

1 **SETTLEMENT AGREEMENT OF CLASS ACTION AND PRIVATE ATTORNEYS**

2 **GENERAL ACT CLAIMS**

3 This Settlement Agreement of Class Action and Private Attorneys General Act Claims
4 (“Settlement” or “Settlement Agreement”) is made between Ekaterina Netsvetayeva and Valerie
5 Butler (“Plaintiffs”), as individuals and on behalf of all other similarly situated and alleged
6 aggrieved employees, on the one hand, and Defendant Autodesk, Inc. (“Defendant” or
7 “Autodesk”) on the other hand (collectively, the “Parties” and individually, a “Party”). This
8 Settlement was reached pursuant to lengthy negotiations between the Parties over the course of
9 several months.

10 **I. DEFINITIONS**

11 **A.** “Lawsuit” means the lawsuit entitled *Ekaterina Netsvetayeva and Valerie Butler v.*
12 *Autodesk, Inc.*.

13 **B.** “Class Counsel” means Craig Ackermann and Avi Kreitenberg of Ackermann &
14 Tilajef, P.C., 1180 South Beverly Drive, Suite 610, Los Angeles, California 90035 and India Lin
15 Bodien of India Lin Bodien, Attorney at Law, 2522 North Proctor Street, No. 387, Tacoma,
16 Washington 98406.

17 **C.** “Class Member Payments” means the amount payable from the Net Distribution
18 Fund to each Settlement Class Member, 90% of which shall be allocated to penalties and 10% of
19 which shall be allocated to wages. Class Member Payments are separate and distinct from PAGA
20 Payments (defined below) that will be paid to PAGA Aggrieved Employees.

21 **D.** “Class Payout Fund” means all funds remaining from the Gross Settlement Amount
22 after deducting the Court-awarded Named Plaintiff Enhancement Payments, Fees Award, Costs
23 Award, Settlement Administration Costs, and PAGA Payments.

24 **E.** “Class Settlement” means the non-PAGA portion of the settlement embodied in
25 this Settlement Agreement.

26 **F.** “Costs Award” means costs of litigation approved by the Court for Class Counsel’s
27 costs incurred in investigation, litigation, and resolution of the Lawsuit, and administration of the
28 Settlement, including anticipated costs incurred through Final Approval and disbursement of

1 payments under this Settlement Agreement and obtaining entry of the judgment terminating the
2 Lawsuit.

3 **G.** “Court” means Marin County Superior Court, located at 3501 Civic Center Drive
4 San Rafael, California 94903.

5 **H.** “Defendant’s Counsel” means Paul Cowie and Luis Arias of Sheppard, Mullin,
6 Richter & Hampton LLP, Four Embarcadero Center, 17th Floor, San Francisco, CA 94111.

7 **I.** “Effective Date” means the date by which the final judgment becomes final. For
8 purposes of this Settlement Agreement, the final judgment “becomes final” only after the Court
9 grants the motion for final approval of the settlement and upon the latter of (i) the period for filing
10 any appeal, writ, or other appellate proceeding challenging or opposing the Settlement has elapsed
11 without any appeal, writ, or other appellate proceeding having been filed; (ii) any appeal, writ or
12 other appellate proceeding challenging or opposing the Settlement has been dismissed finally and
13 conclusively with no right to pursue further remedies or relief and without impacting this
14 Settlement; or (iii) any appeal, writ or other appellate proceeding has upheld the Court’s final
15 order with no right to pursue further remedies or relief. In this regard, it is the intention of the
16 parties that the Settlement shall not become effective, and Defendant will not be obligated to fund
17 this Settlement, until the Court’s order approving the Settlement is completely final, and there is
18 no further recourse by an appellant, objector, intervenor, or otherwise by anyone who seeks to
19 contest the Settlement.

20 **J.** “Fees Award” means attorneys’ fees approved by the Court for Class Counsel’s
21 fees incurred in investigation, litigation, and resolution of the Lawsuit, and administration of the
22 Settlement, including anticipated fees incurred through Final Approval and disbursement of
23 payments under this Settlement Agreement and obtaining entry of the judgment terminating the
24 Lawsuit, and which shall not exceed one third (1/3) of the Gross Settlement Amount, i.e. up to
25 \$158,333.33.

26 **K.** “Final Approval” means the Court’s order granting final approval of the Settlement
27 Agreement.

28

1 **L.** “Gross Settlement Amount” means a non-reversionary common fund that shall
2 have a total all-in value of \$475,000.00 and includes without limitation any and all payments
3 Defendant may be responsible for under the Settlement, including any Fees Award and Costs
4 Award to Class Counsel, Named Plaintiff Enhancement Payments, the Class Member Payments,
5 the PAGA Payments (which includes payments to the LWDA), and Settlement Administration
6 Costs, and all payroll taxes (inclusive of employer-side payroll taxes) due and owing as a result of
7 the Settlement. The total amount that Defendant shall pay for any and all purposes under this
8 Settlement Agreement is the Gross Settlement Amount.

9 **M.** “LWDA” means the California Labor and Workforce Development Agency.

10 **N.** “Named Plaintiffs” means Ekaterina Netsvetayeva and Valerie Butler.

11 **O.** “Named Plaintiff Enhancement Payments” means the amount to be paid to each
12 Named Plaintiff for their time and effort spent pursuing the Lawsuit; for the risks associated with
13 suing Defendant; and for their agreement to enter into a general release of all claims, not to exceed
14 \$5,000 for Ekaterina Netsvetayeva and \$7,500 for Valerie Butler, for a total of \$12,500.

15 **P.** “PAGA” means the California Private Attorneys General Act, California Labor
16 Code §§ 2699 *et seq.*

17 **Q.** “PAGA Aggrieved Employees” means all current and former employees of
18 Autodesk employed in California during the PAGA Period who were subject to stay-at-home
19 orders and/or whose offices were closed due to COVID-19 for at least one pay period during the
20 PAGA period and did not receive a fully paid wireless internet device for work purposes.

21 **R.** “PAGA Aggrieved Employee List” means the list of all PAGA Aggrieved
22 Employees that Defendant will diligently and in good faith compile from its records to accurately
23 reflect employees’ names, last known mailing address, telephone number, Social Security number,
24 date of birth, and pay periods worked by the PAGA Aggrieved Employees during the PAGA
25 Period.

26 **S.** “PAGA Payment” means the payment to the State of California LWDA and the
27 PAGA Aggrieved Employees in settlement of all claims for PAGA penalties as defined in this
28 Settlement Agreement.

1 **T.** “PAGA Period” means the time period beginning March 17, 2020 through March
2 5, 2022.

3 **U.** “PAGA Settlement” means the PAGA portion of the settlement embodied in this
4 Settlement Agreement.

5 **V.** “Qualified Settlement Account” means the account established by the Settlement
6 Administrator pursuant to Internal Revenue Code section 1.468B-1.

7 **W.** “Released Parties” means Defendant, and each of its past, present and future
8 agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders,
9 stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations
10 and/or partnerships (defined as a company/corporation and/or partnership that is, directly or
11 indirectly, under common control with Defendant or any of its parents and/or affiliates), divisions,
12 assigns, predecessors, successors, insurers, consultants, joint ventures, any actual or alleged joint
13 employers, affiliates, and alter-egos, and all of their respective past, present and future employees,
14 directors, officers, agents, attorneys, insurers, stockholders, fiduciaries, parents, subsidiaries, and
15 assigns.

16 **X.** “Settlement Administration Costs” means the costs payable from the Gross
17 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
18 but not limited to, the Settlement Administrator’s responsibilities outlined in this Settlement
19 Agreement.

20 **Y.** “Settlement Administrator” means CPT Group, Inc., whom the Parties mutually
21 agree shall be responsible for the administration of the Settlement, distribution of amounts owed
22 under this Settlement, and matters necessarily related thereto, pursuant to the terms of this
23 Settlement Agreement.

24 **Z.** “Settlement Class” means all current and former employees of Autodesk employed
25 in California during the Settlement Class Period who were subject to stay-at-home orders and/or
26 whose offices were closed due to COVID-19 for at least one pay period during the Settlement
27 Class Period and did not receive a fully paid wireless internet device for work purposes.

28

1 **AA.** “Settlement Class Members” means individuals in the Settlement Class who do not
2 submit a timely and valid request for exclusion from the Settlement Class.

3 **BB.** “Settlement Class List” means the list of all Settlement Class employees that
4 Defendant will diligently and in good faith compile from its records to accurately reflect
5 employees’ names, last known mailing address, telephone number, Social Security number, date
6 of birth, and pay periods worked during the Settlement Class Period.

7 **CC.** “Settlement Class Period” means the time period from March 17, 2020 through
8 March 5, 2022.

9 **II. RECITALS**

10 **A. Background and Procedural History**

11 1. On September 2, 2021, Plaintiffs Ekaterina Netsvetayeva and Valerie Butler
12 (collectively, the “Plaintiffs”) submitted a PAGA notice to the LWDA in accordance with the
13 requirements of Labor Code section 2699.3(a). The PAGA notice alleges that Defendant violated
14 California Labor Code section 2802 for failure to reimburse its employees a reasonable portion of
15 their work-related home office expenses, including reasonable percentage of their cell phone and
16 home internet expenses incurred on behalf of Defendant during the COVID-19 pandemic. The
17 LWDA declined to investigate the alleged violations, permitting the Plaintiffs to assert a claim
18 under PAGA.

19 2. The Parties engaged in prolonged informal settlement discussions,
20 informally exchanged information, and ultimately reached a settlement.

21 **B.** Named Plaintiffs have fully investigated the factual and legal bases for the causes
22 of action asserted in the Lawsuit. As a result of their investigation, Named Plaintiffs continue to
23 believe their claims are viable and that Defendant violated the California Labor Code. Defendant
24 has denied all allegations and contends that the claims asserted in the Lawsuit have no merit and
25 cannot give rise to liability on behalf of Defendant. Given the disagreement between the Parties as
26 to the viability of these claims, the Parties believe the Settlement provided for herein is a fair,
27 adequate and reasonable settlement.

28

1 **C.** Named Plaintiffs recognize the expense and length of continued proceedings
2 necessary to continue the litigation against Defendant through trial and through any possible
3 appeals. Named Plaintiffs have also taken into account the uncertainty and risk of the outcome of
4 further litigation, the difficulties and delays inherent in such litigation, and Defendant's
5 contentions regarding its policies and defenses. Named Plaintiffs are also aware of the burdens of
6 proof necessary to establish liability for the claims asserted in the Lawsuit, Defendant's defenses
7 thereto, and the difficulties in establishing damages for the Settlement Class and PAGA Aggrieved
8 Employees. Named Plaintiffs have also taken into account the documents and information
9 produced and settlement negotiations conducted, which negotiations resulted in the material
10 settlement terms set forth herein. Based on the foregoing, Named Plaintiffs have determined that
11 the Settlement set forth in this Settlement Agreement is a fair, adequate and reasonable settlement,
12 and is in the best interests of the Settlement Class and PAGA Aggrieved Employees.

13 **D.** Defendant has concluded that defense of this litigation would be protracted and
14 expensive for all Parties. Defendant has devoted substantial amounts of time, energy and
15 resources to the investigation and defense of the claims asserted in the Lawsuit and, unless this
16 Settlement is made, will continue to do so for the foreseeable future (likely years). For these
17 reasons, Defendant has agreed to settle the matter upon the terms set forth in this Settlement
18 Agreement, to put to rest the claims as set forth in the Lawsuit.

19 **E.** Defendant has denied and continues to deny each of the claims and contentions
20 alleged in the Lawsuit. Defendant has repeatedly asserted and continues to assert defenses thereto,
21 and has expressly denied and continues to deny any wrongdoing or legal liability arising out of
22 any of the facts or conduct alleged in the Lawsuit. Defendant also has denied and continues to
23 deny, *inter alia*, the allegations that the Settlement Class and PAGA Aggrieved Employees have
24 suffered damages; that Defendant improperly failed to pay the Settlement Class and PAGA
25 Aggrieved Employees all wages owed; that Defendant failed to properly provide meal and rest
26 periods; that Defendant provided the Settlement Class and PAGA Aggrieved Employees with
27 inaccurate wage statements; that Defendant failed to timely pay all wages due during employment
28 or at the separation of employment; that Defendant failed to reimburse business expenses; that

1 Defendant violated any provisions of the California Labor Code or any IWC Wage Order; that
2 Defendant engaged in any unlawful, unfair or fraudulent business practices; that Defendant
3 engaged in any other wrongful conduct alleged in the Lawsuit; or that the Settlement Class and
4 PAGA Aggrieved Employees were harmed by the conduct alleged in the Lawsuit. Neither this
5 Settlement Agreement, nor any document referred to or contemplated herein, nor any action taken
6 to carry out this Settlement Agreement, is, may be construed as, or may be used as, an admission,
7 concession or indication by or against Defendant of any fault, wrongdoing or liability whatsoever.

8 **F.** Named Plaintiffs claim and continue to claim that the claims released by this
9 Settlement Agreement have merit and give rise to liability on the part of Defendant. Neither this
10 Settlement Agreement nor any documents referred to herein, or any action taken to carry out this
11 Settlement Agreement is, may be construed as, or may be used as an admission, by or against the
12 Settlement Class, PAGA Aggrieved Employees, or Class Counsel as to the merits or lack thereof
13 of the claims asserted.

14 **I.** The Parties stipulate, subject to the approval of the Court, that the Lawsuit is being
15 compromised and settled pursuant to the terms and conditions set forth in this Settlement
16 Agreement. Upon Final Approval of the Settlement by the Court at or after the Final Approval
17 hearing, the Parties shall present a Proposed Final Judgment (attached as Exhibit 3 hereto) to the
18 Court for its approval, requesting that the Court enter judgment and retain jurisdiction with respect
19 to the interpretation, implementation, and enforcement of the terms of this Settlement Agreement
20 and all orders and judgments entered in connection therewith.

21 **III. SETTLEMENT TERMS**

22 **A. Pleadings**

23 1. As part of this Settlement, and in connection with the preliminary approval
24 of this Settlement, Named Plaintiffs shall file within five (5) days of the execution of this
25 Settlement Agreement an amended LWDA Letter alleging the same allegations as in Plaintiffs'
26 September 2, 2021 PAGA Letter to the LWDA, as well as additional claims for off-the-clock
27 work, meal and rest period violations, and derivative claims for failure to provide accurate
28 itemized wage statements and failure to timely pay all wages due at the time of separation, as

1 alleged by Plaintiffs in the draft Class Action Complaint attached as **Exhibit 1** (the “Complaint”).
2 Plaintiffs shall also file their Complaint within five (5) days of the execution of this Settlement
3 Agreement. Plaintiffs shall file the Complaint in Marin County Superior Court, entitled *Ekaterina*
4 *Netsvetayeva and Valeire Butler v. Autodesk, Inc.*.

5 2. Because the Parties have preliminarily settled this matter, Autodesk shall
6 not be required to file a responsive pleading to Plaintiffs’ Complaint. In the event that the Court
7 does not enter an order granting Final Approval, Autodesk shall have 30 days from the date of
8 notice that final approval is not granted to file a responsive pleading.

9 **B. Funding and Allocation of Settlement**

10 1. Gross Settlement Amount. Provided the Court approves the Settlement and
11 the Effective Date occurs, Autodesk will pay the Gross Settlement Amount, which is the
12 maximum monetary amount payable by Autodesk and which shall not exceed the all-inclusive
13 sum of \$475,000.00.

14 2. Settlement Accounting. No more than fourteen (14) days after the Effective
15 Date, or at a reasonable time thereafter if not reasonably practicable, the Settlement Administrator
16 will provide the Parties with an accounting of all anticipated payments from the Qualified
17 Settlement Account, including: (a) Class Member Payments, (b) the PAGA Payments; (c) the
18 Named Plaintiff Enhancement Payments; (d) the Fees Award and Costs Award to Class Counsel,
19 and (f) Settlement Administration Expenses, all as specified in this Settlement Agreement and
20 approved by the Court.

21 3. Funding the Settlement. Within thirty (30) days after receipt of the
22 Settlement Accounting from the Settlement Administrator, and solely for purposes of this
23 Settlement, Defendant shall wire the Gross Settlement Amount into the Qualified Settlement
24 Account, for distribution in accordance with the terms of this Settlement Agreement. At no time
25 shall Defendant have the obligation to segregate the funds comprising the Gross Settlement
26 Amount from other assets and will retain exclusive authority over, and responsibility for, those
27 funds until the date those amounts are required to be funded pursuant to this Settlement
28 Agreement.

1 **C. Payments from the Gross Settlement Amount.**

2 1. Named Plaintiff Enhancement Payments. The Settlement Administrator
3 shall pay any Named Plaintiff Enhancement Payments within sixty (60) days of the Effective Date
4 either by check or wire to an account(s) designated by Class Counsel. Named Plaintiffs agree to
5 provide the Settlement Administrator with an executed IRS Form W-9 within five days after the
6 Effective Date and before the Named Plaintiff Enhancement Payments are issued. The Settlement
7 Administrator shall issue an IRS Form 1099 to Named Plaintiffs for these payments. Named
8 Plaintiffs shall be solely and legally responsible for paying any and all applicable taxes on their
9 Named Plaintiff Enhancement Payments and shall hold Released Parties harmless from any claim
10 or liability for taxes, penalties or interest arising as a result of the Named Plaintiff Enhancement
11 Payments. The Named Plaintiff Enhancement Payments shall be in addition to any Class Member
12 Payments or PAGA Payments the Named Plaintiffs receive as Settlement Class Members and
13 PAGA Aggrieved Employees. If the Court awards Named Plaintiff Enhancement Payments less
14 than the amount specified, the unawarded amounts shall remain in the Class Payout Fund and be
15 distributed to Settlement Class Members.

16 2. Class Counsel’s Attorneys’ Fees and Costs. Class Counsel may request a
17 Fees Award of up to \$158,333.33, which constitutes one-third of the Gross Settlement Amount
18 and will seek a Costs Award of up to \$10,000.00 for reimbursement of Class Counsel’s out-of-
19 pocket costs incurred pursuing the Lawsuit.

20 a. The Settlement Administrator shall pay any Fees Award and/or
21 Costs Award within sixty (60) days of the Effective Date either by check or wire to an account
22 designated by Class Counsel. Class Counsel agrees to provide the Settlement Administrator with
23 an executed IRS Form W-9 within five days after the Effective Date and before payments for
24 Class Counsel’s Fees Award and Costs Award are issued. The Settlement Administrator shall
25 issue an IRS Form 1099 to Class Counsel for the payments made pursuant to this section. Class
26 Counsel shall be solely and legally responsible for paying any and all applicable taxes on their
27 Fees Award or Costs Award and shall hold Released Parties harmless from any claim or liability
28 for taxes, penalties or interest arising as a result of any payments received by Class Counsel

1 pursuant to this Agreement. If the Court awards a Fees Award or a Costs Award less than the
2 amount requested by Class Counsel, the unawarded amounts shall remain in the Class Payout
3 Fund and be distributed to Settlement Class Members. This Settlement is not contingent upon the
4 Court awarding Class Counsel any particular amount in attorneys' fees and costs.

5 b. Neither Class Counsel nor any other current or past counsel for
6 Named Plaintiffs shall be permitted to petition the Court for, or accept, any additional payments
7 for fees, costs, or interest, and the Fees Award and Costs Award shall be for all claims for
8 attorneys' fees and costs whenever incurred, including past, present and future fees and costs
9 incurred in the Lawsuit to date and through and including the Effective Date, as well as final
10 distribution of all payments under this Settlement Agreement and through and after final
11 judgment. Upon the Effective Date, payment of the Fees Award and Costs Award to Class
12 Counsel as set forth herein shall constitute full satisfaction of the obligation to pay any amounts to
13 any person, attorney or law firm for attorneys' fees, expenses or costs arising out of and/or in
14 connection with the Lawsuit incurred by any attorney on behalf of Named Plaintiffs and/or any of
15 the Settlement Class or PAGA Aggrieved Employees, and shall relieve the Settlement Class,
16 PAGA Aggrieved Employees, Released Parties, the Settlement Administrator, the Qualified
17 Settlement Account, and Defendant's Counsel of any other claims or liability to any other attorney
18 or law firm for any attorneys' fees, expenses and/or costs to which any of them may claim to be
19 entitled on behalf of Named Plaintiffs and/or any of the Settlement Class or PAGA Aggrieved
20 Employees in connection with the claims released in this Settlement.

21 3. PAGA Payment. The PAGA Payment amount is \$47,500, which the Parties
22 have agreed is to be paid in settlement of all PAGA claims released in this Settlement Agreement,
23 which shall be allocated as follows:

24 a. Within sixty (60) days of the Effective Date, the Settlement
25 Administrator shall pay from the Qualified Settlement Account \$35,625 to the State of California
26 LWDA. This amount is 75% of the \$47,500 PAGA Payment.

27 b. The remaining 25% of the PAGA Payment (\$11,875) shall be
28 distributed to all PAGA Aggrieved Employees, with each receiving a pro rata share based on the

1 number of pay periods worked during the PAGA Period. To establish the pay period value, the
2 Settlement Administrator will first determine the total number of pay periods worked by the
3 PAGA Aggrieved Employees during the PAGA Period. The pay period value will be equal to
4 25% of the PAGA Payment divided by the total number of pay periods worked by PAGA
5 Aggrieved Employees during the PAGA Period. The pay period value will be rounded to the
6 nearest cent. The amount of the PAGA Payment to be paid to each PAGA Aggrieved Employee
7 will be determined by multiplying the pay period value by the total number of pay periods each
8 PAGA Aggrieved Employee worked during the PAGA Period.

9 c. The portion of the PAGA Payment paid to the PAGA Aggrieved
10 Employees shall be treated entirely as penalties. In the event that the Court awards less than the
11 full amount requested for the PAGA Payment, the un-awarded amount shall remain in the Class
12 Payout Fund and be distributed to Settlement Class Members. If for any reason additional funds
13 are allocated to the PAGA Payment, such monies shall be drawn from other amounts in this
14 Settlement with the other components of the Gross Settlement Amount being reduced
15 proportionately, including the Fees Award and the Class Payout Fund, but the Gross Settlement
16 Amount will not exceed \$475,000.00.

17 4. Settlement Administration Costs. The Settlement Administrator shall pay
18 from the Qualified Settlement Account the Court-approved Settlement Administration Costs,
19 within sixty (60) days of the Effective Date, in an amount not to exceed \$18,500. In the event that
20 the Court awards less than the full amount requested for Settlement Administration Costs, the
21 unawarded amounts shall remain in the Class Payout Fund and shall be distributed to Settlement
22 Class Members.

23 5. Calculation of Settlement Class Member Payments. All Settlement Class
24 Members will receive a Class Member Payment, paid from the Class Payout Fund without the
25 need to make a claim. The Parties agree that 90% of the Class Member Payments shall be
26 allocated to penalties and 10% of the Class Member Payments shall be allocated to wages.

27 a. The amount of each Class Member Payment will be calculated on a
28 pro rata basis, based on the number of pay periods each Settlement Class Member worked during

1 the Settlement Class Period. To establish the pay period value, the Settlement Administrator will
2 first determine the total number of pay periods worked by the Settlement Class Members during
3 the Settlement Period. The pay period value will be equal to the Class Payout Fund divided by the
4 total number of pay periods worked by Settlement Class Members during the Settlement Period.
5 The pay period value will be rounded to the nearest cent. The Class Member Payment to each
6 Settlement Class Member will be determined by multiplying the pay period value by the total
7 number of pay periods each Settlement Class Member worked during the Settlement Class Period.
8 The total of all Class Member Payments to all Settlement Class Members shall equal the Class
9 Payout Fund. There is no need for a Settlement Class Member to submit a claim form in order to
10 be eligible for and to receive a Class Member Payment. Any partial pay period will be rounded up
11 to the nearest full pay period. Class Member Payments will be reduced by any required
12 deductions for each Settlement Class Member.

13 6. Method and Timing of Payments to Settlement Class Members and PAGA
14 Aggrieved Employees.

15 a. Class Member Payments and the PAGA Aggrieved Employees’
16 portion of the PAGA Payment will be mailed by the Settlement Administrator by First Class U.S.
17 Mail within sixty (60) calendar days following the Effective Date.

18 b. Checks paid to PAGA Aggrieved Employees and Settlement Class
19 Members shall remain valid and negotiable for 180 days from the date of their issuance. After
20 one-hundred eighty (180) calendar days from the date of mailing, the checks shall become null and
21 void, and any monies remaining in the distribution account shall be distributed to the Controller of
22 the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code
23 §§ 1500 *et seq.*, for the benefit of those Settlement Class Members and PAGA Aggrieved
24 Employees who did not cash their checks until such time that they claim their property. The
25 Parties agree that this disposition results in no “unpaid residue” under California Civil Procedure
26 Code § 384, as the entire Class Payout Fund will be paid out to Class Members, whether or not
27 they all cash their Class Member Payments. Therefore, Defendant will not be required to pay any
28 interest on said amount.

1 7. No Effect on Employee Benefits. The Named Plaintiff Enhancement
2 Awards, Class Member Payments, and PAGA Payments paid to Named Plaintiffs, PAGA
3 Aggrieved Employees, and Settlement Class Members shall be deemed not to be pensionable
4 earnings and shall not have any effect on the eligibility for, or calculation of, any employee
5 benefits (e.g., vacations, holiday pay, retirement plans, etc.) of the respective Named Plaintiffs,
6 PAGA Aggrieved Employees, or Settlement Class Members. The Parties agree that any Named
7 Plaintiff Enhancement Awards, Class Member Payments, and PAGA Payments paid to Named
8 Plaintiffs, PAGA Aggrieved Employees, and Settlement Class Members under the terms of this
9 Settlement Agreement do not represent any modification of Named Plaintiffs', PAGA Aggrieved
10 Employees', or Settlement Class Members' previously credited hours of service or other eligibility
11 criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by
12 Defendant or any of the Released Parties. Further, any Named Plaintiff Enhancement Awards,
13 Class Member Payments, or PAGA Payments shall not be considered "compensation" in any year
14 for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit
15 plan or employee welfare benefit plan sponsored by Defendant or any of the Released Parties.

16 **D. Taxation**

17 1. Tax Treatment of Class Member Payments. Each Class Member Payment
18 shall be allocated between taxable and non-taxable consideration as follows: 10% will be
19 allocated to alleged unpaid wages for which an IRS Form W-2 will issue, and 90% will be
20 allocated to alleged penalties, reimbursement of expenses and interest for which an IRS Form
21 1099 will issue, if required by law. The Settlement Administrator will be responsible for
22 calculating the employer-side and employee-side taxes owed on the wage portion of each Class
23 Member Payment and deducting and paying these amounts to the appropriate state and federal
24 agencies, within the timing required by applicable state and federal law. Each Settlement Class
25 Member shall be responsible for ensuring that any employee-side taxes due on his or her
26 settlement are paid.

27
28

1 2. Tax Treatment of PAGA Payments. The PAGA Payment distributed to each
2 PAGA Aggrieved Employee will be treated entirely as civil penalties, and will be reported as such
3 to each PAGA Aggrieved Employee on an IRS Form 1099 misc., if required.

4 3. Tax Liability. The Parties make no representation as to the tax treatment or
5 legal effect of the payments called for hereunder, and the Parties, Settlement Class Members, and
6 PAGA Aggrieved Employees are not relying on any statement, representation, or calculation by
7 any of the Parties or by the Settlement Administrator in this regard. Named Plaintiffs, Settlement
8 Class Members, and PAGA Aggrieved Employees understand and agree that except for the
9 employer's portion of any payroll taxes, Named Plaintiffs, Settlement Class Members, and PAGA
10 Aggrieved Employees will be solely responsible for the payment of any taxes and penalties
11 assessed on the payments described herein and will hold Named Plaintiffs, Class Counsel,
12 Defendant, the Released Parties, Defendant's Counsel and the Settlement Administrator free and
13 harmless from and against any claims resulting from treatment of such payments as non-taxable
14 damages. Each Party to this Settlement Agreement (for purposes of this section, the
15 "acknowledging party" and each party to this agreement other than the acknowledging party, an
16 "other party") acknowledges and agrees that (1) no provision of this Settlement Agreement, and
17 no written communication or disclosure between or among the Parties or their attorneys and other
18 advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be
19 construed or be relied upon as, tax advice within the meaning of United States Treasury
20 Department Circular 230 (31 C.F.R. Part 10, as amended); (2) the acknowledging party (a) has
21 relied exclusively upon their own, independent legal and tax counsel for advice (including tax
22 advice) in connection with this Settlement Agreement, (b) has not entered into this Settlement
23 Agreement based upon the recommendation of any other party or any attorney or advisor to any
24 other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or
25 adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging
26 party; and (3) no attorney or adviser to any other Party has imposed any limitation that protects the
27 confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such
28 limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or

1 tax structure of any transaction, including any transaction contemplated by this Settlement
2 Agreement.

3 **E. Conditional Certification**

4 For the purposes of this Settlement Agreement only, the Parties agree to the certification of
5 the Settlement Class Members. If, for any reason, the Settlement Agreement is not approved, the
6 stipulation to certification will be void. Should the Settlement Agreement not become final, for
7 whatever reason, the fact that the Parties were willing to stipulate to class certification as part of
8 the Settlement shall have no bearing on, and shall not be admissible in connection with, the issue
9 of whether a class should be certified in a non-settlement context in the Lawsuit, and shall have no
10 bearing on, and shall not be admissible in connection with, the issue of whether a class should be
11 certified in any other lawsuit.

12 **F. Injunctive Relief**

13 As part of this Settlement, Defendant shall not be required to enter into any consent decree,
14 nor shall Defendant be required to agree to any provision for injunctive relief, or to modify or
15 eliminate any of its personnel, compensation, or payroll practices or policies, or adopt any new
16 personnel, compensation, or payroll practices or policies.

17 **G. Release of Claims**

18 1. Class Member Release. As of the Effective Date, all Settlement Class
19 Members, fully and finally release the Released Parties from any and all claims that arose during
20 the Settlement Class Period based on the facts, theories, and primary rights alleged in the Lawsuit
21 including without limitation for unpaid wages, including, but not limited to, failure to pay
22 minimum wages, failure to pay straight time compensation, overtime compensation, double-time
23 compensation, and/or interest; missed, late, short or interrupted meal and/or rest periods or any
24 allegation that meal or rest periods were not provided, including any claim for any alleged failure
25 to pay premiums for missed, late, short or interrupted meal or rest periods, or to pay such
26 premiums at the regular rate of compensation; reimbursement for business expenses or any other
27 claim that Defendant allowed or required employees to bear any of the costs associated with the
28 operation of Defendant's business, including without limitation the use of personal cell phones,

1 home internet, equipment, home electricity, home office infrastructure or other costs incurred;
2 inaccurate or otherwise improper wage statements and/or failure to keep or maintain accurate
3 records; unlawful deductions; any claim for unfair business practices arising out of or related to
4 any or all of the aforementioned claims; any claim for penalties arising out of or related to any or
5 all of the aforementioned claims, including, but not limited to, recordkeeping penalties, wage
6 statement penalties, minimum wage penalties, liquidated damages, and waiting time penalties; and
7 attorneys' fees and costs. The claims released by the Settlement Class Members also include any
8 and all claims that arise out of or arise in connection with the claims and facts alleged in the
9 Lawsuit, and any claims which could have been asserted in the Lawsuit arising from the alleged
10 facts, theories, and/or primary rights alleged to have been invaded to the fullest extent permitted
11 by law. This release includes claims alleging a violation of the Wage Orders of the California
12 Industrial Welfare Commission; California Business and Professions Code section 17200, *et seq.*;
13 the California Civil Code sections 3287, 3289, 3336, and 3294; California Code of Civil
14 Procedure section 1021.5; and/or alleging a violation of California Labor Code §§ 200, 201, 201.3,
15 202, 203, 204, 210, 212, 216, 218, 218.5, 218.6, 221, 222.5, 223, 224, 225, 225.5, 226, 226.7, 510,
16 511, 512, 516, 558, 1021.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 2800, 2802,
17 and 2804.

18 2. Release of PAGA Claims. As of the Effective Date, PAGA Aggrieved
19 Employees and the LWDA fully and finally release the Released Parties from all claims under the
20 PAGA associated with any and all claims that arose during the PAGA Period based on the facts,
21 theories, and primary rights alleged in the Lawsuit including without limitation for unpaid wages,
22 including, but not limited to, failure to pay minimum wages; failure to pay straight time
23 compensation, overtime compensation, double-time compensation, and/or interest; missed, late,
24 short or interrupted meal and/or rest periods or any allegation that meal or rest periods were not
25 provided, including any claim for any alleged failure to pay premiums for missed, late, short or
26 interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation;
27 reimbursement for business expenses or any other claim that Defendant allowed or required
28 employees to bear any of the costs associated with the operation of Defendant's business,

1 including without limitation the use of personal cell phones, home internet, equipment, home
2 electricity, home office infrastructure or other costs incurred; inaccurate or otherwise improper
3 wage statements and/or failure to keep or maintain accurate records; unlawful deductions; any
4 claim for unfair business practices arising out of or related to any or all of the aforementioned
5 claims; any claim for penalties arising out of or related to any or all of the aforementioned claims,
6 including, but not limited to, recordkeeping penalties, wage statement penalties, minimum wage
7 penalties, liquidated damages, and waiting time penalties; and attorneys' fees and costs. The
8 claims released by the PAGA Aggrieved Employees also include any and all claims under the
9 California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* that arise out of
10 or arise in connection with the claims and facts alleged in the Lawsuit, and any claims which could
11 have been asserted in the Lawsuit arising from the alleged facts, theories, and/or primary rights
12 alleged to have been invaded to the fullest extent permitted by law. This release includes claims
13 under the California Private Attorneys General Act of 2004 alleging a violation of the Wage
14 Orders of the California Industrial Welfare Commission; and/or alleging a violation of California
15 Labor Code §§ 200, 201, 201.3, 202, 203, 204, 210, 212, 216, 218, 218.5, 218.6, 221, 222.5, 223,
16 224, 225, 225.5, 226, 226.7, 510, 511, 512, 516, 558, 1021.5, 1174, 1174.5, 1194, 1194.2, 1197,
17 1197.1, 1197.2, 1198, 2698 *et seq.*, 2800, 2802, and 2804.

18 3. General Release By Named Plaintiffs Only. As of the Effective Date,
19 Named Plaintiffs fully and finally release the Released Parties from any and all claims, known and
20 unknown, under federal, state and/or local law, statute, ordinance, regulation, common law, or
21 other source of law, including but not limited to claims arising from or related to Named
22 Plaintiffs' employment with Defendant and/or the termination of Named Plaintiffs' employment
23 ("Named Plaintiffs' Released Claims"). The Named Plaintiffs' Released Claims include, but are
24 not limited to, all claims asserted in, arising in connection with, or related in any way to the
25 Lawsuit, including without limitation any and all claims that could have been asserted as part of
26 the Lawsuit based on the facts alleged. Named Plaintiffs' Released Claims include all claims for
27 unpaid wages, including, but not limited to, failure to pay minimum wages; failure to pay straight
28 time compensation, overtime compensation, double-time compensation, vacation or PTO, sick

1 pay, reporting time compensation, and/or interest; missed, late, short or interrupted meal and/or
2 rest periods or any allegation that meal or rest periods were not provided, including any claim for
3 any alleged failure to pay premiums for missed, late, short or interrupted meal or rest periods, or to
4 pay such premiums at the regular rate of compensation; reimbursement for business expenses or
5 any other claim that Defendant allowed or required employees to bear any of the costs associated
6 with the operation of Defendant's business, including without limitation the use of personal cell
7 phones, home internet, equipment, home electricity, home office infrastructure or other costs
8 incurred; inaccurate or otherwise improper wage statements and/or failure to keep or maintain
9 accurate records; unlawful deductions; secret underpayment of wages; unlawful payment
10 instruments; any claim for unfair business practices arising out of or related to any or all of the
11 aforementioned claims; any claim for penalties arising out of or related to any or all of the
12 aforementioned claims, including, but not limited to, recordkeeping penalties, wage statement
13 penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs.
14 Named Plaintiffs' Released Claims include all claims arising under the California Labor Code
15 (including, but not limited to, sections 200, 201, 201.3, 202, 203, 204, 210, 212, 216, 218.5, 218.6,
16 221, 222.5, 223, 224, 225, 225.5, 226, 226.3, 226.7, 226.8, 227.3, 245, 246, 247, 248, 249, 450,
17 510, 511, 512, 558, 1021.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*,
18 2802, and 2804); all claims arising under the Wage Orders of the California Industrial Welfare
19 Commission, including but not limited to Wage Order 7-2001, Section 14(A) and (B); California
20 Business and Professions Code section 17200, *et seq.*; the California Labor Code; California
21 Government Code; the California Civil Code, including but not limited to, sections 3287, 3289,
22 3336 and 3294; California Code of Civil Procedure § 1021.5; the California common law of
23 contract; the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*; federal common law; and the
24 Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.* Named Plaintiffs' Released
25 Claims include any and all claims under the Private Attorneys General Act, Cal. Lab. Code § 2698
26 *et seq.* ("PAGA"), of any kind, including but not limited to the PAGA claims asserted in the
27 Lawsuit. Named Plaintiffs' Released Claims also include all claims for lost wages and benefits,
28 emotional distress, punitive damages, and attorneys' fees and costs arising under federal, state, or

1 local laws for discrimination, harassment, retaliation, and wrongful termination, such as, by way
2 of example only, (as amended) 42 U.S.C. section 1981, Title VII of the Civil Rights Act of 1964,
3 the Americans With Disabilities Act, the Age Discrimination in Employment Act, and the
4 California Fair Employment and Housing Act; and the law of contract and tort. This release
5 excludes the release of claims not permitted by law. Named Plaintiffs' Released Claims include
6 all claims, whether known or unknown. Even if Named Plaintiffs discover facts in addition to or
7 different from those that Named Plaintiffs now know or believe to be true with respect to the
8 subject matter of Named Plaintiffs' Released Claims, those claims will remain released and
9 forever barred. Thus, Named Plaintiffs expressly waive and relinquish the provisions, rights and
10 benefits of section 1542 of the California Civil Code, which reads:

11 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
12 **THAT THE CREDITOR OR RELEASING PARTY DOES**
13 **NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
14 **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.

15 4. Notwithstanding the foregoing, Named Plaintiffs do not waive or release
16 any claim which cannot be waived or released by private agreement. Further, nothing in this
17 Agreement shall prevent Named Plaintiffs from filing a charge or complaint with, or from
18 participating in, an investigation or proceeding conducted by the SEC, OSHA, EEOC, DFEH,
19 NLRB or any other federal, state or local agency charged with the enforcement of any
20 employment or other applicable laws. Named Plaintiffs, however, understand that by signing this
21 Agreement, Named Plaintiffs waive the right to recover any damages or to receive other relief in
22 any claim or suit brought by or through the EEOC, the DFEH or any other state or local deferral
23 agency on Named Plaintiffs' behalf to the fullest extent permitted by law, but expressly excluding
24 any monetary award or other relief available from the SEC/OSHA, including an SEC/OSHA
25 whistleblower award, or other awards or relief that may not lawfully be waived.

26 **H. Settlement Administrator Responsibilities**

27 1. The Settlement Administrator shall be responsible for preparing, printing
28 and mailing to the Settlement Class and the PAGA Aggrieved Employees the Notice of Proposed

1 Settlement of Class Action attached as Exhibit 2 hereto (the “Class Notice”) as directed by the
2 Court; calculating Class Member Payments and PAGA Payments; calculating and withholding all
3 required state and federal taxes owed by the Settlement Class Members, PAGA Aggrieved
4 Employees, and Defendant; keeping track of opt-outs and objections; drafting and mailing checks
5 to Settlement Class Members and PAGA Aggrieved Employees; distributing Named Plaintiff
6 Enhancement Payments, the Fees Award, the Costs Award, 75% of the PAGA Payment to the
7 LWDA, and Settlement Administration Costs; issuing and reporting on all necessary W-2s and
8 1099s as identified within this Settlement Agreement and relating to distributions of funds made
9 hereunder; providing weekly status reports to counsel for the Parties; providing a due diligence
10 declaration for submission to the Court prior to the Final Approval hearing and as otherwise
11 required by the Court; and for such other tasks as the Parties mutually agree or the Court orders
12 the Settlement Administrator to perform. The Parties each represent they do not have any
13 financial interest in the Settlement Administrator or otherwise have a relationship with the
14 Settlement Administrator that could create a conflict of interest.

15 2. The Settlement Administrator’s determination of eligibility for, and the
16 amounts of, any Class Member Payment and share of the PAGA Payment shall be conclusive,
17 final and binding on all Parties, including all Settlement Class Members and PAGA Aggrieved
18 Employees. The Settlement Administrator has no power or ability to increase the amount of the
19 Gross Settlement Amount.

20 3. To the extent any tax returns must be filed for the Gross Settlement Amount
21 pursuant to this Settlement Agreement, the Settlement Administrator shall cause to be timely and
22 properly filed all informational and other tax returns, if any, necessary with respect to the Gross
23 Settlement Amount. Such returns shall be consistent with this paragraph. Any expenses and/or
24 costs incurred in connection with the operation and implementation of this paragraph (including,
25 without limitation, reasonable expenses of tax attorneys, accountants or other designees retained
26 by the Settlement Administrator as required for the preparation and filing of tax returns described
27 in this paragraph) shall be treated as, and considered to be, a cost of administration of the
28 Settlement and shall be paid from the Settlement Administration Costs.

1 4. No person shall have any claim against Defendant, the Released Parties,
2 Defendant’s Counsel, Named Plaintiffs, Plaintiffs, Class Counsel or the Settlement Administrator
3 based on distributions and payments made in accordance with this Settlement Agreement.

4 **I. Notice/Approval of Settlement and Settlement Implementation.** As part of this
5 Settlement, the Parties agree to the following procedures for obtaining preliminary approval of the
6 Settlement, notifying the Settlement Class and PAGA Aggrieved Employees, obtaining final Court
7 approval of the Settlement, and processing the settlement payments:

8 1. Preliminary Approval of Settlement

9 a. Named Plaintiffs shall file a motion for preliminary approval of the
10 Settlement in the Lawsuit within sixty five (65) days after the filing of Plaintiffs’ Complaint.
11 Named Plaintiffs shall schedule the motion for hearing on the earliest date the Court has available
12 that complies with notice requirements, but no earlier than 65 days after the date of the filing of
13 Plaintiffs’ Complaint. Named Plaintiffs shall seek the entry of a Preliminary Approval Order for:
14 (a) conditional certification of the Settlement Class Members for settlement purposes only, (b)
15 Preliminary Approval of the proposed Settlement Agreement, and (c) setting a date for a Final
16 Approval hearing.

17 b. In conjunction with the Preliminary Approval Hearing, Named
18 Plaintiffs will submit this Settlement Agreement, which sets forth the terms of this Settlement, and
19 will include proposed forms of all notices and other documents as attached hereto necessary to
20 implement the Settlement. Simultaneous with the filing of the Stipulation of Settlement and solely
21 for purposes of this Settlement, Named Plaintiffs will request the Court to enter the Preliminary
22 Approval Order (“Preliminary Approval Order” or “Order”) (attached as Exhibit 3 hereto),
23 preliminarily approving the proposed Settlement, and setting a hearing date to determine final
24 approval of the Settlement. The Order shall provide for notice of the Settlement and related
25 matters to be sent to Settlement Class and PAGA Aggrieved Employees as specified herein. Class
26 Counsel will be responsible for drafting all documents necessary to obtain Preliminary Approval,
27 subject to review and comment by Defendant’s counsel who shall be provided a minimum of
28 seven (7) days to review prior to filing.

1 2. LWDA Notice. Pursuant to the PAGA, concurrently with the filing of the
2 motion for Preliminary Approval, Plaintiff will, pursuant to California Labor Code § 2699(I),
3 provide notice of the proposed Settlement to the LWDA. The Parties intend and believe that the
4 notice pursuant to the procedures described in this section complies with the requirements of the
5 PAGA.

6 3. Notice to Settlement Class.

7 a. Notice By First-Class Mail. Within twenty-one (21) days after
8 receipt of the Settlement Class List, the Settlement Administrator shall mail a class notice to the
9 Settlement Class via first-class regular U.S. mail (“Class Notice”). The Settlement Class will have
10 forty-five (45) days from the mailing of the Class Notice to opt-out of or object to the Class
11 Settlement (“Opt Out/Objection Period”). Prior to mailing, the Settlement Administrator will
12 perform a search based on the National Change of Address Database information to update and
13 correct for any known or identifiable address changes and, if necessary, perform reasonable skip-
14 tracing efforts to locate employees. If a new address is obtained by way of a returned Class
15 Notice, the Settlement Administrator shall promptly forward the original Class Notice to the
16 updated address via first-class regular U.S. mail indicating on the original Class Notice the date of
17 such re-mailing.

18 b. Delivery of the Settlement Class Member and PAGA Aggrieved
19 Employee Lists. Within thirty (30) days of entry of the Preliminary Approval Order of this
20 Settlement, Defendant will provide the Settlement Class List and PAGA Aggrieved Employee
21 Lists (collectively, “Employee Lists”) to the Settlement Administrator, which shall be used solely
22 for the administration of this Settlement and for no other purpose, and shall not be shared with any
23 persons or entity not employed by the Settlement Administrator and working on the administration
24 of this Settlement. Because sensitive personal information is included in the Employee Lists, the
25 Settlement Administrator shall maintain the Employee Lists securely and in confidence. Access to
26 such Employee Lists shall be limited to employees of the Settlement Administrator with a need to
27 use the Employee Lists for administration of the Settlement. In the event that the Settlement
28 Agreement is not finally approved by the Court, or if it is in any way altered or disapproved on

1 appeal, the Settlement Administrator shall not thereafter use the Employee Lists, and shall destroy
2 any and all copies or versions of it (including any in electronic form).

3 c. Notice Satisfies Due Process. Compliance with the notice
4 procedures specified in this Settlement Agreement shall constitute due and sufficient notice to the
5 Settlement Class and PAGA Aggrieved Employees of this Settlement and shall satisfy the
6 requirements of due process. Nothing else shall be required of, or done by, the Parties, Class
7 Counsel or Defendant’s Counsel to provide notice of the proposed Settlement. In the event that
8 the procedures in this Settlement Agreement are followed and the intended recipient of a Notice of
9 Settlement still does not receive the Notice of Settlement, the intended recipient shall be a
10 Settlement Class Member and will be bound by all the terms of the Settlement and the Final
11 Approval entered by the Court if the Settlement becomes effective.

12 4. Objections or Exclusions.

13 a. Procedure for Objecting. The Notice shall provide that individuals
14 in the Settlement Class who wish to object to the Settlement must submit a written objection to the
15 Settlement Administrator. The objection must include the case name and number and only needs
16 to provide a concise statement explaining why he or she objects along with any supporting
17 documentation. The Settlement Administrator will promptly serve copies of any objection on
18 Class Counsel and Defense Counsel. Class Counsel shall lodge a copy of the objection with the
19 Court. Such written statement must be submitted to the Settlement Administrator no later than
20 forty-five (45) days after the date the Class Notice is first mailed (the “Objection/Exclusion
21 Deadline Date”). No PAGA Aggrieved Employee may opt out or otherwise be excluded from the
22 PAGA Settlement, as no such right exists under the law. An Employee who does not timely
23 submit a written objection to the Settlement Administrator may appear (or their representative may
24 appear on their behalf) at the Final Approval Hearing to present to the Court oral objections or
25 concerns with the Settlement, so long as the Employee provides written notice, which may be by
26 email, to Class Counsel, Defense Counsel, and the Court no later than seven days prior to the date
27 of the Final Approval Hearing of their intent to appear at the Final Approval Hearing. The Parties
28 will be permitted to respond in writing to such objections prior to the Final Approval hearing.

1 Any individual in the Settlement Class who fails to file and serve timely written objections in the
2 manner specified above shall remain Settlement Class Members and shall be deemed to have
3 waived any objections and shall be foreclosed from making any objection (whether by appeal or
4 otherwise) to the Settlement.

5 b. Procedure for Requesting Exclusion. The Class Notice shall provide
6 that individuals in the Settlement Class who wish to exclude themselves from the Settlement Class
7 must submit a personally signed, written statement requesting exclusion from the Settlement Class
8 on or before the Objection/Exclusion Deadline Date. The opt-out request must state in substance,
9 words to the effect:

10 “I have read the Class Notice and I wish to opt out of the Settlement
11 Class in *Ekaterina Netsvetayeva and Valerie Butler v. Autodesk,*
12 *Inc.*, Case No. []. I understand that by requesting to be excluded
13 from the Settlement Class, I will not receive a Class Member
14 Payment. I also understand that I will still receive a PAGA Payment
15 for my share of the PAGA Settlement, if I am entitled to such
16 payment, because I cannot object or exclude myself from the PAGA
17 Settlement.”

18 (1) Such written request for exclusion must contain the name, address,
19 telephone number, last four digits of Social Security number, and the years of his or her
20 employment by Autodesk of the person requesting exclusion, must be returned by mail to the
21 Settlement Administrator at the specified address, must be signed by the objecting individual in
22 the Settlement Class personally, and must be postmarked on or before the Objection/Exclusion
23 Deadline Date. The date of the postmark on the return mailing envelope shall be the exclusive
24 means used to determine whether a request for exclusion has been timely submitted. If the
25 postmark is illegible then the request for exclusion must arrive within three (3) calendar days after
26 the Objection/Exclusion Deadline Date to be considered timely.

27 (2) Any individual in the Settlement Class who opts out of the
28 Settlement Class will not be entitled to any recovery under the Class Settlement (which refers to
claims encompassed by the Class Payout Fund and excludes the PAGA claims) and will not be
bound by the Settlement as it relates to the Class Settlement or have any right to object, appeal or
comment in court on the Class Settlement. Any and all individuals in the Settlement Class who
fail to submit a valid and timely request for exclusion on or before the Objection/Exclusion

1 Deadline Date shall be Settlement Class Members and shall be bound by all terms of the
2 Settlement and any final judgment entered in these actions if the Settlement is approved by the
3 Court.

4 c. No Opt-Out or Objection of PAGA Settlement. PAGA Aggrieved
5 Employees will not have the opportunity to opt out of, or object to, the PAGA Settlement and
6 release of the PAGA claims set forth in this Settlement Agreement and will receive their share of
7 the PAGA Payment.

8 d. No Solicitation of Settlement Objections or Exclusions. The Parties
9 agree to use their best efforts to carry out the terms of this Settlement. At no time shall any of the
10 Parties, or their counsel, seek to directly or indirectly solicit or otherwise encourage the Settlement
11 Class to submit written objections to the Settlement or requests for exclusion from the Class
12 Settlement, or appeal from the Court's final judgment.

13 5. Certification Reports by the Settlement Administrator.

14 a. The Settlement Administrator will, on a weekly basis during and for
15 a reasonable period following distribution of the Class Notice, provide updates to Class Counsel
16 and Defendant's Counsel as to the number of individuals in the Settlement Class who submitted (i)
17 valid opt-out requests for exclusion; and (ii) objections. All written objections shall be provided
18 to the Parties' counsel within five (5) calendar days of receipt by the Settlement Administrator.
19 The Settlement Administrator shall also provide the names of any opt-outs to Defendant's counsel
20 within five (5) calendar days of receipt. To the extent practicable, the weekly updates shall also
21 provide updated data on the extent of Class Notices that are returned undeliverable and any re-
22 mailing efforts.

23 b. Within ten (10) calendar days after the Objection/Exclusion
24 Deadline Date, the Settlement Administrator will prepare a declaration to be provided to Class
25 Counsel and Defendant's Counsel for filing in support of Named Plaintiffs' motion for final
26 approval attesting to the following: (i) its mailing efforts regarding the Class Notice; (ii) its receipt
27 of any valid and timely requests for exclusion, and its inability to deliver the Class Notice to the
28 Settlement Class, if any; (iii) the number of Settlement Class Members; (iv) the highest estimated

1 Class Member Payment and PAGA Aggrieved Employees' portion of the PAGA Payment, along
2 with the estimated average Class Member Payment and portion of the PAGA Payment. The
3 Settlement Administrator will also prepare and submit to Class Counsel and Defendant's Counsel
4 for filing in support of the motion any supplemental declaration as may be needed.

5 6. Right of Defendant to Reject Settlement.

6 a. Option to Void Settlement. If, after the Objection/Exclusion
7 Deadline Date, the number of employees in the Settlement Class who have timely submitted
8 requests for exclusion total in number more than two (2) percent of the Settlement Class,
9 Defendant shall have, in its sole discretion, the option to void this Settlement. In order to exercise
10 this option, Defendant must notify Class Counsel in writing within fifteen (15) days after the later
11 of the Objection/Exclusion Deadline Date, or of learning in writing from the Settlement
12 Administrator that the number of individuals in the Settlement Class who have timely submitted
13 requests for exclusion total in number more than 2 percent of the Settlement Class.

14 b. Escalator Clause. Defendant estimates that there will be
15 approximately 97,943 pay periods worked by PAGA Aggrieved Employees and the Settlement
16 Class during the PAGA Period and Settlement Class Period (the "Estimated Pay Periods").
17 Within fifteen (15) days of receipt of the data, the Settlement Administrator shall calculate and
18 provide to all Parties the number of actual pay periods worked by PAGA Aggrieved Employees
19 and the Settlement Class during the PAGA period and Settlement Class Period (the "Actual Pay
20 Periods.") If the number of Actual Pay Periods as of March 5, 2022 exceed 15% above the
21 Estimated Pay Periods, the Gross Settlement Amount shall be increased automatically in
22 proportion to the increase in pay periods. There shall be no increase in the Gross Settlement
23 Amount if the total number of Actual Pay Periods is 112,634, or less.

24 c. Nullification of Settlement Agreement. In the event: (i) the Court
25 does not enter the Order specified herein; (ii) the Court does not finally approve the Settlement as
26 provided herein; (iii) the Court does not enter a final judgment as provided herein which becomes
27 final as a result of the occurrence of the Effective Date; or (iv) the Settlement does not become
28 final for any other reason, this Settlement Agreement shall be null and void and any order or

1 judgment entered by the Court in furtherance of this Settlement shall be treated as void ab initio.
2 In such a case, the Parties and any funds to be awarded under this Settlement shall be returned to
3 their respective statuses as of the date and time immediately prior to the execution of this
4 Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had not
5 been executed, except that any fees already incurred by the Settlement Administrator shall be
6 borne equally by the Parties. In the event an appeal is filed from the Court's final judgment, or
7 any other appellate review is sought prior to the Effective Date, administration of the Settlement
8 shall be stayed pending final resolution of the appeal or other appellate review, pending the
9 Effective Date.

10 7. Final Approval Hearing and Entry of Final Judgment.

11 a. Upon expiration of the Objection/Exclusion Deadline Date, with the
12 Court's permission, a Final Approval hearing shall be conducted to determine final approval of the
13 Settlement along with the amount properly payable for (i) the Fees Award and Costs Award, (ii)
14 Named Plaintiffs Enhancement Awards, (iii) Settlement Administration Costs, and (iv) Class
15 Member Payments; and (v) the PAGA Payment. Upon final approval of the Settlement by the
16 Court at or after the Final Approval hearing, the Parties shall present a Proposed Final Judgment
17 (attached as Exhibit 4 hereto) to the Court for its approval. Class Counsel will be responsible for
18 drafting all documents necessary to obtain Final Approval, including the Final Judgment.

19 b. The Settlement Administrator shall keep counsel for the Parties
20 apprised of all distributions from the Qualified Settlement Account and upon completion of
21 administration of that portion of the Settlement, the Settlement Administrator shall provide written
22 certification, under penalty of perjury, of such completion to the Court and counsel for all Parties.

23 c. Upon completion of administration of the Settlement, Named
24 Plaintiffs and Class Counsel shall provide written certification, under penalty of perjury, of such
25 completion to the Court and Defendant's Counsel.

26 8. Administration Costs. All of Defendant's own legal fees, costs and
27 expenses incurred in the Lawsuit shall be borne by Defendant. As set forth above, claims
28 administration expenses will be paid from the Gross Settlement Amount. The Parties agree to

1 cooperate in the Settlement administration process and to make all reasonable efforts to control
2 and minimize the costs and expenses incurred in administration of the Settlement.

3 **IV. Other Provisions**

4 **A. Publicity.** The Parties agree that neither Named Plaintiffs nor Class Counsel shall
5 issue any press release or announcement of any kind related in any way to the Settlement. Named
6 Plaintiffs and Class Counsel agree that, prior to preliminary approval of the Settlement, they will
7 keep the terms of the Settlement confidential except for purposes of communicating with Named
8 Plaintiffs only. Named Plaintiffs shall be informed that the Settlement is confidential and shall be
9 advised to keep the Settlement confidential. From and after preliminary approval of the
10 Settlement, Named Plaintiffs and Class Counsel may comment regarding the specific terms of the
11 Settlement (1) as required by law; (2) as required under the terms of the Settlement; or (3) as
12 required under counsel's duties and responsibilities as Class Counsel. In all other cases, Named
13 Plaintiffs and Class Counsel agree to limit their statements regarding the terms of the Settlement,
14 whether oral, written or electronic (including the world wide web), to say the Lawsuit has been
15 resolved and that Named Plaintiffs and Class Counsel are satisfied with the terms of the
16 Settlement. Class Counsel shall not, at any time, advertise or mention the terms of the Settlement
17 on personal or firm website(s); shall not discuss the terms of the Settlement with media, general
18 public, or issue press releases; and shall limit any statements regarding the terms of the Settlement
19 to that information that is publicly available. Nothing in this Paragraph is intended to interfere
20 with Class Counsel's duties and obligations to faithfully discharge their duties as Class Counsel,
21 including but not limited to, communicating with Settlement Class Members regarding the
22 Settlement.

23 **B. Privacy of Documents and Information.** Named Plaintiffs and Class Counsel
24 agree that none of the documents and information provided to them by Defendant shall be used for
25 any purpose other than settlement of the Lawsuit.

26 **C. No Admission By the Released Parties.**

27 1. The Released Parties, including Defendant, deny any and all claims alleged
28 in the Lawsuit and deny any and all wrongdoing whatsoever. This Settlement Agreement is not a

1 concession or admission, and shall not be used against Defendant or any of the Released Parties as
2 an admission or indication with respect to any claim of any fault, concession or omission by
3 Defendant or any of the Released Parties. Whether or not the Settlement is finally approved,
4 neither the Settlement, nor any document, statement, proceeding or conduct related to this
5 Settlement Agreement, nor any reports or accounts thereof, shall in any event be: (1) construed as,
6 offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse
7 to the Released Parties, including, but not limited to, evidence of a presumption, concession,
8 indication or admission by any of the Released Parties of any liability, fault, wrongdoing,
9 omission, concession or damage; or (2) disclosed, referred to or offered or received in evidence
10 against any of the Released Parties, in any further proceeding in the Lawsuit, or any other civil,
11 criminal or administrative action or proceeding, except for purposes of settling the Lawsuit
12 pursuant to this Settlement Agreement.

13 2. The Released Parties, including Defendant, shall have the right to use this
14 Settlement, including the Releases set forth above, to defend against any claims asserted by or on
15 behalf of Settlement Class Members, PAGA Aggrieved Employees, or the LWDA, that are
16 encompassed within the Releases, whether such claims are asserted in the Lawsuit or any other
17 lawsuit.

18 **D. Exhibits and Headings.** The terms of this Settlement Agreement include the terms
19 set forth in any attached Exhibits 1-4, which are incorporated by this reference as though fully set
20 forth herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.
21 The descriptive headings of any paragraphs or sections of this Settlement Agreement are inserted
22 for convenience of reference only and do not constitute a part of this Settlement Agreement.

23 **E. Interim Stay of Proceedings.** The Parties agree to hold all proceedings in the
24 Lawsuit, except such proceedings necessary to implement and complete the Settlement in
25 abeyance pending the Final Approval hearing to be conducted by the Court.

26 **F. Amendment or Modification.** This Settlement Agreement may be amended or
27 modified only by a written instrument signed by all Parties or their successors-in-interest.

28

1 **G. Entire Agreement.** This Settlement Agreement and any attached Exhibits
2 constitute the entire agreement among these Parties with respect to resolution of the Lawsuit. To
3 the extent there are any other oral or written agreements relating to the subject matter of this
4 Settlement Agreement, this Settlement Agreement controls and supersedes all such agreements.
5 No oral or written representations, warranties or inducements have been made to any Party
6 concerning this Settlement Agreement or its Exhibits other than the representations, warranties
7 and covenants contained and memorialized in this Settlement Agreement and any attached
8 Exhibits.

9 **H. Authorization to Enter Into Settlement Agreement.** Counsel for all Parties
10 warrant and represent they are expressly authorized by the Parties whom they represent and who
11 are signing this Settlement Agreement, to negotiate this Settlement Agreement and to take all
12 appropriate action required or permitted to be taken by such Parties pursuant to this Settlement
13 Agreement to effectuate its terms, and to execute any other documents required to effectuate the
14 terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other
15 and use their best efforts to effect the implementation of the Settlement.

16 **I. Binding on Successors and Assigns.** This Settlement Agreement shall be binding
17 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
18 defined.

19 **J. California Law Governs.** All terms of this Settlement Agreement and the
20 Exhibits hereto shall be governed by and interpreted according to the laws of the State of
21 California.

22 **K. Counterparts.** This Settlement Agreement may be executed in one or more
23 counterparts. All executed counterparts and each of them shall be deemed to be one and the same
24 instrument provided that counsel for the Parties to this Settlement Agreement shall exchange
25 among themselves original signed counterparts.

26 **L. This Settlement is Fair, Adequate and Reasonable.** The Parties believe this
27 Settlement is a fair, adequate and reasonable settlement of the Lawsuit and have arrived at this
28

1 Settlement in arms-length negotiations, taking into account all relevant factors, present and
2 potential. This Settlement was reached after extensive negotiations.

3 **M. Jurisdiction.** The Court shall retain jurisdiction with respect to the interpretation,
4 implementation and enforcement of the terms of this Settlement Agreement and all orders and
5 judgments entered in connection therewith, and the parties and their counsel hereto submit to the
6 jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement
7 embodied in this Settlement Agreement and all orders and judgments entered in connection
8 therewith.

9 **N. Cooperation and Drafting.** Each of the parties has cooperated in the drafting and
10 preparation of this Settlement Agreement. Hence, in any construction made to this Settlement
11 Agreement, the same shall not be construed against any of the Parties.

12 **O. Invalidity of Any Provision.** Before declaring any provision of this Settlement
13 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest
14 extent possible consistent with applicable precedents so as to define all provisions of this
15 Settlement Agreement valid and enforceable.

16 **P. Severability.** Should any clause or provision of this Settlement Agreement be
17 declared illegal or unenforceable, it shall be modified or reformed as minimally necessary to be
18 enforceable. If the provision cannot be modified or reformed to be enforceable, such provision
19 shall be severed and deemed null and void, leaving the remainder of this Settlement Agreement in
20 full force and effect.

21 **Q. Named Plaintiff General Release Remains Effective.** Named Plaintiffs agree to
22 sign this Settlement Agreement, and by signing this Settlement Agreement are bound by the terms
23 herein stated upon final approval, including without limitation the general release set forth above.
24 Named Plaintiffs shall retain their rights to participate as Settlement Class Members under this
25 Settlement Agreement, and agree that they may not opt out of the Settlement Class.

26
27
28

PLAINTIFF

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Date: 2/15/2022

DocuSigned by:
Ekaterina Netsvetayeva
143A3EFC8D76444...
EKATERINA NETSVETAYEVA

PLAINTIFF

Date: 2/14/2022

DocuSigned by:
Valerie Butler
957E204A365448D...
VALERIE BUTLER

DEFENDANT AUTODESK, INC.

Date: 18-Feb-2022 | 13:51 PST

DocuSigned by:
Ruth Ann Keene
17E205A8B49140F...
RUTH ANN KEENE
Executive Vice President & General Counsel
Autodesk, Inc.

APPROVED AS TO FORM

Date: 2/15/2022

DocuSigned by:
Craig Ackermann
958133D51C1D4A4...
CRAIG ACKERMANN
Attorneys for Plaintiffs Ekaterina Netsvetayeva and
Valerie Butler

**SHEPPARD, MULLIN, RICHTER & HAMPTON
LLP**

Date: 2/15/2022

P. S. Cowie
Paul S. Cowie
Attorney for Defendant Autodesk, Inc.