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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

ROBERTO RUIZ, on behalf of himself and all others similarly situated and aggrieved,

Plaintiff,

v.

PROTECH DELIVERY AND
INSTALLATION, and T.J.S.
ENTERPRISES, INC.

Defendants.

CASE NO.: 21STCV07001

[Assigned to the Hon. Stuart M. Rice, in Dept. 1]

CLASS AND PAGA SETTLEMENT AGREEMENT

Action Filed: August 4, 2021

Trial Date: None Set

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiff ROBERTO RUIZ (“Plaintiff”) and defendants PROTECH DELIVERY AND
3 INSTALLATION, and T.J.S. ENTERPRISES, INC. (“Defendants”). The Agreement refers to
4 Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

5 **1. DEFINITIONS**

6 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
7 Defendants captioned Roberto Ruiz v. Protech Delivery and installation, T.J.S. Enterprises
8 initiated on February 23, 2021 and pending in Los Angeles County Superior Court in the State
9 of California.

10 1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties
11 have agreed to appoint to administer the Settlement

12 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid
13 from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance
14 with the Administrator’s “not to exceed” bid submitted to the Court in connection with
15 Preliminary Approval of the Settlement.

16 1.4. “Aggrieved Employee” means a person employed by Protech in California and classified
17 as a non-exempt, hourly-paid employee who worked for Protech during the PAGA Period.

18 1.5. “Class” means all persons employed by Protech in California and classified as a non-
19 exempt, hourly-paid employee who worked for Protech during the Class Period.

20 1.6. “Class Counsel” means David D. Bibiyan and Diego Aviles of Bibiyan Law Group, P.C.

21 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean
22 the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
23 expenses, respectively, incurred to prosecute the Action.

24 1.8. “Class Data” means Class Member identifying information in Defendants’ possession,
25 custody, or control including the Class Member’s (1) name; (2) last known address(es); (3) last
26 known telephone number(s); (4) last known Social Security Number(s); and (5) the dates of
27 employment (i.e., hire dates, and, if applicable, re-hire date(s) and/or separation date(s)).

28 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either

1 a Participating Class Member or Non-Participating Class Member (including a Non- Participating
2 Class Member who qualifies as an Aggrieved Employee).

3 1.10. “Class Member Address Search” means the Administrator’s investigation and search for
4 current Class Member mailing addresses using all reasonably available sources, methods and
5 means including, but not limited to, the National Change of Address database, skip traces, and
6 direct contact by the Administrator with Class Members.

7 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION
8 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to
9 Class Members in English with a Spanish translation, in the form, without material variation,
10 attached as Exhibit A and incorporated by reference into this Agreement.

11 1.12. “Class Period” means the period from February 23, 2017 through August 20, 2022.

12 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the
13 Action seeking Court approval to serve as a Class Representative.

14 1.14. “Class Representative Service Payment” means the payment to the Class Representative
15 for initiating the Action and providing services in support of the Action.

16 1.15. “Court” means the Superior Court of California, County of Los Angeles.

17 1.16. “Defendants” means named Defendants Protech Delivery and Installation (“Protech”),
18 and T.J.S. Enterprises, Inc (“TJS”).

19 1.17. “Defense Counsel” means Robert S. Blumberg of Littler Mendelson, PC.

20 1.18. “Effective Date” means the later of: (a) the date the Court signs an Order Granting Final
21 Approval of the Settlement and Judgment; (2) if there is an objector or intervenor, sixty (60)
22 days from the date the Final Approval and Judgment if no appeal is filed; or (3) to the extent
23 any appeals have been filed, the date on which they have been resolved or exhausted.

24 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.

25 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval
26 of the Settlement.

27 1.21. “Final Judgment” means the Judgment entered by the Court based upon the Final
28 Approval.

1 1.22. “Gross Settlement Amount” means \$420,000.00 (Four Hundred Twenty Thousand
2 Dollars and Zero Cents) which is the total amount Defendants agree to pay under the Settlement,
3 except as provided in Paragraph 8.1 below and any and all employer payroll taxes owed on the
4 Wage Portions of the Individual Class Payments. The Gross Settlement Amount will be used to
5 pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class
6 Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the
7 Administrator’s Expenses.

8 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the
9 Net Settlement Amount calculated according to the number of Workweeks worked during the
10 Class Period.

11 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of
12 the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA
13 Period.

14 1.25. “Judgment” means the judgment entered by the Court based upon Final Approval.

15 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency
16 entitled, under Labor Code section 2699, subd. (i).

17 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA
18 under Labor Code section 2699, subd. (i).

19 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following
20 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
21 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
22 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to
23 be paid to Participating Class Members as Individual Class Payments.

24 1.29. “Non-Participating Class Member” means any Class Member who opts out of the
25 Settlement by sending the Administrator a valid and timely Request for Exclusion.

26 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked
27 for Defendants for at least one day during the PAGA Period.

28 1.31. “PAGA Period” means the period from August 4, 2020 through the end of the Class

- 1 Period.
- 2 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).
- 3 1.33. “PAGA Notice” means Plaintiff’s February 19, 2021 letter to Defendants and the LWDA,
4 and Plaintiff’s January 21, 2022 letter to Defendants and the LWDA, providing notice pursuant
5 to Labor Code section 2699.3 subd. (a).
- 6 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the
7 Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$2,500.00) and the 75%
8 to the LWDA (\$7,500.00) in settlement of PAGA claims.
- 9 1.35. “Participating Class Member” means a Class Member who does not submit a valid and
10 timely Request for Exclusion from the Settlement.
- 11 1.36. “Plaintiff” means Roberto Ruiz, the named plaintiff in the Action.
- 12 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the
13 Settlement.
- 14 1.38. “Preliminary Approval Order” means the proposed Order granting Preliminary Approval
15 and Approval of PAGA Settlement.
- 16 1.39. “Released Class Claims” means the claims being released as described in Paragraph 5.2
17 below.
- 18 1.40. “Released PAGA Claims” means the claims being released as described in Paragraph 5.4
19 below.
- 20 1.41. “Released Parties” means: Defendants and each of its present and past parent
21 companies, affiliates or related entities, and its and their respective current and former owners,
22 shareholders, accountants, insurers, attorneys, trustees, contractors, successors and assigns,
23 heirs, advisors, employees, directors, officers and agents thereof.
- 24 1.42. “Request for Exclusion” means a Class Member’s submission of a written request to be
25 excluded from the Class Settlement signed by the Class Member.
- 26 1.43. “Response Deadline” means forty-five (45) calendar days after the Administrator mails
27 Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class
28 Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax,

1 email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets
2 are resent after having been returned undeliverable to the Administrator shall have an additional
3 fifteen (15) calendar days beyond the Response Deadline has expired.

4 1.44. “Settlement” means the disposition of the Action effected by this Agreement and the
5 Judgment.

6 1.45. “Workweek” means any week during which a Class Member was employed by and
7 worked for Protech in a non-exempt, hourly position during the Class Period in California, based
8 on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

9 **2. RECITALS**

10 2.1. On February 19, 2021, Plaintiff filed with the LWDA and served on Defendants a notice
11 under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the LWDA to
12 recover civil penalties for Aggrieved Employees for various Labor Code violations.

13 2.2. On August 4, 2021 Plaintiff commenced this Action by filing a Complaint alleging causes
14 of action against Defendants for (1) failure to pay overtime wages; (2) failure to pay minimum
15 wages; (3) failure to provide meal breaks or compensation in lieu thereof; (4) failure to provide
16 rest breaks or compensation in lieu thereof; (5) waiting time penalties; (6) wage statements
17 violations; (7) failure to indemnify work expenses; and (8) unfair competition.

18 2.3. On August 10, 2021, after sixty-five (65) days had passed without any action by the
19 LWDA with respect to the alleged Labor Code violations in the PAGA Notice, Plaintiff filed a
20 First Amended Complaint in the Action to add causes of action seeking civil penalties under
21 PAGA. The First Amended Complaint is the “Operative Complaint.”

22 2.4. Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written notice to
23 Defendants and the LWDA by sending the PAGA Notice.

24 2.5. On February 24, 2022, the Parties participating in an all-day mediation presided over by
25 Mark Rudy, Esquire, which led to this Agreement to settle the Action.

26 2.6. Prior to mediation, Plaintiff obtained, through informal discovery: (1) a 33% sampling of
27 time and payroll records for the estimated 143 Class Members; (2) data points for the Class,
28 including rates of pay, hire dates, and termination dates; (3) all policy documents, including any

1 employee handbooks applicable to Protect Class Members; and (4) all documents pertaining to
2 Plaintiff in Protech's custody, possession, or control.

3 2.7. The Court has not granted class certification.

4 2.8. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any
5 other pending matter or action asserting claims that will be extinguished or affected by the
6 Settlement.

7 **3. MONETARY TERMS**

8 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below,
9 Defendants promises to pay \$420,000.00 as the Gross Settlement Amount, unless escalated
10 pursuant to Paragraph 8.1 of this Agreement and to separately pay any and all employer payroll
11 taxes owed on the Wage Portions of the Individual Class Payments. Defendants have no
12 obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated
13 in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement
14 Amount without asking or requiring Participating Class Members or Aggrieved Employees to
15 submit any claim as a condition of payment. None of the Gross Settlement Amount will revert
16 to Defendants.

17 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct
18 the following payments from the Gross Settlement Amount, in the amounts specified by the Court
19 in the Final Approval:

20 3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative
21 of not more than \$7,500.00, in addition to any Individual Class Payment and any
22 Individual PAGA Payment the Class Representative is entitled to receive as a
23 Participating Class Member. Defendants will not oppose Plaintiff's request for a Class
24 Representative Service Payment that does not exceed this amount. As part of the motion
25 for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will
26 seek Court approval for any Class Representative Service Payments prior to the Final
27 Approval Hearing. If the Court approves a Class Representative Service Payment less
28 than the amount requested, the Administrator will retain the remainder in the Net

1 Settlement Amount. The Administrator will pay the Class Representative Service
2 Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for
3 employee taxes owed on the Class Representative Service Payment.

4 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 35 %, which,
5 unless escalated pursuant to Paragraph 8.1 of this Agreement, is currently estimated to
6 be \$147,500.00 and a Class Counsel Litigation Expenses Payment of not more than
7 \$25,000.00. Defendants will not oppose requests for these payments provided that do
8 not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class
9 Counsel Fees Payment and Class Litigation Expenses Payment prior to the Final
10 Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class
11 Counsel Litigation Expenses Payment less than the amounts requested, the
12 Administrator will allocate the remainder to the Net Settlement Amount. Released
13 Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising
14 from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel
15 Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees
16 Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms.
17 Class Counsel assumes full responsibility and liability for taxes owed on the Class
18 Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
19 Defendants harmless, and indemnifies Defendants, from any dispute or controversy
20 regarding any division or sharing of any of these Payments. There will be no additional
21 charge of any kind to either the Settlement Class Members or request for additional
22 consideration from Defendants for such work unless, Defendants materially breach this
23 Agreement, including any term regarding funding, and further efforts are necessary
24 from Class Counsel to remedy said breach, including, without limitation, moving the
25 Court to enforce the Agreement. Should the Court approve attorneys' fees and/or
26 litigation costs and expenses in amounts that are less than the amounts provided for
27 herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

28 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed

1 \$7,500.00 except for a showing of good cause and as approved by the Court. To the
2 extent the Administration Expenses are less or the Court approves payment less than
3 \$7,500.00, the Administrator will retain the remainder in the Net Settlement Amount.

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

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

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

22 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
23 \$10,000.00 to be paid from the Gross Settlement Amount, with 75% (\$7,500.00)
24 allocated to the LWDA PAGA Payment and 25% (\$2,500.00) allocated to the Individual
25 PAGA Payments.

26 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a)
27 dividing the amount of the Aggrieved Employees' 25% share of PAGA
28 Penalties \$2,500.00 by the total number of PAGA Period Pay Periods worked

1 by all Aggrieved Employees during the PAGA Period and (b) multiplying the
2 result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved
3 Employees assume full responsibility and liability for any taxes owed on their
4 Individual PAGA Payment.

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

9 **4. SETTLEMENT FUNDING AND PAYMENTS**

10 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records
11 through the date of mediation, Defendants estimates there are 143 Class Members who
12 collectively worked a total of 12,000 Workweeks, and 53 Aggrieved Employees who worked a
13 total of 1,459 PAGA Pay Periods.

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

26 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement
27 Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by
28 transmitting the funds to the Administrator no later than thirty (30) calendar days after the

1 Effective Date.

2 4.4. Payments from the Gross Settlement Amount. Within fourteen (14) calendar days after
3 Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all
4 Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the
5 Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel
6 Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of
7 the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class
8 Representative Service Payment shall not precede disbursement of Individual Class Payments
9 and Individual PAGA Payments.

10 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or
11 Individual PAGA Payments and send them to the Class Members via First Class U.S.
12 Mail, postage prepaid. The face of each check shall prominently state the date (not less
13 than one hundred eighty (180) days after the date of mailing) when the check will be
14 voided. The Administrator will cancel all checks not cashed by the void date. The
15 Administrator will send checks for Individual Settlement Payments to all Participating
16 Class Members (including those for whom Class Notice was returned undelivered). The
17 Administrator will send checks for Individual PAGA Payments to all Aggrieved
18 Employees including Non-Participating Class Members who qualify as Aggrieved
19 Employees (including those for whom Class Notice was returned undelivered). The
20 Administrator may send Participating Class Members a single check combining the
21 Individual Class Payment and the Individual PAGA Payment. Before mailing any
22 checks, the Settlement Administrator must update the recipients' mailing addresses
23 using the National Change of Address Database.

24 4.4.2. The Administrator must conduct a Class Member Address Search for all other
25 Class Members whose checks are returned undelivered without USPS forwarding
26 address. Within seven (7) calendar days of receiving a returned check the Administrator
27 must re-mail checks to the USPS forwarding address provided or to an address
28 ascertained through the Class Member Address Search. The Administrator need not

1 take further steps to deliver checks to Class Members whose re-mailed checks are
2 returned as undelivered. The Administrator shall promptly send a replacement check to
3 any Class Member whose original check was lost or misplaced, requested by the Class
4 Member prior to the void date.

5 4.4.3. For any Class Member whose Individual Class Payment check or Individual
6 PAGA Payment check is uncashed and cancelled after the void date, the Administrator
7 shall transmit the funds represented by such checks to Legal Aid at Work, 180
8 Montgomery Street, Suite 600, San Francisco, California 94104, for use in Los Angeles
9 County (“Cy Pres Recipient”).

10 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall
11 not obligate Defendants to confer any additional benefits or make any additional
12 payments to Class Members (such as 401(k) contributions or bonuses) beyond those
13 specified in this Agreement.

14 **5. Release of Claims.**

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

19 5.1. Plaintiff’s Release. Plaintiff and his respective former and present spouses,
20 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
21 and discharge Released Parties from all claims, transactions, or occurrences including, but not
22 limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts
23 contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could
24 have been, alleged based on facts contained in the Operative Complaint, Plaintiff’s PAGA
25 Notice, or ascertained during the Action and released under 5.2, below. (“Plaintiff’s Release.”)
26 Plaintiff’s Release does not extend to any claims or actions to enforce this Agreement, or to any
27 claims for vested benefits, unemployment benefits, disability benefits, social security benefits,
28 workers’ compensation benefits that arose at any time, or based on occurrences outside the Class

1 Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in
2 addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless,
3 that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such
4 different or additional facts or Plaintiff's discovery of them.

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

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

13 5.2. Release by Participating Class Members: For the duration of the Class Period, all
14 Participating Class Members, on behalf of themselves and their respective former and present
15 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released
16 Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the
17 facts stated in the Operative Complaint including: (1) all claims for failure to pay overtime wages;
18 (2) all claims for failure to pay minimum wages; (3) all claims for failure to provide compliant
19 meal periods, or compensation in lieu thereof; (4) all claims for failure to provide compliant rest
20 periods, or compensation in lieu thereof (5) all claims for the failure to pay wages due upon
21 termination or resignation; (6) all claims for non-compliant wage statements; (7) all claims for
22 failure to reimburse employees for business expenses; and (8) all claims asserted through
23 California Business & Professions Code section 17200, *et seq.* arising out of the Labor Code
24 violations referenced in the Operative Complaint.

25 5.3. Except as set forth in Section 5.4 of this Agreement, Participating Class Members do not
26 release any other claims, including claims for vested benefits, wrongful termination, violation of
27 the Fair Employment and Housing Act, unemployment insurance, disability, social security,
28 workers' compensation, or claims based on facts occurring outside the Class Period.

1 5.4. Release by Aggrieved Employees: For the duration of the PAGA Period, the State of
2 California and LWDA, acting on behalf of all Aggrieved Employees, are deemed to release, on
3 behalf of themselves and their respective former and present representatives, agents, attorneys,
4 heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA
5 penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period
6 facts stated in the Operative Complaint and the PAGA Notice, including, claims for PAGA
7 penalties pursuant to Labor Code sections 210, 226.3, 558, 1197.1, and 2699 in connection with
8 alleged violations of Labor Code sections 200, 201, 202, 203, 204, 226, 226.7, 227.3, 246 *et seq.*,
9 432, 510, 512, 1174, 1194, 1197, 1197.5, 1198.5, 2802, and 2810.5.

10 **6. MOTION FOR PRELIMINARY APPROVAL**

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

14 6.1. Defendants’ Declaration in Support of Preliminary Approval. Within fourteen (14)
15 calendar days of the full execution of this Agreement, Defendants will prepare and deliver to
16 Class Counsel a signed Declaration from Defendants and Defense Counsel disclosing all facts
17 relevant to any actual or potential conflicts of interest with the Administrator and Cy Pres
18 Recipient. In their Declarations, Defense Counsel and Defendants shall aver that they are not
19 aware of any other pending matter or action asserting claims that will be extinguished or
20 adversely affected by the Settlement.

21 6.2. Plaintiff’s Responsibilities. Plaintiff will prepare and endeavor to deliver to Defense
22 Counsel prior to filing all documents necessary for obtaining Preliminary Approval, including:
23 (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval
24 that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the
25 PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order
26 Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class
27 Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for
28 administering the Settlement and attesting to its willingness to serve; competency; operative

1 procedures for protecting the security of Class Data; amounts of insurance coverage for any data
2 breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential
3 conflicts of interest with Class Members; and the nature and extent of any financial relationship
4 with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff
5 confirming willingness and competency to serve and disclosing all facts relevant to any actual or
6 potential conflicts of interest with Class Members and the proposed Cy Pres; (v) a signed
7 declaration from each Class Counsel firm attesting to its competency to represent the Class
8 Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice
9 of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section
10 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) a redlined
11 version of the parties' Agreement showing all modifications made to the Model Agreement ready
12 for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest
13 with Class Members, the Administrator and/or the Cy Pres Recipient. In their Declarations,
14 Plaintiff and Class Counsel Declarations shall aver that they are not aware of any other pending
15 matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

16 6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible
17 for expeditiously finalizing and filing the Motion for Preliminary Approval after the full
18 execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary
19 Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary
20 Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the
21 Administrator.

22 6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
23 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
24 Defense Counsel will expeditiously work together on behalf of the Parties by meeting and
25 conferring, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary
26 Approval or conditions Preliminary Approval on any material change to this Agreement, Class
27 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by
28 meeting and conferring, and in good faith, to modify the Agreement and otherwise satisfy the

1 Court's concerns.

2 **7. SETTLEMENT ADMINISTRATION**

3 7.1. Selection of Administrator. The Parties have jointly selected Phoenix Settlement
4 Administrators and asked to Court to appoint Phoenix Settlement Administrators to serve as the
5 Administrator and verified that, as a condition of appointment, Phoenix Settlement
6 Administrators agrees to be bound by this Agreement and to perform, as a fiduciary, all duties
7 specified in this Agreement in exchange for payment of Administration Expenses. The Parties
8 and their Counsel represent that they have no interest or relationship, financial or otherwise, with
9 the Administrator other than a professional relationship arising out of prior experiences
10 administering settlements.

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

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

17 7.4. Notice to Class Members

18 7.4.1. No later than five (5) business days after receipt of the Class Data, the
19 Administrator shall notify Class Counsel that the list has been received and state the
20 number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class
21 Data.

22 7.4.2. Using best efforts to perform as soon as possible, and in no event later than seven
23 (7) days after receiving the Class Data, the Administrator will send to all Class Members
24 identified in the Class Data, via first-class United States Postal Service ("USPS") mail,
25 the Class Notice with Spanish translation, substantially in the form attached to this
26 Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the
27 dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable
28 to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable)

1 used to calculate these amounts. Before mailing Class Notices, the Administrator shall
2 update Class Member addresses using the National Change of Address database.

3 7.4.3. Not later than five (5) business days after the Administrator's receipt of any Class
4 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class
5 Notice using any forwarding address provided by the USPS. If the USPS does not
6 provide a forwarding address, the Administrator shall conduct a Class Member Address
7 Search, and re-mail the Class Notice to the most current address obtained. The
8 Administrator has no obligation to make further attempts to locate or send Class Notice
9 to Class Members whose Class Notice is returned by the USPS a second time.

10 7.4.4. The deadlines for Class Members' written objections, Challenges to Workweeks
11 and/or Pay Periods, and Requests for Exclusion will be extended an additional fourteen
12 (14) calendar days beyond the forty-five (45) calendar days otherwise provided in the
13 Class Notice for all Class Members whose notice is re-mailed. The Administrator will
14 inform the Class Member of the extended deadline with the re-mailed Class Notice.

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

24 7.5. Requests for Exclusion (Opt-Outs).

25 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement
26 must send the Administrator, by fax, email, or mail, a signed written Request for
27 Exclusion not later than forty-five (45) calendar days after the Administrator mails the
28 Class Notice (plus an additional fourteen (14) calendar days for Class Members whose

1 Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or
2 his/her representative that reasonably communicates the Class Member's election to be
3 excluded from the Settlement and includes the Class Member's name, address and email
4 address or telephone number. To be valid, a Request for Exclusion must be timely
5 faxed, emailed, or postmarked by the Response Deadline.

6 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it
7 fails to contain all the information specified in the Class Notice. The Administrator
8 shall accept any Request for Exclusion as valid if the Administrator can reasonably
9 ascertain the identity of the person as a Class Member and the Class Member's desire
10 to be excluded. The Administrator's determination shall be final and not appealable or
11 otherwise susceptible to challenge. If the Administrator has reason to question the
12 authenticity of a Request for Exclusion, the Administrator may demand additional proof
13 of the Class Member's identity. The Administrator's determination of authenticity shall
14 be final and not appealable or otherwise susceptible to challenge.

15 7.5.3. Every Class Member who does not submit a timely and valid Request for
16 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled
17 to all benefits and bound by all terms and conditions of the Settlement, including the
18 Participating Class Members' Releases under Paragraphs 5.2 and 5.4 of this Agreement,
19 regardless whether the Participating Class Member actually receives the Class Notice
20 or objects to the Settlement.

21 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a
22 Non-Participating Class Member and shall not receive an Individual Class Payment or
23 have the right to object to the class action components of the Settlement. Because
24 future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-
25 Participating Class Members who are Aggrieved Employees are deemed to release the
26 claims identified in Paragraph 5.4 of this Agreement and are eligible for an Individual
27 PAGA Payment.

28 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have forty-five (45)

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

13 **7.7. Objections to Settlement**

14 7.7.1. Only Participating Class Members may object to the class action components of
15 the Settlement and/or this Agreement, including contesting the fairness of the
16 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
17 Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

18 7.7.2. Participating Class Members may send written objections to the Administrator,
19 by fax, email, or mail. In the alternative, Participating Class Members may appear in
20 Court (or hire an attorney to appear in Court) to present verbal objections at the Final
21 Approval Hearing. A Participating Class Member who elects to send a written objection
22 to the Administrator must do so not later than forty-five (45) calendar days after the
23 Administrator's mailing of the Class Notice (plus an additional fifteen (15) calendar
24 days for Class Members whose Class Notice was re-mailed).

25 7.7.3. Non-Participating Class Members have no right to object to any of the class action
26 components of the Settlement.

27 **7.8. Administrator Duties.** The Administrator has a duty to perform or observe all tasks to be
28 performed or observed by the Administrator contained in this Agreement or otherwise.

1 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will maintain
2 and use an internet website to post information of interest to Class Members including
3 the date, time and location for the Final Approval Hearing and copies of the Settlement
4 Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class
5 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment,
6 Class Counsel Litigation Expenses Payment and Class Representative Service Payment,
7 the Final Approval and the Judgment. The Administrator will also maintain and monitor
8 an email address and a toll-free telephone number to receive Class Member calls, faxes
9 and emails.

10 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
11 promptly review on a rolling basis Requests for Exclusion to ascertain their validity.
12 Not later than five (5) calendar days after the expiration of the deadline for submitting
13 Requests for Exclusion, the Administrator shall email a list to Class Counsel and
14 Defense Counsel containing (a) the names and other identifying information of Class
15 Members who have timely submitted valid Requests for Exclusion (“Exclusion List”);
16 (b) the names and other identifying information of Class Members who have submitted
17 invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement
18 submitted (whether valid or invalid).

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

28 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to

1 address and make final decisions consistent with the terms of this Agreement on all
2 Class Member challenges over the calculation of Workweeks and/or Pay Periods. The
3 Administrator's decision shall be final and not appealable or otherwise susceptible to
4 challenge.

5 7.8.5. Administrator's Declaration. Before the date by which Plaintiff is required to file
6 the Motion for Final Approval of the Settlement, the Administrator will provide to Class
7 Counsel and Defense Counsel, a declaration suitable for filing in Court attesting to its
8 due diligence and compliance with all of its obligations under this Agreement,
9 including, but not limited to, its mailing of Class Notice, the Class Notices returned as
10 undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total
11 number of Requests for Exclusion from Settlement it received (both valid or invalid),
12 the number of written objections and attach the Exclusion List. The Administrator will
13 supplement its declaration as needed or requested by the Parties and/or the Court. Class
14 Counsel is responsible for filing the Administrator's declaration(s) in Court.

15 7.8.6. Final Report by Settlement Administrator. Within ten (10) calendar days after the
16 Administrator disburses all funds in the Gross Settlement Amount, the Administrator
17 will provide Class Counsel and Defense Counsel with a final report detailing its
18 disbursements by employee identification number only of all payments made under this
19 Agreement. At least seven (7) calendar days before any deadline set by the Court, the
20 Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed
21 declaration suitable for filing in Court attesting to its disbursement of all payments
22 required under this Agreement. Class Counsel is responsible for filing the
23 Administrator's declaration in Court.

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

25 Based on its records, Defendants estimates that, as of the date of mediation there, (1) there
26 were 143 Class Members and 12,000 Total Workweeks during the Class period and (2) there
27 were 53 Aggrieved Employees who worked 1,459 Pay Periods during the PAGA Period.

28 8.1. Increase in Workweeks. Defendants represent that as of the date of the mediation they

1 reasonably believed there were no more than 12,000 Workweeks worked during the Class Period.
2 In the event the number of Workweeks worked by Class Members during the Class Period
3 increases by more than 10%, or 1,200 Workweeks, then the Gross Settlement Amount shall be
4 increased proportionally by the Workweeks in excess of 13,200 Workweeks multiplied by the
5 Workweek Value. The Workweek Value shall be calculated by dividing the originally agreed-
6 upon Gross Settlement Amount (\$420,000.00) by 12,000, which amounts to a Workweek Value
7 of \$35.00. Thus, for example, should there be 14,000 Workweeks in the Class Period, then the
8 Gross Settlement Amount shall be increased by \$28,000.00. ((14,000 Workweeks – 13,200
9 Workweeks) x \$35.00 per Workweek.).

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

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

20 **10. MOTION FOR FINAL APPROVAL**

21 Plaintiff will file in Court, a motion for final approval of the Settlement that includes a
22 request for approval of the PAGA settlement under Labor Code section 2699, subd. (1), a
23 Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final
24 Approval”). Plaintiff shall endeavor to provide drafts of these documents to Defense Counsel
25 prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will
26 expeditiously meet and confer in person or by telephone, and in good faith, to resolve any
27 disagreements concerning the Motion for Final Approval.

28 10.1. Response to Objections. Each Party retains the right to respond to any objection raised

1 by a Participating Class Member, including the right to file responsive documents in Court no
2 later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or
3 accepted by the Court.

4 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
5 Approval on any material change to the Settlement (including, but not limited to, the scope of
6 release to be granted by Class Members), the Parties will expeditiously work together in good
7 faith to address the Court's concerns by revising the Agreement as necessary to obtain Final
8 Approval. The Court's decision to award less than the amounts requested for the Class
9 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
10 Expenses Payment and/or Administrator Expenses Payment shall not constitute a material
11 modification to the Agreement within the meaning of this paragraph.

12 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the
13 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of
14 (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters,
15 and (iii) addressing such post-Judgment matters as are permitted by law.

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

27 10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
28 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material

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

9 **11. AMENDED JUDGMENT**

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

12 **12. ADDITIONAL PROVISIONS**

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

27 12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendants and
28 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement

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

16 12.3. No Solicitation. The Parties separately agree that they and their respective counsel and
17 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal
18 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's
19 ability to communicate with Class Members in accordance with Class Counsel's ethical
20 obligations owed to Class Members.

21 12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
22 together with its attached exhibits shall constitute the entire agreement between the Parties
23 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or
24 inducements made to or by any Party.

25 12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
26 represent that they are authorized by Plaintiff and Defendants , respectively, to take all
27 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
28 to effectuate its terms, and to execute any other documents reasonably required to effectuate the

1 terms of this Agreement including any amendments to this Agreement.

2 12.6. Cooperation. The Parties and their counsel will cooperate with each other and use their
3 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
4 Settlement Agreement, submitting supplemental evidence and supplementing points and
5 authorities as requested by the Court. In the event the Parties are unable to agree upon the form
6 or content of any document necessary to implement the Settlement, or on any modification of the
7 Agreement that may become necessary to implement the Settlement, the Parties will seek the
8 assistance of a mediator and/or the Court for resolution.

9 12.7. No Prior Assignments. The Parties separately represent and warrant that they have not
10 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
11 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
12 action, or right released and discharged by the Party in this Settlement.

13 12.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense Counsel are
14 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
15 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR
16 Part 10, as amended) or otherwise.

17 12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended,
18 modified, changed, or waived only by an express written instrument signed by all Parties or their
19 representatives, and approved by the Court.

20 12.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to
21 the benefit of, the successors of each of the Parties.

22 12.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
23 governed by and interpreted according to the internal laws of the state of California, without
24 regard to conflict of law principles

25 12.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
26 this Agreement. This Agreement will not be construed against any Party on the basis that the
27 Party was the drafter or participated in the drafting

28 12.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered

1 during Action and in this Agreement relating to the confidentiality of information shall survive
2 the execution of this Agreement

3 12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal.
4 Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by
5 Defendants in connection with the mediation, other settlement negotiations, or in connection with
6 the Settlement, may be used only with respect to this Settlement, and no other purpose, and may
7 not be used in any way that violates any existing contractual agreement, statute, or rule of court.

8 12.15. Headings. The descriptive heading of any section or paragraph of this Agreement is
9 inserted for convenience of reference only and does not constitute a part of this Agreement.

10 12.16. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall
11 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
12 weekend or federal legal holiday, such date or deadline shall be on the first business day
13 thereafter.

14 12.17. Execution in Counterparts. This Agreement may be executed in one or more counterparts
15 by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall
16 be accepted as an original. All executed counterparts and each of them will be deemed to be one
17 and the same instrument if counsel for the Parties will exchange between themselves signed
18 counterparts. Any executed counterpart will be admissible in evidence to prove the existence
19 and contents of this Agreement.

20 12.18. Stay of Litigation. The Parties agree that upon the execution of this Agreement the
21 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
22 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend
23 the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
24 process.

25 12.19. Severability. In the event that one or more of the provisions contained in this Agreement
26 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,
27 illegality, or unenforceability shall in no way effect any other provision if Defendants’ Counsel
28 and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing

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to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

IT IS SO AGREED:

 (14, 2023 15:25 PST)

For Plaintiff, Roberto Ruiz

For Defendant, Protech Delivery and Installation

APPROVED AS TO FORM:



David D. Bibiyan
Vedang J. Patel
Counsel for Plaintiff

Robert S. Blumberg
Counsel for Defendant Protech Delivery and
Installation

1 to proceed as if such invalid, illegal, or unenforceable provision had never been included in this
2 Agreement.

3 **IT IS SO AGREED:**

4 _____
5 *Chao Chapman*
6 _____
7 For Plaintiff, Roberto Ruiz For Defendant, Protech Delivery and Installation

8 APPROVED AS TO FORM:

9 _____
10 David D. Bibiyan Robert S. Blumberg
11 Vedang J. Patel Counsel for Defendant Protech Delivery and
12 Counsel for Plaintiff Installation

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