitness, LLC. dba Crunch Fitness*, Case No. 23STCV11477, initiated
13 on May 22, 2023, and pending in Superior Court of the State of California, County of Los
14 Angeles.

15 1.32. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked
16 for Defendant for at least one day during the PAGA Period, based on hire dates, re-hire dates (as
17 applicable), and termination dates (as applicable).

18 1.33. “PAGA Period” means the period from March 16, 2022 through April 11, 2025.

19 1.34. “PAGA” means the Labor Code Private Attorneys General Act of 2004 (Labor Code §§
20 2698. *et seq.*).

21 1.35. “PAGA Notice” means Plaintiff’s March 16, 2023 letter to Defendant and the LWDA,
22 providing notice pursuant to Labor Code section 2699.3 subd. (a).

23 1.36. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the
24 Gross Settlement Amount, allocated 25% to the Aggrieved Employees and 75% to the LWDA
25 in settlement of PAGA claims.

26 1.37. “Participating Class Member” means a Class Member who does not submit a valid and
27 timely Request for Exclusion from the Settlement.

28 1.38. “Plaintiff” means Thomas James Rasmussen the named plaintiff in the Actions.

1 1.39. "Preliminary Approval" means the Court's order granting Preliminary Approval of the
2 Settlement.

3 1.40. "Released Class Claims" means the claims being released as described in Paragraph 5.1.2
4 below.

5 1.41. "Released PAGA Claims" means the claims being released as described in Paragraph 5.3
6 below.

7 1.42. "Released Parties" means Defendant, Harman Fitness, LLC, Fitness Club Management,
8 LLC and each of their former, present and future direct or indirect parent organizations,
9 subsidiaries, divisions, affiliated entities, and all of their current, former, and future owners,
10 officers, directors, trustees, administrators, fiduciaries, members, managers, employees,
11 consultants, partners, shareholders, joint venturers, agents, predecessors, successors, assigns,
12 accountants, insurers, reinsurers, legal representatives, employment benefit plans and/or pensions
13 plans or funds, individually and in their official capacities.

14 1.43. "Request for Exclusion" means a Class Member's submission of a written request to be
15 excluded from the Class Settlement signed by the Class Member.

16 1.44. "Response Deadline" means forty-five (45) days after the Administrator mails the Class
17 Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class
18 Members may: (a) mail his, her, or their Request for Exclusion from the Settlement, or (b) mail
19 his, her, or their objection to the Settlement. Class Members to whom a Class Notice is resent
20 after having been returned undeliverable to the Administrator shall have an additional 15 days
21 beyond the Response Deadline has expired.

22 1.45. "Settlement" means the disposition of the Action and the PAGA Action effected by this
23 Agreement and the Judgment in the Action.

24 1.46. "Workweek" means any week during which a Class Member worked for Defendant, for
25 at least one day during the Class Period, based on hire dates, re-hire dates (as applicable), and
26 termination dates (as applicable).

2. RECITALS

2.1. On March 16, 2023, Plaintiff commenced the Action. Plaintiff also filed the PAGA Notice with the LWDA and served the PAGA Notice on Defendant on the same date.

2.2. On May 22, 2023, Plaintiff filed the PAGA Action.

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

2.4. Prior to mediation Plaintiff obtained, through informal discovery: (1) a sampling of time and payroll records for Class Members during the Class Period; (2) class data points, including the number of Class Members and Workweeks during the Class Period, the number of Aggrieved Employees and Pay Periods during the PAGA Period; (3) Defendant's wage and hour policy documents, including two employee handbooks; (4) all documents pertaining to Plaintiff available to Defendant, including Plaintiff's personnel and payroll records.

2.5. 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*").

2.6. On April 11, 2025, the Parties participated in an all-day mediation presided over by Steve Pearl, a well-respected third party neutral with significant experience settling class and PAGA claims. The mediation was successful, and the Parties agreed to globally resolve all claims asserted in the Action and the PAGA Action. As part of this Agreement, the Parties agreed to stipulate to Plaintiff's filing of the Operative Complaint, 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.

2.7. The Court has not granted class certification in the Class Action.

2.8. 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, Defendant promise to pay \$300,000.00 as the Gross Settlement Amount, and to separately pay

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

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

10 3.2.1. To Plaintiff: A Class Representative Service Payment of not more than \$7,500.00
11 in addition to Plaintiff's share of any Individual Class Payments and any Individual
12 PAGA Payments Plaintiff is entitled to receive as a Participating Class Member.
13 Defendant will not oppose Plaintiff's request for a Class Representative Service
14 Payment that does not exceed this amount. As part of the motion for Final Approval,
15 Plaintiff will seek Court approval for any Class Representative Service Payment. If the
16 Court approves a Class Representative Service Payment less than the amount requested,
17 the Administrator will retain the remainder in the Net Settlement Amount. The
18 Administrator will pay the Class Representative Service Payment using IRS Form 1099.
19 Plaintiff assumes full responsibility and liability for employee taxes owed on the Class
20 Representative Service Payment.

21 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 35% of the
22 Gross Settlement Amount, which is currently estimated to be \$105,00.00 and a Class
23 Counsel Litigation Expenses Payment of not more than \$40,000.00. Defendant will not
24 oppose requests for these payments provided they do not exceed these amounts.
25 Plaintiff and/or Class Counsel will endeavor to file a motion prior to the Final Approval
26 Hearing seeking Court approval of a Class Counsel Fees Payment and Class Litigation
27 Expenses Payment. In support of the Class Counsel Litigation Expenses Payment, Class
28 Counsel must submit a cost ledger listing each expense incurred during the Action. If

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

19 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
20 \$7,500.00 except for a showing of good cause and as approved by the Court. To the
21 extent the Administration Expenses are less or the Court approves payment less than
22 \$7,500.00, the Administrator will retain the remainder in the Net Settlement Amount.

23 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated
24 by (a) dividing the Net Settlement Amount by the total number of Workweeks worked
25 by all Participating Class Members during the Class Period and (b) multiplying the result
26 by each Participating Class Member's Workweeks.

27 3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating
28 Class Member's share of the Individual Class Payments will be allocated to

1 settlement of wage claims (the "Wage Portion"). Each Participating Class
2 Member's Wage Portion is subject to tax withholding and will be reported on
3 an IRS W-2 Form. The 80% of each Participating Class Member's share of the
4 Individual Class Payments will be allocated to settlement of claims for interest
5 and penalties (the "Non-Wage Portion"). Each Participating Class Member's
6 Non-Wage Portion is not subject to wage withholdings and will be reported on
7 an IRS 1099 Form to said Participating Class Member. Participating Class
8 Members assume full responsibility and liability for any employee taxes owed
9 on their share of the Individual Class Payments.

10 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual
11 Class Payments. Non-Participating Class Members will not receive any portion
12 of the Individual Class Payments. The Administrator will retain amounts equal
13 to the Non-Participating Class Members' shares of the Individual Class
14 Payments in the Net Settlement Amount for distribution to Participating Class
15 Members on a *pro rata* basis.

16 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
17 \$30,000.00 to be paid from the Gross Settlement Amount, with 75% (\$22,500.00)
18 allocated to the LWDA PAGA Payment and 25% (\$7,500.00) allocated to the Individual
19 PAGA Payments.

20 3.2.5.1. The Administrator will calculate each Aggrieved
21 Employees' share of the Individual PAGA Payments by (a) dividing the amount
22 of the Aggrieved Employees' 25% share of PAGA Penalties (\$7,500.00) by the
23 total number of PAGA Period Pay Periods worked by all Aggrieved Employees
24 during the PAGA Period and (b) multiplying the result by each Aggrieved
25 Employee's PAGA Pay Periods. Aggrieved Employees assume full
26 responsibility and liability for any taxes owed on their share of the Individual
27 PAGA Payments.

28 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 each Aggrieved Employee's share of the Individual PAGA Payments on IRS 1099 Forms, if required by law.

4. SETTLEMENT FUNDING AND PAYMENTS

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records, Defendant estimates there are 242 Class Members who collectively worked a total of 9,849 Workweeks during the Class Period, and 112 Aggrieved Employees who worked a total of 2,067 Pay Periods during the PAGA Period.

4.2. Class Data. Not later than 30 days after execution of the settlement agreement, Defendant 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. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant 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. Calculation of Employer's Share of Payroll Taxes. Prior to the Effective Date, the Administrator will calculate the amount owed by Defendant to pay the employer's share of payroll taxes and provide that amount to Defense Counsel.

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

4.5. Payments from the Gross Settlement Amount. Within fourteen (14) days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class

1 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
2 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
3 Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel
4 Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative
5 Service Payment shall not precede disbursement of Individual Class Payments, and the Individual
6 PAGA Payments.

7 4.5.1. The Administrator will issue checks for the Individual Class Payments and/or
8 Individual PAGA Payments and send them to the Class Members via First Class U.S.
9 Mail, postage prepaid. The face of each check shall prominently state the date (not less
10 than 180 days after the date of mailing) when the check will be voided. The
11 Administrator will cancel all checks not cashed by the void date. The Administrator
12 will send checks for Individual Settlement Payments to all Participating Class Members
13 (including those for whom Class Notice was returned undelivered). The Administrator
14 will send checks for Individual PAGA Payments to all Aggrieved Employees including
15 Non-Participating Class Members who qualify as Aggrieved Employees (including
16 those for whom Class Notice was returned undelivered). The Administrator may send
17 Participating Class Members a single check combining their shares of the Individual
18 Class Payments and the Individual PAGA Payments. Before mailing any checks, the
19 Settlement Administrator must update the recipients' mailing addresses using the
20 National Change of Address Database.

21 4.5.2. The Administrator must conduct a Class Member Address Search for all other
22 Class Members whose checks are returned undelivered without USPS forwarding
23 address. Within seven (7) days of receiving a returned check the Administrator must
24 re-mail checks to the USPS forwarding address provided or to an address ascertained
25 through the Class Member Address Search. The Administrator need not take further
26 steps to deliver checks to Class Members whose re-mailed checks are returned as
27 undelivered. The Administrator shall promptly send a replacement check to any Class
28 Member whose original check was lost or misplaced, as requested by the Class Member

1 or Aggrieved Employee before the void date.

2 4.5.3. For any Participating Class Member whose check for their share of the Individual
3 Class Payments is uncashed and cancelled after the void date, the Administrator shall
4 transmit the funds represented by such checks to the California State Controller's Office,
5 Unclaimed Property Division in the name of the Participating Class Member thereby
6 leaving no unpaid residue pursuant to the requirements of Code of Civil Procedure
7 section 384.

8 4.5.4. For any Aggrieved Employee whose check for their share of the Individual PAGA
9 Payments is uncashed and cancelled after the void date, the Administrator shall transmit
10 the funds represented by such checks to the California State Controller's Office,
11 Unclaimed Property Division in the name of the Aggrieved Employee thereby leaving
12 no unpaid residue pursuant to the requirements of Code of Civil Procedure section 384.

13 4.5.5. The payment of Individual Class Payments and Individual PAGA Payments shall
14 not obligate Defendant to confer any additional benefits or make any additional
15 payments to Class Members or Aggrieved Employees (such as 401(k) contributions or
16 bonuses) beyond those specified in this Agreement.

17 **5. RELEASE OF CLAIMS**

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

22 5.1. Plaintiff's Release. Plaintiff on behalf of himself and his former and present spouses,
23 representatives, agents, attorneys, heirs, executors, administrators, successors, and assigns
24 generally, releases and discharge Released Parties, jointly and severally, of an from any and all
25 claims, transactions, or occurrences, including, but not limited to: (a) all claims that were, or
26 reasonably could have been, alleged, based on the facts contained, in the Operative Complaint
27 and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts
28 contained in the Operative Complaint and Plaintiff's PAGA Notice. ("Plaintiff's Release.")

1 Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any
2 claims for vested benefits, unemployment benefits, disability benefits, social security benefits,
3 or workers' compensation benefits that arose at any time.

4 5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
5 purposes of Plaintiff's Release only, Plaintiff expressly waives and relinquishes the
6 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,
7 which reads:

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

13 5.1.2. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or
14 in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees,
15 nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
16 notwithstanding such different or additional facts or Plaintiff's discovery of them.

17 5.2. Release by Participating Class Members: All Participating Class Members, on behalf of
18 themselves and their respective former and present representatives, agents, attorneys, heirs,
19 executors, administrators, successors, and assigns, release Released Parties from all claims that
20 were alleged, or reasonably could have been alleged, based on the facts stated in the Operative
21 Complaint that are alleged to have occurred during the Class Period. Except as set forth in Section
22 5.3 below, Participating Class Members do not release any other claims, including claims for
23 vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
24 unemployment insurance, disability, social security, workers' compensation, or claims based on
25 facts occurring outside the Class Period.

26 5.3. Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on
27 behalf of themselves and their respective former and present representatives, agents, attorneys,
28 heirs, executors, administrators, successors, and assigns, the Released Parties from all claims for

1 PAGA Penalties that were alleged, or reasonably could have been alleged, based on the facts and
2 allegations in the Operative Complaint that are alleged to have occurred during the PAGA Period
3 and the PAGA Notice.

4 **6. MOTION FOR PRELIMINARY APPROVAL**

5 The Parties agree to work jointly as set forth below to prepare and file a motion for
6 preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current
7 checklist for Preliminary Approvals.

8 6.1. Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all
9 documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and
10 memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the
11 Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor
12 Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and
13 Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from
14 the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting
15 to its willingness to serve; competency; operative procedures for protecting the security of Class
16 Data; amounts of insurance coverage for any data breach, defalcation of funds or other
17 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;
18 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense
19 Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve
20 and disclosing all facts relevant to any actual or potential conflicts of interest with other Class
21 Members and/or the Administrator; (vi) a signed declaration from Class Counsel attesting to its
22 competency to represent the Class Members; its timely transmission to the LWDA of all
23 necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)),
24 Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code
25 section 2699, subd. (l)(2)); and (vii) a red-lined version of the Agreement showing all
26 modifications made to the Los Angeles Superior Court’s Model Agreement; and (viii) all facts
27 relevant to any actual or potential conflict of interest with Class Members and/or the
28 Administrator. In their declarations, Plaintiff and Class Counsel shall aver whether they are

1 aware of any other pending matter or action asserting claims that will be extinguished or
2 adversely affected by the Settlement.

3 6.2. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible
4 for expeditiously finalizing the Motion for Preliminary Approval after the full execution of this
5 Agreement and for appearing in Court to advocate in favor of the Motion for Preliminary
6 Approval. Class Counsel is responsible for obtaining a prompt hearing date for and filing the
7 Motion for Preliminary Approval after the full execution of this Agreement and delivering the
8 Court's Preliminary Approval to the Administrator.

9 6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
10 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
11 Defense Counsel will expeditiously work together on behalf of the Parties by meeting and
12 conferring, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary
13 Approval or conditions Preliminary Approval on any material change to this Agreement, Class
14 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by
15 meeting and conferring, and in good faith, to modify the Agreement and otherwise satisfy the
16 Court's concerns.

17 7. SETTLEMENT ADMINISTRATION

18 7.1. Selection of Administrator. The Parties have jointly selected Apex Class Action
19 Administration ("Apex") to serve as the Administrator and verified that, as a condition of
20 appointment, Apex agrees to be bound by this Agreement and to perform, as a fiduciary, all duties
21 specified in this Agreement in exchange for payment of Administration Expenses. The Parties
22 and their respective Counsel represent that they have no interest or relationship, financial or
23 otherwise, with the Administrator other than a professional relationship arising out of prior
24 experiences administering settlements.

25 7.2. Employer Identification Number. The Administrator shall have and use its own Employer
26 Identification Number for purposes of calculating payroll tax withholdings and providing reports
27 state and federal tax authorities.

28 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets

the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

7.4. Notice to Class Members

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

7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14 days after Preliminary Approval, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice, substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of the Class Member’s share of any Individual Class Payment and/or the Aggrieved Employee’s share of any Individual PAGA Payment payable to the Class Member/Aggrieved Employee, 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 three (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 for Class Members whose Class Notices are remailed. Class Members to whom a Class Notice is re-mailed after having been returned as undeliverable to the Administrator shall have their

1 deadline extended an additional fifteen (15) days beyond the Response Deadline. The
2 Administrator will inform the Class Member of the extended deadline with the re-mailed
3 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 and in good faith, in an effort to agree on whether to include them as Class Members.
8 If the Parties agree, such persons will be Class Members entitled to the same rights as
9 other Class Members, and the Administrator will send, via email or overnight delivery,
10 a Class Notice requiring them to exercise options under this Agreement not later than
11 fifteen (15) days after receipt of Class Notice, or the deadline dates in the Class Notice,
12 whichever are later.

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

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

22 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it
23 fails to contain all the information specified in the Class Notice. The Administrator
24 shall accept any Request for Exclusion as valid if the Administrator can reasonably
25 ascertain the identity of the person as a Class Member and the Class Member's desire
26 to be excluded. The Administrator's determination shall be final and not appealable or
27 otherwise susceptible to challenge. If the Administrator has reason to question the
28 authenticity of a Request for Exclusion, the Administrator may demand additional proof

1 of the Class Member's identity. The Administrator's determination of authenticity shall
2 be final and not appealable or otherwise susceptible to challenge.

3 7.5.3. Every Class Member who does not submit a timely and valid Request for
4 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled
5 to all benefits and bound by all terms and conditions of the Settlement, including the
6 Participating Class Members' Releases under Paragraphs 5.2 and 5.3 above, regardless
7 whether the Participating Class Member actually receives the Class Notice or objects to
8 the Settlement.

9 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a
10 Non-Participating Class Member and shall not receive an Individual Class Payment or
11 have the right to object to the class action components of the Settlement. Because future
12 PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-
13 Participating Class Members who also are Aggrieved Employees are deemed to release
14 the claims identified in Paragraph 5.3 above and are eligible for their share of the
15 Individual PAGA Payments.

16 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have forty-five (45)
17 days after the Administrator mails the Class Notice (plus an additional fifteen (15) days for Class
18 Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and
19 PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class
20 Member may challenge the allocation by communicating with the Administrator via mail. The
21 Administrator must encourage the challenging Class Member to submit supporting
22 documentation. In the absence of any contrary documentation, the Administrator is entitled to
23 presume that the Workweeks contained in the Class Notice are correct so long as they are
24 consistent with the Class Data. The Administrator's determination of each Class Member's
25 allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise
26 susceptible to challenge. The Administrator shall promptly provide to Defense Counsel and
27 Class Counsel copies of all challenges to calculation of Workweeks and/or Pay Periods and the
28 Administrator's determination of the challenges.

1 7.7. Objections to Settlement

2 7.7.1. Only Participating Class Members may object to the class action components of
3 the Settlement and this Agreement, including contesting the fairness of the Settlement,
4 and the amounts requested for the Class Counsel Fees Payment, Class Counsel
5 Litigation Expenses Payment, and Class Representative Service Payment.

6 7.7.2. Participating Class Members may send written objections to the Administrator, by
7 mail no later than the Response Deadline (plus an additional 15 days for Class Members
8 whose Class Notice was re-mailed). Participating Class Members may appear in Court
9 (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
10 Hearing..

11 7.7.3. Non-Participating Class Members have no right to object to any of the class action
12 components of the Settlement.

13 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
14 performed or observed by the Administrator contained in this Agreement or otherwise.

15 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will establish,
16 maintain, and use a website to post information of interest to Class Members including
17 the date, time and location for the Final Approval Hearing and copies of the Settlement
18 Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class
19 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment,
20 Class Counsel Litigation Expenses Payment, and Class Representative Service
21 Payment, the Final Approval and the Judgment. The Administrator will also maintain
22 and monitor an email address and a toll-free telephone number to receive Class Member
23 calls and emails.

24 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
25 promptly review on a rolling basis Requests for Exclusion to ascertain their validity.
26 Not later than five (5) days after the expiration of the deadline for submitting Requests
27 for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel
28 containing (a) the names and other identifying information of Class Members who have

1 timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and
2 other identifying information of Class Members who have submitted invalid Requests
3 for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted
4 (whether valid or invalid).

5 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written
6 reports to Class Counsel and Defense Counsel that, among other things, tally the number
7 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for
8 Exclusion (whether valid or invalid) received, objections received, challenges to
9 Workweeks and/or Pay Periods received and/or resolved, and checks mailed for
10 Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The
11 Weekly Reports must include the Administrator’s assessment of the validity of Requests
12 for Exclusion and attach copies of all Requests for Exclusion and objections received.

13 7.8.4. Administrator’s Declaration. Before the date by which Plaintiff is required to file
14 the Motion for Final Approval of the Settlement, the Administrator will provide to Class
15 Counsel and Defense Counsel, a declaration suitable for filing in Court attesting to its
16 due diligence and compliance with all of its obligations under this Agreement,
17 including, but not limited to, its mailing of Class Notice, the Class Notices returned as
18 undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total
19 number of Requests for Exclusion from Settlement it received (both valid or invalid),
20 the number of written objections and attach the Exclusion List. The Administrator will
21 supplement its declaration as needed or requested by the Parties and/or the Court. Class
22 Counsel is responsible for filing the Administrator’s declaration(s) in Court.

23 7.8.5. Final Report by Settlement Administrator. Within ten (10) days after the
24 Administrator disburses all funds in the Gross Settlement Amount, the Administrator
25 will provide Class Counsel and Defense Counsel with a final report detailing its
26 disbursements by employee identification number only of all payments made under this
27 Agreement. At least seven (7) days before any deadline set by the Court, the
28 Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed

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

4 **8. CLASS SIZE ESTIMATES, RIGHTS TO WITHDRAW, AND**
5 **ESCALATOR CLAUSE**

6 8.1. Class Size Estimates. Based on its records, Defendant estimates that, as of the date of this
7 Settlement Agreement, there are: (1) 242 Class Members and 9,849 Total Workweeks during the
8 Class Period and (2) 112 Aggrieved Employees who worked 2,067 Pay Periods during the PAGA
9 Period.

10 8.2. Defendant's Right to Withdraw. If the number of valid Requests for Exclusion identified
11 in the Exclusion List exceeds 10% of the total of all Class Members, Defendant may, but is not
12 obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws,
13 the Settlement shall be *void ab initio* and have no force or effect whatsoever, and neither Party
14 will have any further obligation to perform under this Agreement; provided, however, Defendant
15 will remain responsible for paying all Settlement Administration Expenses incurred to that point.
16 Defendant must notify Class Counsel and the Court of its election to withdraw not later than
17 seven (7) days after the Administrator sends the final Exclusion List to Defense Counsel; late
18 elections will have no effect.

19 8.3. Increase in Workweeks. In the event the number of Workweeks worked by Class
20 Members during the Class Period increases by more than 10%, or 985 Workweeks, then
21 Defendant shall have the option to either: (1) end the Class and PAGA Period as of the date when
22 the total number of Workweeks exceeded 10,834; or (2) permit the Gross Settlement Amount to
23 be increased proportionally by the Workweeks in excess of 10,834 multiplied by the workweek
24 value (the "Escalator Clause"). The Workweek Value shall be calculated by dividing the
25 originally agreed-upon Gross Settlement Amount (\$300,000.00) by 9,849, which amounts to a
26 Workweek Value of \$30.46. Thus, for example, should there be 12,000 Workweeks in the Class
27 Period, then the Gross Settlement Amount shall be increased by \$35,516 ((12,000 Workweeks –
28

1 10,834 Workweeks) x \$30.46 per Workweek.). Defendant shall provide the Class Data to the
2 administrator no later than 30 days after full execution of the long form agreement. Defendant
3 shall make its election regarding the above no later than 7 days after receiving information from
4 the administrator regarding the workweek count. Should Defendant fail to make its election
5 within the above timeframe, then option (2) shall automatically apply.

6 **9. MOTION FOR FINAL APPROVAL**

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

14 9.1. Response to Objections. Each Party retains the right to respond to any objection raised
15 by a Participating Class Member, including the right to file responsive documents in Court no
16 later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or
17 accepted by the Court.

18 9.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
19 Approval on any material change to the Settlement (including, but not limited to, the scope of
20 release to be granted by Class Members), the Parties will expeditiously work together in good
21 faith to address the Court's concerns by revising the Agreement as necessary to obtain Final
22 Approval. The Court's decision to award less than the amounts requested for the Class
23 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
24 Expenses Payment, or Administrator Expenses Payment shall not constitute a material
25 modification to the Agreement within the meaning of this paragraph.

26 9.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the
27 Court will retain jurisdiction over the Parties, the Action, and the Settlement solely for purposes
28 of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration

1 matters, and (iii) addressing such post-Judgment matters as are permitted by law.

2 9.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
3 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class
4 Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
5 respective counsel, and all Participating Class Members who did not timely object to the
6 Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including
7 all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment,
8 motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include
9 any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the
10 Judgment, the Parties' obligations to perform under this Agreement will be suspended until such
11 time as the appeal is finally resolved and the Judgment becomes final, except as to matters that
12 do not affect the amount of the Net Settlement Amount.

13 9.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
14 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material
15 modification of this Agreement (including, but not limited to, the scope of release to be granted
16 by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
17 expeditiously work together in good faith to address the appellate court's concerns and to obtain
18 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
19 Expenses reasonably incurred after *remittitur*. An appellate decision to vacate, reverse, or modify
20 the Court's award of the Class Representative Service Payment or any payments to Class Counsel
21 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
22 as long as the Gross Settlement Amount remains unchanged.

23 **10. AMENDED JUDGMENT**

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

26 **11. ADDITIONAL PROVISIONS**

27 11.1. No Admission of Liability, Class Certification, or Representative Manageability for
28 Other Purposes. This Agreement represents a compromise and settlement of highly disputed

1 claims. Nothing in this Agreement is intended or should be construed as an admission by
2 Defendant that any of the allegations in the Operative Complaint have merit or that any of the
3 Released Parties have any liability for any claims asserted; nor should it be intended or construed
4 as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties
5 agree that class certification and representative treatment is for purposes of this Settlement only.
6 If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment,
7 Defendant reserves the right to contest certification of any class for any reasons and all available
8 defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification
9 on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement
10 and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible
11 in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement
12 and this Agreement).

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

1 owed to Class Members.

2 11.3. No Solicitation. The Parties separately agree that they and their respective counsel and
3 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal
4 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's
5 ability to communicate with Class Members in accordance with Class Counsel's ethical
6 obligations owed to Class Members.

7 11.4. Integrated Agreement. Upon execution by both Parties and their counsel, this Agreement
8 together with its attached exhibits shall constitute the entire agreement between the Parties
9 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or
10 inducements made to or by any Party.

11 11.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
12 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate
13 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
14 its terms, and to execute any other documents reasonably required to effectuate the terms of this
15 Agreement including any amendments to this Agreement.

16 11.6. Cooperation. The Parties and their counsel will cooperate with each other and use their
17 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
18 Settlement Agreement, submitting supplemental evidence and supplementing points and
19 authorities as requested by the Court. In the event the Parties are unable to agree upon the form
20 or content of any document necessary to implement the Settlement, or on any modification of the
21 Agreement that may become necessary to implement the Settlement, the Parties will seek the
22 assistance of a mediator and/or the Court for resolution.

23 11.7. No Prior Assignments. The Parties separately represent and warrant that they have not
24 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
25 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
26 action, or right released and discharged by the Party in this Settlement.

27 11.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant, nor Defense Counsel are
28 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied

1 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR
2 Part 10, as amended) or otherwise.

3 11.9. Modification of Agreement. This Agreement, and all parts of it, may be amended,
4 modified, changed, or waived only by an express written instrument signed or agreed to by all
5 Parties or their representatives, and approved by the Court. Plaintiff and Defendant expressly
6 agree that should the Parties agree to amend, modify, change, or waive this Agreement, or any
7 part of it, Class Counsel and Defense Counsel are authorized to submit to the Court any
8 amendments of this Agreement, amended Agreements, or amendments to the Agreement, on
9 behalf of the Parties once fully executed, which includes, but is not limited to, authorization of
10 the use of signatures previously provided by the Parties.

11 11.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to
12 the benefit of, the successors of each of the Parties.

13 11.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
14 governed by and interpreted according to the internal laws of the state of California, without
15 regard to conflict of law principles.

16 11.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
17 this Agreement. This Agreement will not be construed against either Party on the basis that the
18 Party was the drafter or participated in the drafting.

19 11.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
20 during Action and in this Agreement relating to the confidentiality of information shall survive
21 the execution of this Agreement.

22 11.14. Use of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code
23 §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant
24 in connection with the mediation, other settlement negotiations, or in connection with the
25 Settlement, may be used only with respect to this Settlement, and no other purpose, and may not
26 be used in any way that violates any existing contractual agreement, statute, or rule of court.

27 11.15. Headings. The descriptive heading of any section or paragraph of this Agreement is
28 inserted for convenience of reference only and does not constitute a part of this Agreement.

1 11.16. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall
2 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
3 weekend or federal legal holiday, such date or deadline shall be on the first business day
4 thereafter.

5 11.17. Execution in Counterparts. This Agreement may be executed in one or more counterparts
6 by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall
7 be accepted as an original. All executed counterparts and each of them will be deemed to be one
8 and the same instrument if counsel for the Parties will exchange between themselves signed
9 counterparts. Any executed counterpart will be admissible in evidence to prove the existence
10 and contents of this Agreement.

11 11.18. Stay of Litigation. The Parties agree that upon the execution of this Agreement the
12 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
13 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend
14 the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
15 process.

16 11.19. Severability. In the event that one or more of the provisions contained in this Agreement
17 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,
18 illegality, or unenforceability shall in no way effect any other provision if Defendant’s Counsel
19 and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing
20 to proceed as if such invalid, illegal, or unenforceable provision had never been included in this
21 Agreement.

22 ///

23 **IT IS SO AGREED:**

24 *Thomas Rasmussen*

06/01/2026

25 Plaintiff, Thomas James Rasmussen



26
27 For Defendant, Oceangate Fitness, LLC
28

1 **AGREED AS TO FORM ONLY:**

2 Vedang J. Patel

06/01/2026

3 David D. Bibiyan
4 Vedang J. Patel
5 Megan R. Lazar
6 Counsel for Plaintiff



David G. Hoiles, Jr.
Lauren R. Presser
Phong L. Tran
Counsel for Defendant

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