

## **CLASS ACTION AND PAGA SETTLEMENT**

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiffs Kimberly Pelletier (“Plaintiff Pelletier”) and Jason Johnson (“Plaintiff Johnson”) on the one hand, and defendant ABC Legal Services, LLC (“ABC”) on the other. This Agreement refers to Plaintiff Pelletier and Plaintiff Johnson collectively as “Plaintiffs.” This Agreement refers to Plaintiffs and ABC collectively as “Parties,” or individually as “Party.”

### **1. DEFINITIONS.**

- 1.1 “Action” means the action captioned Kimberly Pelletier v. ABC Legal Services, LLC which is pending in the Superior Court for the County of San Diego, Case No. 37-2022-00047743.
- 1.2 “Administrator” means CPT Group, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4 “Aggrieved Employee” means any and all individuals and/or entities who served process or performed any work as a process server in the State of California under any agreement (written, oral, or implied) with ABC (or its predecessor(s)) as an independent contractor during the PAGA Period.
- 1.5 “Class” means any and all individuals and/or entities who served process or performed any work as a process server in the State of California under any agreement (written, oral, or implied) with ABC (or its predecessor(s)) as an independent contractor during the Class Period. The Class does not include any individual/entity who, as of the date of this Agreement, has claims for individual relief for misclassification as an independent contractor and California Labor Code violations, under the PAGA or otherwise, pending

in arbitration against ABC.

- 1.6 “Class Counsel” means collectively Shaun Setareh and William M. Pao of Setareh Law Group and Craig M. Nicholas, Shaun Markley, and Jordan Belcastro of Nicholas & Tomasevic, LLP.
- 1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” means the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8 “Class Data” means Class Member identifying information in ABC’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workdays and PAGA Pay Periods.
- 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 Class Members’ current 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 and PAGA 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 April 1, 2019, through the date the Court enters an order granting Preliminary Approval of this Agreement.
- 1.13 “Class Representatives” means Plaintiffs Johnson and Pelletier.

- 1.14 “Class Representative Service Payments” means the payments to the Class Representatives for initiating the Action, providing services in support of the Action, and as consideration for their general release of all known and unknown claims contained in this Settlement Agreement.
- 1.15 “Court” means the Superior Court of California, County of San Diego.
- 1.16 “ABC” means named Defendant ABC Legal Services, LLC.
- 1.17 “Defense Counsel” means Dente Law, P.C. and Meservy Law, P.C.
- 1.18 “Effective Date” means the date by when both of the following have occurred: (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 objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19 “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21 “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.22 “Gross Settlement Amount” means One Million Four Hundred and Twenty-Five Thousand Dollars (\$1,425,000.00) which is the total amount ABC agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Litigation Expenses Payment, Class Representative Service Payments and

the Administrator's Expenses.

- 1.23 "Individual Class Payment" means each Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workdays worked during the Class Period.
- 1.24 "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.
- 1.25 "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.26 "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27 "LWDA PAGA Payment" means the 75% of the allocation for PAGA Penalties to be paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28 "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29 "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30 "Operative Complaint" means the amended complaint adding Plaintiff Johnson as a plaintiff and adding class claims and the additional PAGA claims set forth in Plaintiffs' December 6, 2023, amended PAGA exhaustion letter to be filed in the Action. A true and correct copy of the

Operative Complaint to be filed in the Action is attached as Exhibit B and is incorporated by reference into this Agreement.

- 1.31 “PAGA Pay Period” means each pay period during the PAGA Period in which an Aggrieved Employee provided process serving work to ABC for at least one day.
- 1.32 “PAGA Period” means the period from January 24, 2021, through the date the Court enters an order granting Preliminary Approval of this Agreement.
- 1.33 “PAGA” means the California Labor Code Private Attorneys General Act (Labor Code §§ 2698., *et seq.*).
- 1.34 “PAGA Notice” means Plaintiffs’ joint amended PAGA exhaustion letter dated December 6, 2023, to ABC and the LWDA, as well as the Plaintiff Johnson’s September 1, 2022 and Plaintiff Pelletier’s September 21, 2022 exhaustion letters, providing notice under Labor Code section 2699.3, subd.(a).
- 1.35 “PAGA Penalties” means \$200,000.00 which is the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$50,000.00) and the 75% to LWDA (\$150,000.00) in settlement of the PAGA claims.
- 1.36 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.37 “Plaintiffs” means Plaintiffs Jason Johnson and Kimberley Pelletier, the named plaintiffs in the Action.
- 1.38 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.39 "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval of the Settlement.
- 1.40 “Released Class Claims” means the claims being released as described in

Paragraph 6.2 below.

- 1.41 “Released PAGA Claims” means the claims being released as described in Paragraph 6.3 below.
- 1.42 “Released Parties” means Defendant ABC Legal Services, LLC and all of its present, future and former parent companies, subsidiaries, divisions, concepts, related or affiliated companies, owners, members, shareholders, officers, directors, employees, partners, agents, predecessors, and any other successors, assigns, or legal representatives, insurers, co-insurers, reinsurers, attorneys, accountants, auditors, advisors, representatives, consultants and their related companies, and any other individual or entity which could be liable to any Class Member for any of the Released Class Claims and/or any Aggrieved Employee for any of the Released PAGA Claims arising from any form of work performed by Class Members and/or Aggrieved Employees for, on behalf of, or under contract with ABC, ABC’s predecessors, or their clients.
- 1.43 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.44 "Response Deadline" means Sixty (60) days after the Administrator mails the Class Notice to Class Members and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.45 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.46 “Workday” means each day during the Class Period in which a Class

Member made one or more process serving attempts on a process service order received from ABC.

## **2. RECITALS**

- 2.1 On September 1, 2022, Plaintiff Johnson submitted an exhaustion letter with the LWDA under the PAGA, which provided notice of Plaintiff Johnson's intent to seek civil penalties against ABC for alleged wage and hour violations committed against him and other allegedly "aggrieved employees." Plaintiff Johnson's September 1, 2022, exhaustion letter identified a litany of alleged Labor Code violations arising from ABC's alleged improper classification of California process servers as independent contractors including ABC's failure to: provide meal period, provide rest breaks, issue premium pay for non-compliant meal periods and rest breaks, failure to pay contractual, minimum, overtime, and double-time wages, off-the-clock work, failure to reimburse business expenses, failure to provide accurate itemized wage statements, failure to pay all wages timely during employment, failure to pay all wages timely on termination/separation of employment, and unlawful collection or deduction from wages. Plaintiff Johnson's September 1, 2022, PAGA letter sought penalties pursuant to and/or for violation of California Labor Code §§ 201, 202, 203, 204, 210, 212, 216, 221, 222, 223, 225.5, 226, 226.3, 226.7, 256, 226.8, 510, 512, 513, 558, 1194, 1197, 1197.1, 1198, 1199, 2698, 2699(f), and 2802.
- 2.2 On November 7, 2022, Plaintiff Johnson filed a civil action seeking penalties against ABC under the PAGA in Los Angeles Superior Court, Case No. 22STCV35360 (the "Johnson PAGA Action"). The Johnson PAGA Complaint sought civil penalties under PAGA for the violations alleged in his September 1, 2022, PAGA exhaustion letter including civil penalties arising from ABC's alleged: willful misclassification of process servers as independent contractors; failure to provide meal periods; failure

to provide rest breaks; failure to issue premium pay for non-compliant meal periods and rest breaks; failure to pay contractual, minimum, overtime, and double-time wages; off-the-clock work; failure to reimburse business expenses; failure to provide accurate itemized wage statements; failure to pay all wages timely during employment; failure to pay all wages timely on termination/separation of employment; and unlawful collection or deduction from wages.

- 2.3 On September 21, 2022, Plaintiff Pelletier submitted an exhaustion letter with the LWDA under the PAGA which provided notice of Plaintiff Pelletier's intent to seek civil penalties against ABC for alleged wage and hour violations committed against her and other allegedly "aggrieved employees." Plaintiff Pelletier's September 21, 2022, exhaustion letter identified a litany of alleged Labor Code violations arising from ABC's alleged improper classification of California process servers as independent contractors including its failure to: provide meal period, provide rest breaks, issue premium pay for non-compliant meal periods and rest breaks, failure to pay contractual, minimum, overtime, and double-time wages, off-the-clock work, failure to reimburse business expenses, failure to provide accurate itemized wage statements, failure to pay all wages timely during employment, failure to pay all wages timely on termination/separation of employment, and unlawful collection or deduction from wages. Plaintiff Pelletier's September 21, 2022, PAGA letter sought penalties pursuant to and/or for violation of California Labor Code §§ 201, 202, 203, 210, 216, 221, 223, 225.5, 226, 226.2, 226.3, 226.7, 226.8, 432.5, 450, 510, 512, 558, 1174, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 2802, 2698, 2699.
- 2.4 On November 21, 2022, Plaintiff Pelletier filed the Action seeking civil penalties against ABC under the PAGA for the violations alleged in her September 21, 2022, PAGA exhaustion letter, including civil penalties



arising from ABC's alleged: willful misclassification of process servers as independent contractors; failure to provide meal periods; failure to provide rest breaks; failure issue premium pay for non-compliant meal periods and rest breaks; failure to pay contractual, minimum, overtime, and double-time wages; off-the-clock work; failure to reimburse business expenses; failure to provide accurate itemized wage statements; failure to pay all wages timely during employment; failure to pay all wages timely on termination/separation of employment; and unlawful collection or deduction from wages.

- 2.5 On March 14, 2023, Plaintiff Pelletier filed a putative class action complaint against ABC in the San Diego Superior Court, Case No. 37-2023-00010530 alleging wage and hour violations on behalf of all California process servers who performed service of process for ABC in California and were not classified by ABC as an employee (the "Pelletier Class Action"). The Pelletier Class Action included claims for willful misclassification as independent contractors, failure to reimburse business expenses, failure to provide accurate wage statements, failure to pay minimum wages, failure to provide overtime, failure to provide meal periods, failure to provide rest breaks, failure to pay wages when due, and unfair business practices (Cal. Bus. & Prof. Code § 17200 et seq. The Pelletier Class Complaint also contained individual claims for wrongful termination and retaliation for Plaintiff Pelletier.
- 2.6 ABC denies all of the allegations contained in Plaintiffs' PAGA exhaustion letters, related civil actions, and the Pelletier Class Complaint.
- 2.7 On August 24, 2023, the Parties and their counsel participated in a full-day mediation before the Hon. Amy D. Hogue (Ret.). The Parties were unable to reach an agreement during the course of the mediation. After the mediation concluded, the mediator made a mediator's proposal that all

Parties ultimately accepted. The Parties then drafted this Agreement based on the terms of the accepted mediator's proposal.

- 2.8 On December 6, 2023, Plaintiffs jointly filed an amended PAGA exhaustion letter providing notice of their intent to seek additional civil penalties based on additional alleged violations of California's Labor Code.
- 2.9 Prior to and/or during the mediation, the Parties exchanged extensive documents, class data, PAGA data, documents and information concerning ABC's financial condition, and legal argument. Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App. 4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("Dunk/Kullar").
- 2.10 No motion for class certification has been presented in any Court as of the date of this Agreement.
- 2.11 The Parties, Class Counsel, and Defense Counsel represent that they are not aware of any other pending matter or action asserting class claims that will be extinguished or affected by the Settlement. This Settlement resolves all outstanding claims for civil penalties brought against ABC under PAGA by process servers in California, including those alleged in the following cases: *Derek Lee, et al. v. ABC Legal Services, Inc., et al.*, Case No. 22STCV11138 (Los Angeles Sup. Ct.); and *Tamara Johnson v. ABC Legal Services, LLC, et al.*, Case No. CVRI2204528 (Riverside Sup. Ct.). This Settlement will not resolve the individual, non-PAGA claims brought by Derek Lee and Gabriela Melendez that are currently pending in arbitration before the American Arbitration Association as well as the individual, non-PAGA claims brought by Tamara Johnson.

**3. Dismissal of the Johnson PAGA Action \_and Pelletier Class Action Without Prejudice and Filing of the Operative Complaint in the Action.**

- 3.1 Dismissal of the Johnson PAGA Action Without Prejudice. Within (5) days

of the date all Parties execute this Agreement, the Parties will submit a stipulation and proposed order dismissing the Johnson PAGA Action without prejudice. A true and correct copy of the stipulation and proposed order dismissing the Johnson PAGA Action without prejudice is attached as Exhibit D and is incorporated by reference into this Agreement.

3.2 Dismissal of the Pelletier Class Action Without Prejudice. The Parties already dismissed the Pelletier Class Action without prejudice on February 5, 2024.

3.3 Filing of the Operative Complaint in the Action. Within (5) days of the date all Parties execute this Agreement, the Parties will submit a stipulation and proposed order in the Action seeking leave for Plaintiffs to file the “Operative Complaint.” A true and correct copy of the stipulation and proposed order seeking leave for Plaintiffs to file the Operative Complaint in the Action is attached as Exhibit C and is incorporated by reference into this Agreement. A true and correct copy of the Operative Complaint to be filed in the Action is attached as Exhibit B and is incorporated by reference into this Agreement.

#### **4. Monetary Terms**

4.1 Gross Settlement Amount. ABC promises to pay One Million Four Hundred and Twenty-Five Thousand Dollars (\$1,425,000.00) and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. ABC has no obligation to pay the Gross Settlement Amount (or any related employer payroll taxes) prior to the deadlines set forth in this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to ABC.

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

4.2.1 To Plaintiffs: Class Representative Services Payments to the Class Representatives of not more than \$10,000 each, \$20,000 total, for initiating the Action, providing services in support of the Action, and as consideration for their general release of all claims contained in this Agreement. The Class Representative Services Payments will be made in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representatives are entitled to receive as a Participating Class Member. ABC will not oppose Plaintiffs' requests for Class Representative Service Payments that do not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expense Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payments less than the amounts requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

4.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than 33.33%, which is currently estimated to be \$474,952.50 and a Class Counsel Litigation Expenses Payment of not more than \$20,000.00. ABC will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation

Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other plaintiff's counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds ABC harmless, and indemnifies ABC, from any dispute or controversy regarding any division or sharing of any of these payments.

To the Administrator: An Administrator Expenses Payment not to exceed \$14,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$14,000.00, the Administrator will allocate the remainder in the Net Settlement Amount.

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

4.2.3.1 Tax Allocation of Individual Class Payments: 25% of each Participating Class Member's Individual Class Payment will

be allocated to settlement of wage claims (the “Wage Portion”). The Wage Portion is subject to payroll taxes and withholding and will be reported on an IRS Form W-2. The remaining 75% of each Participating Class Member’s Individual Class Payment will be allocated to settlement of claims for unreimbursed business expenses, interest and statutory penalties (the “Non-Wage Portion”). The Non-Wage Portion is not subject to payroll taxes and withholdings and will be reported on an IRS Form 1099. Participating Class Members assume full responsibility and liability for any employee taxes on their Individual Class Payments.

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

4.2.4 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$200,000.00 to be allocated: 25% (\$50,000.00) to Individual PAGA Payments and 75% (\$150,000.00) to the LWDA PAGA Payment.

4.2.4.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties (\$50,000.00) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b)

multiplying the result by each Aggrieved Employee's PAGA Pay Periods.

4.2.4.2 Tax Allocation of Individual PAGA Payments. 100% of each Aggrieved Employees' Individual PAGA Payment will be allocated to settlement of claims for statutory penalties, will not be subject to payroll taxes and withholdings, and will be reported on an IRS Form 1099. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

4.2.4.3 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount.

## **5. SETTLEMENT FUNDING AND PAYMENTS**

5.1 Class Workdays and Aggrieved Employee PAGA Pay Periods. Based on a review of its records to date, ABC estimates that there are approximately 1,600 Class Members who collectively worked a total of 263,986 Workdays during the Class Period and approximately 1,275 Aggrieved Employees who worked in a total of 22,399 PAGA Pay Periods during the PAGA Period.

5.2 Class Data. Not later than 45 days after the Court grants Preliminary Approval of the Settlement, ABC will deliver the Class Data to the Administrator in the form of a Microsoft Excel spreadsheet or other format agreed to between ABC and the administrator. 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. ABC 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 ABC 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.

5.3 Funding of Gross Settlement Amount. ABC shall fully fund the Gross Settlement Amount, and fund the amounts necessary to fully pay ABC's share of employer payroll taxes by transmitting the funds to the Administrator in two equal installments. ABC shall transmit the first half of the Gross Settlement Amount and ABC's share of employer payroll taxes to the Administrator no later than 30 days after the Effective Date. ABC shall transmit the second half of the Gross Settlement Amount and ABC's share of employer payroll taxes to the Administrator no later than 210 days after the Effective Date.

5.4 Payments from the Gross Settlement Amount. Within 14 days after ABC funds the first half of the Gross Settlement Amount, the Administrator will mail a first set of checks for 50% of the: Individual Class Payments; Individual PAGA Payments; LWDA PAGA Payment; Administration Expenses Payment; Class Counsel Fees Payment; Class Counsel Litigation Expenses Payment; and the Class Representative Service Payments. Within 14 days after ABC funds the second half of the Gross Settlement Amount, the Administrator will mail a second set of checks for the remaining 50% of the: Individual Class Payments; Individual PAGA Payments; LWDA PAGA Payment; Administration Expenses Payment; the Class Counsel Fees Payment; Class Counsel Litigation Expenses Payment; and the Class Representative Service Payments. Disbursement of the Class Counsel Fees



Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

5.4.1 The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Participating Class Members and/or Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (180 days after the date of mailing) when the check will be voided (the "Void Date"). The Administrator will cancel all checks not negotiated by the Void Date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may combine payments for the Individual Class Payment and the Individual PAGA Payment into a single check. Before mailing any checks, the Settlement Administrator must update the Participating Class Members' and/or Aggrieved Employees' mailing addresses using the National Change of Address Database.

5.4.2 The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without a USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not

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

5.4.3 For any Participating Class Member and/or Aggrieved Employee whose Individual Class Payment check and/or Individual PAGA Payment check is uncashed and cancelled after the Void Date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Participating Class Member and/or Aggrieved Employee thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

5.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate ABC to confer any additional benefits or make any additional payments to Participating Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

## **6. RELEASES OF CLAIMS.**

As of the Effective Date, Plaintiffs, Participating Class Members, Aggrieved Employees, and Class Counsel will release claims against the Released Parties as follows:

6.1 Plaintiffs' Release. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge the Released Parties from all claims, transactions, or occurrences through the date of the execution of this Agreement including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint filed in the Action; (b) all PAGA claims that were, or reasonably could have been, alleged based on facts

contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 5.2, below; and (c) any and all known or unknown claims of any nature Plaintiffs have, jointly or individually, against ABC and the Released Parties as of the date the Court grants preliminary approval of this Settlement ("Plaintiffs' Release"). Plaintiffs acknowledge they may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

6.1.1 Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

6.2 Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, businesses and entities owned or operated by Participating Class members, attorneys, heirs, administrators, successors, assigns, release Released Parties from: all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and ascertained in the course of the Action including, but not limited to, any and all claims involving any (a) alleged failure to pay wages, including contractual, minimum wage, overtime wages, double-time wages, and split shift wages; (b) failure to provide compliant, off-duty meal periods, and failure pay any or correct extra compensation owed for failure to provide compliant, off-duty meal periods; (c) failure to provide compliant, off-

duty rest breaks, and failure to pay any or correct extra compensation owed for failure to provide complaint, off-duty rest breaks; (d) failure to reimburse for business expenses; (e) failure to provide timely, accurate, and compliant itemized wage statements; (f) failure to keep accurate records regarding wages or hours worked; (g) failure to timely pay wages during employment; (h) failure to timely pay wages on termination of employment; (i) claims for or derivative of misclassification as an independent contractor; (j) claims for restitution, disgorgement, damages expenses, attorneys fees, costs, statutory or civil penalties pursuant to or arising from violation of any of the following: California Labor §§ 201, 202, 203, 204, 210, 212, 216, 218.5, 221, 222, 223, 224, 225.5, 226, 226.2, 226.3, 226.7, 233, 234, 245-248.5, 256, 226.8, 432.5, 432.7, 450, 510, 512, 512, 558, 558.1, 1024.5, 1174, 1174.5, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 1199, 2698 et seq, 2775, 2802, 2804, 2810.5, 3353, 3700, 3700.5, 3722, 3715, the applicable Industrial Welfare Commission Wage Order(s), California Civil Code § 1786, 15 U.S.C. § 1681; (k) claims for unfair competition and unfair business practices, including for violation of California Business Code §§ 17200, et seq.; and (l) claims for injunctive relief, declaratory relief, interest, attorneys fees, or costs for any of the foregoing alleged violations during the Class Period. Except as set forth in Section 6.1 with respect to Plaintiffs only, and Section 6.3 below with respect to Aggrieved Employees, Participating Class Members do not release any other claims, including claims for wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring after the Class Period.

6.3 Release by Aggrieved Employees: All Aggrieved Employees, whether Participating Class Members or Non-Participating Class Members, as well the State of California and all of its agencies/divisions (including, the LWDA) are deemed to release, on behalf of themselves and their respective former and present

representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA/civil penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and all PAGA notices, as well as those ascertained in the course of the Action including, but not limited to, any and all claims involving any: (a) alleged failure to pay wages, including contractual, minimum wage, overtime wages, double-time wages, and split shift wages; (b) failure to provide compliant, off-duty meal periods, and failure pay any or correct extra compensation owed for failure to provide compliant, off-duty meal periods; (c) failure to provide compliant, off-duty rest breaks, and failure to pay any or correct extra compensation owed for failure to provide complaint, off-duty rest breaks; (d) failure to reimburse for business expenses; (e) failure to provide timely, accurate, and compliant itemized wage statements; (f) failure to keep accurate records regarding wages or hours worked; (g) failure to timely pay wages during employment; (h) failure to timely pay wages on termination of employment; (i) claims for or derivative of misclassification as an independent contractor; (j) claims for civil penalties pursuant to or arising from violation of any of the following: California Labor §§ 201, 202, 203, 204, 210, 212, 216, 218.5, 221, 222, 223, 224, 225.5, 226, 226.2, 226.3, 226.7, 233, 234, 245-248.5, 256, 226.8, 432.5, 432.7, 450, 510, 512, 512, 558, 558.1, 1024.5, 1174, 1174.5, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 1199, 2698 et seq, 2775, 2802, 2804, 2810.5, 3353, 3700, 3700.5, 3722, 3715, the applicable Industrial Welfare Commission Wage Order(s), California Civil Code § 1786, 15 U.S.C. § 1681; and (k) and claims for recovery of attorney's fees and costs for any of the foregoing alleged violations during the PAGA Period.

**7. MOTION FOR PRELIMINARY APPROVAL.**

Plaintiffs' counsel shall prepare and file a motion for preliminary approval ("Motion for Preliminary Approval"). Plaintiffs' counsel shall provide a copy of the planned Motion for Preliminary Approval to Defense Counsel no less than 14 days before filing it with the Court.

- 7.1 ABC's Declaration in Support of Preliminary Approval. Within 21 days of the full execution of this Agreement, ABC will prepare and deliver to Class Counsel a signed Declaration from ABC and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator.
- 7.2 Plaintiffs' Responsibilities. Fourteen (14) days before filing their Motion for Preliminary Approval with the Court, Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft of the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft of the proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve, competency, operative procedures for protecting the security of Class Data, amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance, all facts relevant to any actual or potential conflicts of interest with Class Members and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) signed declarations from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to their competency to represent the Class Members, their timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any

actual or potential conflict of interest with Class Members, and/or the Administrator.

7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 90 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

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

## **8. SETTLEMENT ADMINISTRATION.**

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

8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax

withholdings and providing reports state and federal tax authorities.

8.3 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.

8.4 Notice to Class Members.

8.4.1 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, PAGA Members, Workdays, and PAGA Pay Periods in the Class Data.

8.4.2 Using best efforts to perform as soon as possible, and in no event later than 30 days after receiving the Class Data, 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 any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member/Aggrieved Employee (if applicable), and the number of Workdays and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing the Class Notice, the Administrator shall update Class Member addresses using the National Change of Address database.

8.4.3 Not later than 5 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.



8.4.4 The deadlines for Class Members' written objections, Challenges to Workdays and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

8.4.5 If the Administrator, ABC, or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, to agree on whether to include them as a Class Member and/or Aggrieved Employee. If the Parties agree, such persons will be a Class Member and/or Aggrieved Employee entitled to the same rights as other Class Member and/or Aggrieved Employee under this Agreement, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever is later.

8.5 Requests for Exclusion (Opt-Outs).

8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or

postmarked by the Response Deadline.

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

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

8.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment.

8.6 Challenges to Calculation of Workdays and PAGA Pay Periods. Each Class Member shall have 60 days after the Administrator mails the Class Notice (plus an

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

8.7 Objections to Settlement.

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

8.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

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

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

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

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

8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or

invalid) received, objections received, challenges to Workdays and/or PAGA Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all objections received.

8.8.4 Workday and/or PAGA Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member and/or Aggrieved Employee challenges over the calculation of Workdays and/or PAGA Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

8.8.5 Administrator’s Declaration. Not later than 14 days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), and the number of written objections. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

8.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements of all payments made under this

Agreement that does not contain any identifying information of Class Members or Aggrieved Employees. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

#### **9. CLASS SIZE ESTIMATES**

Based on its records, ABC estimates that there are 1,600 Class Members who collectively worked a total of 263,986 Workdays during the Class Period and approximately 1,275 Aggrieved Employees who worked in a total of 22,399 PAGA Pay Periods during the PAGA Period.

If, at the time Preliminary Approval is granted, the total number of Workdays increases by more than ten percent (10%) of the total number of Workdays that ABC previously provided to Class Counsel, then, at its option, ABC may elect to either: (1) increase the Gross Settlement Amount in proportion to the increased percentage of Workdays over 10% of the total number of Workdays that ABC previously provided to Class Counsel – for example, if such increase in Workdays is 12%, the Gross Settlement Amount will increase by 2%; or (2) end the Class Period on the date on which the number of Workdays does not exceed 10% of the total number of Workdays ABC previously provided to Class Counsel.

#### **10. ABC'S RIGHT TO WITHDRAW**

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

## 11. MOTION FOR FINAL APPROVAL

Not later than 16 court days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiffs shall provide drafts of these documents to Defense Counsel not later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

- 11.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members and/or Aggrieved Employees), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-

Judgment matters as are permitted by law.

- 11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the material terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final.
- 11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members and/or Aggrieved Employees), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payments or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

## **12. AMENDED JUDGMENT**

If any amended judgment is required under Code of Civil Procedure section 384, the Parties



will work together in good faith to jointly submit and a proposed amended judgment.

### **13. ADDITIONAL PROVISIONS**

13.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. No Waiver of Enforceability of Arbitration Agreement or Class Action Waivers Where Settlement Does Not Become Effective. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by ABC that any of the allegations in any PAGA exhaustion letters submitted to the LWDA or any complaints filed in the Action, including the Operative Complaint, have merit or that ABC has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that ABC's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, ABC reserves the right to contest certification of any class for any reasons, and ABC reserves all available defenses to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any grounds available and to contest ABC's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement). Nothing in this Agreement, nor the Parties' efforts to effectuate this Settlement, shall act as a waiver of ABC's ability to move to compel arbitration of all of Plaintiffs' claims on an individual basis. By entering into this Agreement and stipulating to the Settlement contained herein, the Parties agree that ABC is not waiving its right to compel individual arbitration of Plaintiffs' claims and contest Plaintiffs' or Class Members' ability to bring collective/class claims in the event that the Settlement does not become effective.

13.2 Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, ABC and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) to the extent necessary to report income to appropriate taxing authorities; (3) in response to a court order or subpoena; or (4) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel, ABC and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members. Further, ABC and/or Defense Counsel may disclose the Settlement to counsel, courts or arbitrators in any related matters including, but not limited to, arbitrations or actions brought against ABC with claims similar to the Action, where it is appropriate, in their sole discretion, to do so.

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

in accordance with Class Counsel's ethical obligations owed to Class Members.

- 13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and ABC, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 13.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 13.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 13.8 No Tax Advice. Neither Plaintiffs, Class Counsel, ABC nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury

Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

- 13.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by ABC in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiffs and Class Counsel shall destroy, all paper and electronic versions of Class Data received from ABC unless, prior to the Court's discharge of the Administrator's obligation, ABC makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

- 13.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 13.16 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 13.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the day sent by email, addressed as follows:  
To Plaintiff Johnson: shaun@setarehlaw.com and william@setarehlaw.com  
To Plaintiff Pelletier: smarkley@nicholaslaw.org  
To ABC: matt@dentelaw.com and london@meservylawpc.com
- 13.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

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DATED: April \_\_, 2024

FOR PLAINTIFFS, THE CLASS, AND THE STATE OF CALIFORNIA

By: \_\_\_\_\_

JASON JOHNSON

DATED: April \_\_, 2024

FOR PLAINTIFFS, THE CLASS, AND THE STATE OF CALIFORNIA

By: \_\_\_\_\_

KIMBERLEY PELLETIER

4/15/2024

DATED: April \_\_, 2024

ABC LEGAL SERVICES, LLC.

DocuSigned by:

By: \_\_\_\_\_

*Timothy Dinehart*

UA5353D4E11904  
Name: Timothy Dinehart

Title: CEO, ABC Legal Services

AS TO FORM ONLY:  
4/15/2024

DATED: April \_\_, 2024

MESERVY LAW, P.C.  
DENTE LAW, P.C.

DocuSigned by:

By: \_\_\_\_\_

*L. D. Meservy*

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LONDON D. MESERVY

Attorneys for Defendant  
ABC Legal Services, LLC

DATED: April \_\_, 2024

NICOLAS & TOMASEVIC, LLP

By: \_\_\_\_\_

SHAUN MARKLEY

Attorneys for Plaintiff Kimberley Pelletier, Class Members, and the State of California

DATED: April \_\_, 2024

SETAREH LAW GROUP

By: \_\_\_\_\_

SHAUN SETAREH

Attorneys for Plaintiff Jason Johnson, Class Members, and the State of California

DATED: April 17, 2024

FOR PLAINTIFFS, THE CLASS, AND THE STATE OF CALIFORNIA

By:   
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JASON JOHNSON

DATED: April \_\_, 2024

FOR PLAINTIFFS, THE CLASS, AND THE STATE OF CALIFORNIA

By: \_\_\_\_\_  
KIMBERLEY PELLETIER

DATED: April \_\_, 2024

ABC LEGAL SERVICES, LLC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

AS TO FORM ONLY:

DATED: April \_\_, 2024

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Attorneys for Defendant  
ABC Legal Services, LLC

DATED: April \_\_, 2024

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DATED: April \_\_, 2024

FOR PLAINTIFFS, THE CLASS, AND THE STATE OF CALIFORNIA


By: \_\_\_\_\_

JASON JOHNSON

04/11/24

DATED: April \_\_, 2024

FOR PLAINTIFFS, THE CLASS, AND THE STATE OF CALIFORNIA

By:  \_\_\_\_\_  
Kimberly Pelletier (Apr 11, 2024 11:46 PDT)

KIMBERLEY PELLETIER

DATED: April \_\_, 2024

ABC LEGAL SERVICES, LLC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

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