

1 ALAN HARRIS (SBN 146079),
harrisa@harrisandruble.com
2 DAVID GARRETT (SBN 160274),
dgarrett@harrisandruble.com
3 PRIYA MOHAN (SBN 228984),
pmohan@harrisandruble.com
4 HARRIS & RUBLE
655 North Central Avenue 17th Floor
5 Glendale California 91203
Tel: 323.962.3777
6 Fax: 323.962.3004

7 Attorneys for Plaintiff Thomas Pena

8 RONDA D. JAMGOTCHIAN, Cal. Bar No. 200236
rjamgotchian@sheppardmullin.com
9 MICHAEL T. CAMPBELL, Cal. Bar No. 293376
mcampbell@sheppardmullin.com
10 RAYMOND J. NHAN, Cal. Bar No. 306696
rnhan@sheppardmullin.com
11 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
1901 Avenue of the Stars, Ste. 1600
12 Los Angeles, California 90067
Telephone: 310-228-3700
13 Facsimile: 310-228-3701

14 Attorneys for Defendants
AYZENBERG GROUP, INC., ERIC
15 AYZENBERG, ADRIANE ZAUDKE, and
KRISTEN VAIK VAZQUEZ
16

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 COUNTY OF LOS ANGELES

19 THOMAS PENA, an individual, individually
20 and on behalf of all others similarly situated,

21 Plaintiff,

22 v.

23 AYZENBERG GROUP, INC., a California
Corporation; ERIC AYZENBERG, an
24 individual; ADRIANE ZAUDKE, an
individual; KRISTEN VAIK VAZQUEZ, an
25 individual; and DOES 1 through 10,

26 Defendants.

Case No. 21STCV15447
Assigned to: Hon. Maren Nelson
Dept. 17

CLASS ACTION

**AMENDED JOINT STIPULATION AND
SETTLEMENT OF CLASS,
COLLECTIVE, AND REPRESENTATIVE
ACTION**

Complaint Filed: April 22, 2021

1 Subject to final approval by the Court, which counsel and the Parties agree to diligently
2 pursue and recommend in good faith, Plaintiffs Thomas Pena, Eric Ulbrich, and Mark Ramsey
3 (“Named Plaintiffs”)¹, individually and on behalf of all others similarly situated and alleged
4 aggrieved employees, on the one hand, and Defendant Ayzenberg Group, Inc. (“Defendant” or
5 “Ayzenberg”) on the other hand (collectively the “Parties” and individually, a “Party”), hereby
6 agree to the following binding settlement of the class and representative action designated *Thomas*
7 *Pena v. Ayzenberg Group, Inc., et al.*, LASC Case No. 21STCV15447 pursuant to the terms and
8 conditions set forth below (the “Settlement Agreement” or “Agreement”).

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

27 ¹ Eric Ulbrich is a plaintiff in the related PAGA lawsuit entitled *Eric Ulbrich v. Ayzenberg Group,*
28 *Inc., et al.*, (Case No. 21STCV42580). A notice of related cases was filed and served on or about
December 20, 2021.

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

TABLE OF CONTENTS

Page

I. DEFINITIONS.....4

II. RECITALS.....15

III. MONETARY TERMS FUNDING OF THE CLASS SETTLEMENT AMOUNT.16

IV. ATTORNEYS’ FEES AND COSTS.19

V. CLASS REPRESENTATIVE INCENTIVE AWARD.....19

VI. SETTLEMENT ADMINISTRATION COSTS.....19

VII. LABOR AND WORKFORCE DEVELOPMENT AGENCY PAYMENT.....19

VIII. NET SETTLEMENT AMOUNT.....20

IX. INDIVIDUAL SETTLEMENT PAYMENT CALCULATIONS.20

X. SETTLEMENT ADMINISTRATION PROCESS.....22

XI. NULLIFICATION OF THE SETTLEMENT AGREEMENT.....26

XII. OBJECTION PROCEDURES.....27

XIII. CERTIFICATION REPORTS REGARDING INDIVIDUAL SETTLEMENT
PAYMENT CALCULATIONS.....28

XIV. TAX TREATMENT OF INDIVIDUAL SETTLEMENT PAYMENTS.29

XV. ADMINISTRATION OF TAXES BY THE CLAIMS ADMINISTRATOR.....30

XVI. RELEASE BY CLASS MEMBERS.....31

XVII. PRELIMINARY APPROVAL HEARING.32

XVIII. FINAL SETTLEMENT APPROVAL HEARING AND ENTRY OF JUDGMENT.....32

XIX. JUDGMENT AND CONTINUED JURISDICTION.33

XX. OTHER PROVISIONS.....34

1 **I. DEFINITIONS.**

2 The following definitions are applicable to this Settlement Agreement. Definitions
3 contained elsewhere in this Agreement will also be effective:

4 1. “Action” means and refers to the Named Plaintiffs’ instant lawsuits captioned
5 *Thomas Pena v. Ayzenberg Group, Inc., et al.*, LASC Case No. 21STCV15447, as amended, and
6 the related case *Eric Ulbrich v. Ayzenberg Group, Inc.*, LASC Case No. 21STV42580, alleging
7 wage and hour violations against Ayzenberg Group, Inc. (“Ayzenberg”), Eric Ayzenberg, Adriane
8 Zaudke and Kristen Vaik Vazquez (collectively “Defendants”), initiated on April 22, 2021.

9 2. “Administration Expenses Payment” means the amount the Claims Administrator
10 will be paid from the Class Settlement Amount to reimburse its reasonable fees and expenses in
11 accordance with the Claims Administrator’s “not to exceed” bid submitted to the Court in
12 connection with Preliminary Approval of the Settlement.

13
14 3. “Amended Complaint” means and refers to the Second Amended Complaint
15 Plaintiff filed to add causes of action under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*
16 (FLSA) and a misclassification claim, and Thomas Pena, Eric Ulbrich, and Mark Ramsey as
17 Plaintiffs.

18 4. “Attorneys’ Fees and Costs” means and refers to the attorneys’ fees agreed upon by
19 the Parties and approved by the Court for Class Counsel’s litigation and resolution of the Action,
20 and all costs incurred and to be incurred by Class Counsel in the Action, including, but not limited
21 to, costs associated with documenting the Settlement, providing any notices required as part of the
22 Settlement or Court’s Order, securing the Court’s approval of the Settlement, administering the
23 Settlement, and any expert expenses. Class Counsel will request attorneys’ fees not to exceed
24 thirty-three point three percent (33.3%) of the Class Settlement Amount of \$600,000, which is a
25 total of \$200,000. The costs requested to be reimbursed will not exceed \$15,000. The attorneys’
26 fees and costs awarded are subject to the Court’s approval. If the attorneys’ fees and costs
27 awarded by the Court are a reduced amount, then the difference between the amounts set forth
28 above (\$200,000 and \$15,000, respectively) and the reduced attorneys’ fees and costs awarded

1 shall be distributed pro-rata to Participating Class Members. Defendant has agreed not to oppose
2 Class Counsel’s request for attorneys’ fees and costs as set forth above. Such attorneys’ fees and
3 costs shall be paid from the Qualified Settlement Fund. Class Counsel will be issued an IRS Form
4 1099 for the Attorneys’ Fees and Costs Award detailed in this Section and shall be solely and
5 legally responsible for paying all applicable taxes on the payment made pursuant to this paragraph.

6 5. “Claims Administration Costs” or “Settlement Administration Costs” means and
7 refers to the costs payable from the Class Settlement Amount to the Claims Administrator for
8 administering this Settlement, including, but not limited to, printing, distributing, and tracking
9 documents for this Settlement, calculating estimated amounts per Class Member, tax reporting,
10 distributing the Class Settlement Amount, providing necessary reports and declarations, and other
11 duties and responsibilities set forth herein and as requested by the Parties to process this
12 Settlement Agreement. The Claims Administration Costs will be paid from the Class Settlement
13 Amount, including, if necessary, any such costs in excess of the amount represented by the Claims
14 Administrator as being the maximum costs necessary to administer the settlement. The Claims
15 Administration Costs are currently estimated to be \$15,000. The Parties agree to work in good
16 faith to minimize, as much as possible, the Claims Administration Costs. To the extent actual
17 Claims Administrations Costs are greater than \$15,000, such excess amount will be deducted from
18 the Class Settlement Amount, subject to Court approval, provided the Claims Administration
19 Costs will not increase the total Class Settlement Amount.

20 6. “Claims Administrator” or “Settlement Administrator” means and refers to CPT
21 Group, the neutral third-party class action settlement claims administrator agreed to by the Parties
22 and approved by the Court for the purposes of administering this Settlement. The Parties each
23 represent that they do not have any financial interest in the Claims Administrator or otherwise
24 have a relationship with the Claims Administrator that could create a conflict of interest.

25 7. “Class Counsel.” HARRIS & RUBLE shall be appointed Class Counsel upon
26 approval by the Court.

27
28

1 8. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
2 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
3 expenses, respectively, incurred to prosecute the Action.

4 9. “Class Data” means Class Member identifying information in Ayzenberg’s
5 possession including the Class Member’s name, last-known mailing address, last-known telephone
6 number, last- known email address, Social Security number, employee identification number,
7 dates of employment, and number of Class Period Pay Periods and PAGA Period Pay Periods.

8 10. “Class List” means a complete list of all Class Members that Defendant will
9 diligently and in good faith compile from its records and provide to the Settlement Administrator
10 within fourteen (14) calendar days after Preliminary Approval of this Settlement. Defendant shall
11 provide the Settlement Administrator with a Microsoft Excel spreadsheet containing the following
12 information for each class Member: (1) full name; (2) last known home address; (3) last known
13 telephone number; (4) social security number; (5) total Pay Periods worked by the Class Member
14 during the Class Period (i.e., the number of projects worked); (6) total Pay Periods during the
15 Class Period; (7) total Pay Periods during the PAGA Period; and (8) any other information
16 required by the Settlement Administrator in order to effectuate the terms of the Settlement (“Class
17 List”).

18 11. “Class Member(s)” or “Settlement Class” means all persons paid compensation
19 (directly or through a loan-out entity) on account of services provided for Defendant in the
20 production of Motion Pictures, as defined by California Labor Code § 201.5 from October 24,
21 2016 through the preliminary approval of this settlement.

22 12. “Class Member Address Search” means the Claims Administrator’s investigation
23 and search for current Class Member mailing addresses using all reasonably available sources,
24 methods and means including, but not limited to, the National Change of Address database, skip
25 traces, and direct contact by the Claims Administrator with Class Members via telephone or
26 email.

27 13. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION
28 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to

1 Class Members in English in the form, without material variation, attached as **Exhibit A** and
2 incorporated by reference into this Agreement.

3 14. “Class Period” or “Settlement Period.” The Class Period will begin on October 24,
4 2016, and end on the date the Court enters an order preliminarily approving the Parties’
5 Settlement.

6 15. “Class Representative(s)” means the Named Plaintiffs in the operative Complaints
7 in the Action seeking Court approval to serve as a Class Representative.

8 16. “Class Representative Incentive Award” means the amount to be paid to Named
9 Plaintiffs in recognition of their effort and work in prosecuting the Action on behalf of Class
10 Members and for their general release of claims. Subject to the Court granting Final Approval of
11 this Settlement Agreement, Named Plaintiffs – Thomas Pena, Eric Ulbrich, and Mark Ramsey –
12 will request Court approval of a Class Representative Incentive Award of \$7,500 each. Defendant
13 has agreed not to oppose this amount. Named Plaintiffs will be issued an IRS Form 1099 in
14 connection with this payment. Named Plaintiffs shall be solely and legally responsible for paying
15 any and all applicable taxes on this payment and shall hold Defendant harmless from any claim or
16 liability for taxes, penalties or interest arising as a result of the payment. This time-and-effort and
17 general release payment shall be in addition to each Named Plaintiff’s share of the Net Settlement
18 Amount as a Participating Class Member, and shall be conditioned on the execution of this
19 Settlement Agreement and a general release of all claims, including a release pursuant to
20 California Civil Code § 1542. Defendant makes no representations as to the tax treatment or legal
21 effect of the payments called for herein, and Named Plaintiffs are not relying on any statement or
22 representation by Defendant or its counsel in this regard.

23 17. “Class Settlement Amount” means the total value of the Settlement, which is Six
24 Hundred Thousand Dollars and Zero Cents (\$600,000.00) (the “Class Settlement Amount”), to be
25 paid by Defendant in full satisfaction of all claims arising from the Action. The Class Settlement
26 Amount includes all Individual Settlement Payments to Participating Class Members and PAGA
27 Members, all employee-side taxes arising from the payments made under this Settlement, the
28 Class Representative Incentive Awards to Named Plaintiffs, Claims Administration Costs to the

1 Claims Administrator, the Labor and Workforce Development Agency Payment, and Attorneys’
2 Fees and Costs. In addition to the Class Settlement Amount, Defendant shall also pay the
3 employer-side share of payroll taxes on the wage portion of the Individual Settlement Payments.
4 Defendant shall not pay more than the \$600,000 Class Settlement Amount stated herein, plus the
5 employer-side share of payroll taxes on the wage portion of the Individual Settlement Payments,
6 which will be calculated by the Settlement Administrator.

7 There is no reversion to Defendant of the Class Settlement Amount and the entire Class
8 Settlement Amount will be paid out.

9 18. “Court” means and refers to the Superior Court of the State of California for the
10 County of Los Angeles.

11 19. “Effective Date.” The Effective Date of the Settlement will be the later of the
12 following: (a) if no timely objections are filed or if all objections are withdrawn, the date upon
13 which the time from challenging the Final Approval Order and/or Judgment has passed (no less
14 than 45 days following Final Approval); (b) if an objection is filed and not withdrawn, the date for
15 filing an appeal and no such appeal being filed; or (c) if any timely appeals are filed, the date of
16 the resolution (or withdrawal) of any such appeal in a way that does not alter the terms of the
17 Settlement.

18 20. “Excluded Class Members” means any Class Member who timely and validly
19 submits a written request to be excluded from the Class on or before the Objection / Exclusion
20 Deadline Date. A request for exclusion only applies to the class claims and not the PAGA claim.
21 Accordingly, any Class Member who excludes themselves from the class claims will not be
22 excluded from the PAGA claim release and will be bound by the Judgment entered by this Court.

23 21. “Final Approval” or “Final Approval Date” means the date on which the Court’s
24 Final Approval Order is entered.

25 22. “Final Approval Hearing” means the hearing at which the Court considers whether
26 to finally approve the Settlement and to enter the Final Approval Order.

27
28

1 23. “Individual PAGA Payments” means the \$10,000 (25%) of the PAGA Settlement
2 Amount, which will be distributed to PAGA Members.

3 24. “Individual Settlement Payment” means the amount payable from the Net
4 Settlement Amount to each Participating Class Member and any payment a PAGA Member is
5 eligible to receive from the employee portion of the PAGA Penalties, less employee portions of
6 state and federal withholding taxes, including the employee FICA, FUTA and SDI contributions
7 and any other applicable payroll deductions required by law as a result of the payment of the
8 amount allocated to such Participating Class Member as set forth herein. Class Members, except
9 those who request to be excluded from the settlement (of the class claims only), will be paid their
10 portion of the Settlement, which will be considered 20% wages, 40% interest, and the remaining
11 40% penalties. The Settlement Administrator will be responsible for issuing to Participating Class
12 Members a form W-2 for amounts deemed “wages” and an IRS Form 1099 for the amounts
13 deemed penalties and interest.

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

16 26. “LWDA” means the California Labor and Workforce Development Agency, the
17 agency entitled, under Labor Code Section 2699, subd. (i), to recover 75 of the PAGA Penalties.

18 27. “LWDA Notice” means the notice that Plaintiff will submit to the LWDA of this
19 Joint Stipulation of Settlement at the same time it is presented to the Court in accordance with
20 Labor Code Section 2699(1)(2) and thereafter submit a copy of any judgment or any other order
21 providing for an award of civil penalties in conformity with Labor Code Section 2699(1).

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

24 29. “Named Plaintiffs” means Plaintiffs Thomas Pena, Eric Ulbrich, and Mark
25 Ramsey, as reflected in the Second Amended Complaint, and the related case, *Eric Ulbrich v.*
26 *Ayzenberg Group, Inc.*, LASC Case No. 21STCV42580.

27 30. “Net Settlement Amount” means the portion of the Class Settlement Amount
28 remaining after deduction of the approved (1) Attorneys’ Fees and Costs, (2) Settlement

1 Administration Costs, (3) Class Representative Incentive Award, and (4) PAGA Payment to the
2 LWDA. The Net Settlement Amount will be distributed to Participating Class Members subject to
3 the terms and conditions set forth herein.

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

6 32. “Notice of Class Action Settlement” means the document substantially in the form
7 attached as **Exhibit A** that will be mailed to Class Members’ last known addresses and that will
8 provide Class Members with information regarding the Action and information regarding the
9 Settlement.

10 33. “Notice of Objection” means a Class Member’s valid and timely written objection
11 to the Settlement Agreement. For the Notice of Objection to be valid, it must include: (a) the
12 objector’s full name, signature, address, and telephone number, and the last four digits of their
13 social security number or employee ID number; (b) a written statement of all grounds for the
14 objection accompanied by legal support, if any, for such objection; and (c) copies of any papers,
15 briefs, or other documents upon which the objection is based. Class Members regardless of
16 whether or not they submit a written objection to the Settlement Administrator will have the right
17 to appear at the Final Approval Hearing in order to have their objections heard by the Court. The
18 Settlement Administrator shall provide counsel for the Parties with complete copies of all
19 objections received, including the postmark dates or fax timestamps for each objection, within five
20 (5) calendar days of receipt. Plaintiff’s Counsel will provide copies of any objections and
21 supporting documents to the Court at least ten (10) days before the Final Approval Hearing.

22 34. “Notice Packet” means the Notice of Class Action Settlement the Settlement
23 Administrator will mail to Class Members.

24 35. “PAGA Members” means all persons paid compensation (directly or through a
25 loan-out entity) on account of services provided for Defendant in the production of Motion
26 Pictures, as defined by California Labor Code § 201.5 from October 24, 2019 through the
27 preliminary approval of this settlement. (“PAGA Period”).

28

1 36. “PAGA Payment” means the amount that the Parties have agreed to pay to the
2 Labor and Workforce Development Agency (“LWDA”) in connection with the Labor Code
3 Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “the PAGA”). The
4 Parties have agreed that \$40,000 of the Class Settlement Amount will be allocated to the
5 resolution of any Class Members’ claims arising under the PAGA. Pursuant to the PAGA,
6 \$30,000 (75%) of the PAGA Settlement Amount will be paid to the California Labor and
7 Workforce Development Agency and \$10,000 (25%) of the PAGA Settlement Amount will be
8 distributed to PAGA Members.

9 37. “PAGA Period” means the period from October 24, 2019 to the date of Preliminary
10 Approval.

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

12 39. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from
13 the Class Settlement Amount, allocated 25% to the PAGA Members (\$10,000) and the 75% to
14 LWDA (\$30,000) in settlement of PAGA claims.

15 40. “Participating Class Members” means all Class Members who are entitled to
16 receive their share of the Net Settlement Amount and who do not submit a valid and timely
17 Request for Exclusion.

18 41. “Pay Period” A Pay Period (i.e., a work week) is the equivalent of one project in
19 which a Class Member or PAGA Member worked at least one day.

20 42. “Preliminary Approval” means the Court’s order granting preliminary approval of
21 the Settlement Agreement.

22 43. “Qualified Settlement Account” means the fund established by the Claims
23 Administrator pursuant to Internal Revenue Code Section 1.468B-1.

24 44. “Released Claims.” This term is defined as follows: Following the Effective Date,
25 and upon Defendant fully funding the Class Settlement Amount, all Class Members shall fully and
26 finally release Released Parties of the Released Claims for the Class Period. The Released Claims
27 include any and all claims, wage and hour claims, rights, demands, liabilities and causes of action
28 of any nature or description arising from the facts and claims asserted in the Operative Complaint,

1 as amended, and/or that could have been asserted based on the facts alleged in the Operative
2 Complaint, as amended, against Defendant, including without limitation, statutory, constitutional,
3 contractual or common law claims for wages, damages, unpaid costs, penalties, liquidated
4 damages, interest, attorneys' fees, litigation costs, restitution, equitable relief or other relief under
5 Business & Professions Code § 17200, et seq., based on the following categories: (a) any and all
6 claims involving any alleged failure to pay the minimum wages required by federal, state or local
7 law, including prevailing wages; (b) any and all claims arising under federal, state or local law
8 involving any alleged failure to pay for all hours worked, including but not limited to any claim
9 for minimum, straight time, overtime, or double time wages; (c) any and all claims arising under
10 federal, state or local law involving any alleged failure to pay straight time, overtime or double
11 time wages, including but not limited to any claim involving "off the clock" work, and any claim
12 involving Defendant's workday or workweek, and any claim involving failure to include shift
13 differentials, bonuses, other incentive pay, or compensation of any kind in the "regular rate" of
14 pay; (d) any and all claims arising under federal, state or local law involving any alleged failure to
15 properly provide meal periods and/or authorize and permit rest periods, to pay premiums for
16 missed, late, short or interrupted meal and/or rest periods, or to pay such premiums at the regular
17 rate of compensation required by Labor Code § 226.7; (e) any and all claims arising under federal,
18 state or local law involving any alleged failure to keep accurate records or to issue proper wage
19 statements; (f) any and all claims arising under federal, state or local law involving any alleged
20 failure to timely pay wages, including but not limited to any claim that Defendant violated Labor
21 Code §§ 201 or 202, and any claim for waiting time penalties under Labor Code § 203; (g) any
22 and all claims arising under federal, state or local law involving any alleged failure to reimburse
23 for necessary business expenses, including under Labor Code §§2800 or 2802; (h) any and all
24 claims for unfair business practices in violation of California Business and Professions Code
25 sections 17200, et seq.; and (i) any and all penalties pursuant to the Private Attorneys General Act
26 ("PAGA") of 2004 (collectively, the "Released Claims"). The Released Claims include all such
27 claims arising under the California Labor Code (including, but not limited to, sections 201, 201.3,
28 201.5, 202, 203, 204, 210, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7, 226.8, 227.3, 246, 256,

1 510, 511, 512, 515, 516, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1,
2 1197.2, 1198, 1198.5, 1199, 1770 *et seq.*, 2800, 2802, 2810.5, 2698 *et seq.*, and 2699 *et seq.*); the
3 Wage Orders of the California Industrial Welfare Commission; California Business and
4 Professions Code section 17200 *et seq.*; the California Civil Code, to include but not be limited to
5 claims under § 3336; the California common law of contract; the Fair Labor Standards Act, 29
6 U.S.C. § 201 *et seq.*; and federal common law. Participating Class Members who negotiate or
7 otherwise deposit their Settlement Payment Check will be deemed to have opted into the Action
8 for purposes of the Fair Labor Standards Act (“FLSA”) and as to those Class Members they
9 expressly waive and release any FLSA claims arising during the Class Period and reasonably
10 related to the claims and allegations in the Operative Complaint, as amended. This release
11 excludes the release of claims not permitted by law. The following language will be printed on the
12 reverse of each Settlement Payment Check, or words to this effect: “By endorsing or otherwise
13 negotiating this check, I acknowledge that I read, understood, and agree to the terms set forth in
14 the Notice of Class Action Settlement and I consent to join in the Fair Labor Standards Act
15 (“FLSA”) portion of the Action, elect to participate in the settlement of the FLSA claims, and
16 agree to release all of my FLSA claims that are covered by the Settlement.” It is the intent of the
17 Parties that the judgment entered by the Court upon final approval of the Settlement shall have *res*
18 *judicata* effect and be final and binding upon Plaintiff and all Class Members who have not
19 expressly requested to be excluded from of the Settlement. Participating Class Members do not
20 release any other claims, including claims for vested benefits, wrongful termination, violation of
21 the FEHA, unemployment insurance, disability, social security, workers’ compensation, or claims
22 based on facts occurring outside the Class Period. In addition to the releases given above, PAGA
23 Members release Released Parties, from all claims for PAGA penalties that were alleged, or
24 reasonably could have been alleged, based on the PAGA Period facts contained in Plaintiffs’
25 notices to the LWDA and the Operative Complaint. This release shall apply to claims arising
26 during the Class Period.

27 45. “Released Parties.” The Released Parties include Ayzenberg Group, Inc., Eric
28 Ayzenberg, Adriane Zaduke, and Kristen Vaik Vazquez as named by Named Plaintiffs in the

1 Operative Complaint, as amended, and Ayzenberg Group, Inc.’s past, present and/or future, direct
2 and/or indirect, parents, subsidiaries, equity sponsors, related companies/corporations and/or
3 partnerships (defined as a company/ corporation and/or partnership that is, directly or indirectly,
4 under common control with Defendant or any of its parents), divisions, assigns, predecessors,
5 successors, insurers, consultants, joint venturers, joint employers, affiliates, alter-egos, any entity
6 with potential joint liability, employee benefit plans, and fiduciaries thereof, and all of their
7 respective directors, officers, agents, attorneys, stockholders, fiduciaries, parents, subsidiaries,
8 other service providers, and assigns.

9 46. “Request for Exclusion” means a notice submitted by a Class Member requesting
10 to be excluded from the Settlement. The Request for Exclusion: (a) may contain the Class
11 Member’s name, address, telephone number, and the last four digits of the Class Member’s Social
12 Security number and/or the Employee ID number; (b) contain a statement requesting to be
13 excluded from the settlement of the class claims similar to the following: “I wish to exclude
14 myself from the class settlement reached in the matter of *Thomas Pena v. Ayzenberg Group, Inc.*”;
15 (c) be returned by mail to the Settlement Administrator at the specified address; and (d) must be
16 postmarked on or before the Response Deadline. The date of the postmark on the return mailing
17 envelope will be the exclusive means to determine whether a Request for Exclusion has been
18 timely submitted. A Class Member who does not request exclusion from the Settlement will be
19 deemed a Class Member and will be bound by all terms of the Settlement Agreement if the
20 Settlement is granted final approval by the Court. A request for exclusion only applies to the class
21 claims and not the PAGA claim. Accordingly, any Class Member who excludes themselves will
22 not be excluded from the PAGA claim release and will be bound by the Judgment entered by this
23 Court.

24 47. “Response Deadline” means the deadline by which Class Members must mail or
25 fax to the Settlement Administrator valid Requests for Exclusion or Notices of Objection to the
26 Settlement. The Response Deadline will be sixty (60) calendar days from the initial mailing of the
27 Notice Packet by the Claims Administrator, unless the 60th day falls on a Sunday or Federal
28 holiday, in which case the Response Deadline will be extended to the next day on which the U.S.

1 Postal Service is open. The Response Deadline for Requests for Exclusion will be extended
2 fifteen (15) calendar days for any Class Member who is re-mailed a Notice Packet by the
3 Settlement Administrator, unless the 15th day falls on a Sunday or Federal holiday, in which case
4 the Response Deadline will be extended to the next day on which the U.S. Postal Service is open.
5 The Response Deadline may also be extended by express agreement between Class Counsel and
6 Defendant’s counsel. Under no circumstances, however, will the Settlement Administrator have
7 the authority to unilaterally extend the deadline for Class Members to submit a Request for
8 Exclusion or objection to the Settlement.

9 48. “Settlement” means the disposition of the Action effected by this Agreement and
10 the Judgment.

11 49. “Settlement Payment Check” means the payment to Participating Class Members
12 and PAGA Members. The back of the Settlement Payment Check shall state, immediately below
13 the space where the check is to be endorsed by the payee: “By endorsing or otherwise negotiating
14 this check, I acknowledge that I read, understood, and agree to the terms set forth in the Notice of
15 Class Action Settlement and I consent to join in the Fair Labor Standards Act (“FLSA”) portion of
16 the Action, elect to participate in the settlement of the FLSA claims, and agree to release all of my
17 FLSA claims that are covered by the Settlement.”

18 **II. RECITALS.**

19 1. On April 21, 2021, Plaintiff Thomas Pena commenced this Action by filing a
20 Complaint alleging causes of action against Defendants for Unfair Competition Cal. Bus. & Prof.
21 Code § 17200) and violation of Sections 201.5, 203, 226(a), 226(b), 226.7, 510, 512(a), 515, 1194,
22 1197, 1197.1, and 1198.5 of the California Labor Code (the “Code”). The Complaint is not the
23 operative complaint in the Action. On January 24, 2022, Plaintiff filed a First Amended Complaint
24 alleging the above of action against Defendants as well as violations of Code section 2698 et seq.
25 The First Amended Complaint is not the operative complaint in the Action. On March 29, 2022,
26 Plaintiff filed a Second Amended Complaint alleging the above of action against Defendants as
27 well as violations of the Fair Labor Standards Act (“FLSA”). The Second Amended Complaint is
28 the operative complaint in the Action (the “Operative Complaint”). Defendants deny the

1 allegations in the Operative Complaint, deny any failure to comply with the laws identified in the
2 Operative Complaint and deny any and all liability for the causes of action alleged.

3 2. On April 28, 2021, Plaintiff gave written notice to Defendants and the LWDA
4 pursuant to Labor Code section 2699.3, subd. (a) by sending a letter identifying the wage and hour
5 violations alleged as PAGA violations in the Operative Complaint.

6 3. On November 17, 2021, the Parties participated in an all-day mediation presided
7 over by Joel Grossman of JAMS which led to this Agreement to settle the Action.

8 4. Prior to executing the Settlement, Plaintiff obtained, through informal discovery,
9 documents, testimony and information sufficient to satisfy the criteria for court approval set forth
10 in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker*
11 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

12 **III. MONETARY TERMS FUNDING OF THE CLASS SETTLEMENT AMOUNT.**

13 1. Class Settlement Amount. Defendant promises to pay \$600,000 and no more as the
14 Class Settlement Amount and to separately pay any and all employer-side payroll taxes owed on
15 the wage portions of the Individual Settlement Payments. Defendant has no obligation to pay the
16 Class Settlement Amount (or any payroll taxes) prior to the deadlines stated in this Agreement.
17 The Claims Administrator will disburse the entire Class Settlement Amount without asking or
18 requiring Participating Class Members or PAGA Members to submit any claim as a condition of
19 payment. None of the Class Settlement Amount will revert to Defendant.

20 2. Payments from the Class Settlement Amount. The Claims Administrator will make
21 and deduct the following payments from the Class Settlement Amount, in the amounts specified by
22 the Court in the Final Approval Order:

- 23 a. To Named Plaintiffs: Class Representative Incentive Awards to the Class
24 Representatives of not more than \$7,500, each (in addition to any Individual
25 Class Payment [and any Individual PAGA Payment] the Class
26 Representative is entitled to receive as a Participating Class Member).
27 Defendant will not oppose each Named Plaintiff’s request for a Class
28 Representative Incentive Award that does not exceed this amount. Plaintiff

1 will file a motion for Class Representative Incentive Awards no later than
2 16 court days prior to the Final Approval Hearing. If the Court approves a
3 Class Representative Incentive Award less than the amount requested, the
4 Claims Administrator will retain the remainder in the Net Settlement
5 Amount. The Claims Administrator will pay the Class Representative
6 Incentive Award using IRS Form 1099(MISC). Named Plaintiffs assume
7 full responsibility and liability for taxes owed on the Class Representative
8 Incentive Award.

9 b. To Class Counsel: A Class Counsel Fees Payment of not more than
10 \$200,000 and a Class Counsel Administration Expenses Payment of not
11 more than \$15,000. Defendant will not oppose requests for these payments
12 provided that they do not exceed these amounts. Plaintiff and/or Class
13 Counsel will file a motion for Class Counsel Fees Payment and Class
14 Counsel Administration Expenses Payment no later than 16 court days prior
15 to the Final Approval Hearing. If the Court approves a Class Counsel Fees
16 Payment and/or a Class Counsel Administration Expenses Payment less
17 than the amounts requested, the Claims Administrator will allocate the
18 remainder to the Net Settlement Amount. Released Parties shall have no
19 liability to Class Counsel or any other Plaintiff's Counsel arising from any
20 claim to any portion any Class Counsel Fee Payment and/or Class Counsel
21 Administration Expenses Payment. The Claims Administrator will pay the
22 Class Counsel Fees Payment and Class Counsel Administration Expenses
23 Payment using one or more IRS 1099 Forms. Class Counsel assumes full
24 responsibility and liability for taxes owed on the Class Counsel Fees
25 Payment and the Class Counsel Administration Expenses Payment and
26 holds Defendants harmless, and indemnifies Defendants, from any dispute
27 or controversy regarding any division or sharing of any of these Payments.
28

- 1 c. To the Claims Administrator: A payment for Claims Administrator Costs
2 projected not to exceed \$15,000. To the extent the Administration Expenses
3 are less or the Court approves payment less than \$15,000, the Claims
4 Administrator will allocate the remainder to the Net Settlement Amount.
5
- 6 d. Tax Allocation of Individual Class Payments. Twenty percent (20%) of
7 each Participating Class Member's Individual Settlement Payment will be
8 allocated to settlement of wage claims (the "Wage Portion"). The Wage
9 Portions are subject to tax withholding and will be reported on an IRS W-2
10 Form. Eighty percent (80%) of each Participating Class Member's
11 Individual Class Payment will be allocated to settlement of claims for
12 interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions
13 are not subject to wage withholdings and will be reported on IRS 1099
14 Forms. Participating Class Members assume full responsibility and liability
15 for any taxes owed on their Individual Settlement Payment.
16

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

20 4. Within thirty (30) calendar days after the Effective Date of the Settlement,
21 Defendant will make a deposit of the Class Settlement Amount into a Qualified Settlement
22 Account to be established by the Settlement Administrator. After receipt of the Class Settlement
23 Amount, the Settlement Administrator will then issue payments within fourteen (14) calendar days
24 to: (a) Participating Class Members/PAGA Members; (b) Named Plaintiffs' Class Representative
25 Incentive Awards; (c) the Labor and Workforce Development Agency for the 75% portion of the
26 PAGA Payment; (d) Class Counsel; and (e) the Settlement Administrator will also issue a
27 payment to itself for Court-approved services performed in connection with the Settlement.
28 Defendant has no obligation to deposit such funds prior to the deadline set forth herein.

1 **IV. ATTORNEYS' FEES AND COSTS.**

2 Defendant agrees not to oppose or impede any application by Class Counsel for attorneys'
3 fees of not more than \$200,000, and the reimbursement of costs and expenses associated with
4 Class Counsel's litigation and settlement of the Action not to exceed \$15,000.

5 **V. CLASS REPRESENTATIVE INCENTIVE AWARD.**

6 In exchange for a general release by Named Plaintiffs, and in recognition of Named
7 Plaintiffs' effort and work in prosecuting the Action on behalf of Class Members, Defendant
8 agrees not to oppose or impede any application or motion for Class Representative Incentive
9 Awards of \$7,500 each for Thomas Pena, Eric Ulbrich, or Mark Ramsey, a total of \$22,500. The
10 Class Representative Incentive Award will be paid from the Class Settlement Amount and will be
11 in addition to Named Plaintiffs' individual settlement payment paid pursuant to the Settlement,
12 and is conditioned on the execution of a general release of claims (including a release under
13 California Civil Code § 1542) as set forth herein. Thomas Pena, Eric Ulbrich, and Mark Ramsey
14 will be solely and legally responsible for paying any and all applicable taxes on the payments
15 made pursuant to this paragraph and will indemnify and hold Defendant harmless from any claim
16 or liability for taxes, penalties, or interest arising as a result of the payment.

17 **VI. SETTLEMENT ADMINISTRATION COSTS.**

18 The Settlement Administrator will be paid for the reasonable costs of administration of the
19 Settlement and distribution of payments from the Class Settlement Amount, which are currently
20 estimated to be \$15,000. To the extent actual Settlement Administrations Costs are greater than
21 \$15,000, such excess amount will be deducted from the Class Settlement Amount, subject to Court
22 approval, provided the Settlement Administration Costs will not increase the Class Settlement
23 Amount.

24 **VII. LABOR AND WORKFORCE DEVELOPMENT AGENCY PAYMENT.**

25 Subject to Court approval, the Parties agree that \$40,000 of the Class Settlement Amount
26 will be designated for satisfaction of claims arising under PAGA. Pursuant to the PAGA, \$30,000
27 (75%) of the PAGA Settlement Amount will be paid to the California Labor and Workforce
28 Development Agency and \$10,000 (25%) of the PAGA Settlement Amount will be distributed to

1 PAGA Members on a *pro rata* basis based on the number of weeks worked during the PAGA
2 Period.

3 **VIII. NET SETTLEMENT AMOUNT.**

4 The Net Settlement Amount and 25% portion of the PAGA Payment will be used to satisfy
5 Individual Settlement Payments to Participating Class Members/PAGA Members in accordance
6 with the terms of this Settlement.

7 **IX. INDIVIDUAL SETTLEMENT PAYMENT CALCULATIONS.**

8 1. Individual Settlement Payments will be paid from the Net Settlement Amount and
9 the 25% portion of the PAGA Penalties allocated for PAGA Members. Specific calculations of
10 Individual Settlement Payments will be made as follows:

11 a. Defendant will provide the Settlement Administrator with the total number
12 of Pay Periods for each Participating Class Member. Defendant will also
13 provide the total aggregated number of Pay Periods worked by all
14 Participating Class Members during the Class Period. The amount that each
15 Participating Class Member will be eligible to receive will be calculated by
16 dividing each participating Class Member's individual Pay Periods by the
17 total Pay Periods of all Participating Class Members and multiplying the
18 resulting fraction by the Net Settlement Amount.

19 b. Defendant will also provide the Settlement Administrator with the total
20 number of Pay Periods for each PAGA Member. Defendant will also
21 provide the total aggregated number of Pay Periods worked by all PAGA
22 Members during the PAGA Period. The amount that each PAGA Member
23 will receive will be calculated by dividing each participating PAGA
24 Member's individual Pay Periods by the total Pay Periods of all PAGA
25 Members, and multiplying the resulting fraction by the 25% share of the
26 PAGA Penalties designated for distribution to the PAGA Members. PAGA
27 Members shall receive this portion of their Individual Settlement Payment
28

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

regardless of whether they request to be excluded from the participation regarding the class claims.

c. The Individual Settlement Payments estimate indicated on the Notice are subject to change, depending on factors including how many Class Members become Excluded Class Members (resulting in their Individual Pay Periods being removed from the final Class Pay Periods, thereby increasing the final weekly settlement amount).

2. The Individual Settlement Payment will be reduced by any required deductions for each Participating Class Member as set forth herein, including employee-side tax withholdings or deductions. Class Members, except those who request to be excluded from the settlement, will be paid their portion of the Settlement, which will be considered 20% wages, 40% interest, and the remaining 40% penalties. The Parties agree that the Claims Administrator will issue each Participating Class Member a Form W-2 and a Form 1099 for all amounts paid under this Settlement, making all deductions and withholdings required under law.

3. Eligible PAGA Members will receive their share of the employee portion of the PAGA Penalties and will be deemed to have released any claims arising out of PAGA, regardless of whether they request to be excluded from the release of their class claims.

4. The Individual Settlement Payments made to Participating Class Members under this Settlement, and any other payments made pursuant to this Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

1 **X. SETTLEMENT ADMINISTRATION PROCESS.**

2 1. The Parties agree to cooperate in the administration of the Settlement and to make
3 all reasonable efforts to control and minimize the costs and expenses incurred in administration of
4 the Settlement. The Claims Administrator will provide the following services:

- 5 a. Establish and maintain a Qualified Settlement Account.
- 6 b. Calculate the Individual Settlement Payment each Class Member is eligible
7 to receive.
- 8 c. Assist Class Members who have questions regarding the Notice Packet.
- 9 d. Conduct additional address searches for mailed Notice Packets that are
10 returned as undeliverable.
- 11 e. Calculate Participating Class Members' Individual Settlement Payment,
12 field inquiries from Class Members, and administer any Requests for
13 Exclusion. This service will include settlement proceeds calculation,
14 printing and issuance of Settlement Payment Checks, and preparation of IRS
15 W-2 and 1099 Tax Forms. Basic accounting for, and payment of, employee
16 tax withholdings, and forwarding all payroll taxes and penalties to the
17 appropriate government authorities, will also be included as part of this
18 service.
- 19 f. Calculate and make any and all payments on behalf of Defendant required
20 pursuant to the Settlement Agreement, including but not limited to, FICA,
21 FUTA, and SDI contributions, which shall be made from the Class
22 Settlement Amount, as well as the employer's portion of all payroll taxes.
- 23 g. Issue to Named Plaintiffs, Participating Class Members, and Plaintiff's
24 Counsel any W-2, 1099, or other tax forms as may be required by law for
25 all amounts paid pursuant to this Settlement.
- 26 h. Provide declarations and/or other information to the Court as requested by
27 the Parties and/or the Court.

28

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

(1) Claims Administrator’s Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Claims Administrator will provide to Class Counsel and Defendant’s 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), the number of written objections and attach the Exclusion List. The Claims Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Claims Administrator’s declaration(s) in Court.

(2) Final Report by Settlement Administrator. Within 10 days after the Claims Administrator disburses all funds in the Class Settlement Amount, the Claims Administrator will provide Class Counsel and Defendant’s Counsel with a final report detailing its disbursements of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Claims Administrator will prepare, and submit to Class Counsel and Defendant’s 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 Claims Administrator’s declaration in Court.

i. Provide weekly status reports to counsel for the Parties.

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

j. Post the final judgment on the Claims Administrator’s website after it is entered.

k. Website, Email Address and Toll Free Number. The Claims 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, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Administration Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Claims Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

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

m. Provide other customarily required services.

2. Within fourteen (14) calendar days of Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator. If any deficiencies are identified by the Settlement

1 Administrator, Defendant shall work with the Claims Administrator in good faith to resolve any
2 issues.

3 3. Within fourteen (14) calendar days after receiving the Class List from Defendant,
4 the Settlement Administrator will mail a Notice Packet to all Class Members via regular First-
5 Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

6 4. Prior to mailing, the Settlement Administrator will perform a search based on the
7 National Change of Address Database for information to update and correct for any known or
8 identifiable address changes. Any Notice Packets returned to the Settlement Administrator as
9 non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class
10 U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate
11 the date of such re-mailing on the Notice Packet. If no forwarding address is provided, the
12 Settlement Administrator will promptly attempt to determine the correct address using a skip-
13 trace, or other search using the name, address and/or Social Security number of the Class Member
14 involved, and will then perform a single re-mailing. Those Class Members who receive a re-
15 mailed Notice Packet, whether by skip-trace or by request, will have between the later of (a) an
16 additional fourteen (14) calendar days or (b) the Response Deadline to postmark or electronically
17 submit a Request for Exclusion or an objection to the Settlement.

18 5. All Class Members will be mailed a Notice Packet containing the form attached as
19 **Exhibit A** as approved by the Court.

20 6. Class Members will have an opportunity to dispute the information provided in
21 their Notice Packets. If Class Members dispute the number of Pay Periods to which they have
22 been credited or the amount of their Individual Settlement Payment, Class Members may produce
23 evidence to the Settlement Administrator showing that such information is inaccurate. Absent
24 evidence rebutting Defendant's records, Defendant's records will be presumed determinative.
25 However, if a Class Member produces evidence to the contrary, the Settlement Administrator will
26 consult with Class Counsel and Defendant's counsel, and will evaluate the evidence submitted by
27 the Class Member. Together, the Claims Administrator, Class Counsel and Defendant's counsel
28 will make the final decision as to the number of eligible Pay Periods that should be applied and/or

1 the Individual Settlement Payment to which the Class Member may be entitled. If an agreement
2 cannot be reached between the Claims Administrator, Class Counsel and Defendant’s counsel, the
3 Claims Administrator shall make the final determination. All such disputes are to be resolved not
4 later than fourteen (14) calendar days after the Response Deadline.

5 7. Request for Exclusion Procedures. Any Class Member wishing to be excluded
6 from the Settlement Agreement must sign and postmark a written Request for Exclusion to the
7 Claims Administrator within the Response Deadline. The Request for Exclusion may contain
8 (a) the Class Member’s name, address, telephone number, and the last four digits of the Class
9 Member’s Social Security number and/or the Employee ID number, and (b) a statement requesting
10 to be excluded from the settlement of the class claims similar to the following: “I wish to exclude
11 myself from the class settlement reached in the matter of *Thomas Pena v. Ayzenberg Group, Inc.*
12 .” The date of the postmark on the return mailing envelope will be the exclusive means to
13 determine whether a Request for Exclusion has been timely submitted. All Requests for Exclusion
14 will be submitted to the Settlement Administrator, who will certify jointly to Class Counsel and
15 Defendant’s Counsel the Requests for Exclusion that were timely submitted. Any Class Member
16 who does not timely seek exclusion will be bound by the terms of this Settlement Agreement.

17 **XI. NULLIFICATION OF THE SETTLEMENT AGREEMENT.**

18 1. Defendant’s Option to Nullify the Settlement Agreement. If more than 5% of the
19 Class Members request to be excluded from the Settlement (opt-out or are otherwise excluded),
20 Defendant, in its sole discretion, shall have the option of nullifying the Settlement Agreement.
21 Should Defendant nullify the Settlement Agreement, it must notify Class Counsel in writing
22 within thirty (30) days of the Notice Packet Response Deadline. Prior to nullifying and
23 withdrawing from the Settlement pursuant to this provision, Defendant shall meet and confer with
24 Class Counsel. The Parties and any funds to be awarded under this Settlement Agreement shall be
25 returned to their respective statuses as of the date and time immediately prior to the execution of
26 this Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had
27 not been executed.

28

1 2. Nullification of the Settlement Agreement. In the event: (i) the Court does not
2 enter the Preliminary Approval Order and approve the Released Claims specified herein; (ii) the
3 Court does not finally approve the Settlement as provided herein; (iii) the Effective Date does not
4 occur as provided herein; (iv) Defendant exercises its option to nullify the Settlement Agreement
5 based on an excessive number of excluded Class Members, as described in the above paragraph;
6 or (v) the Settlement does not become final for any other reason (e.g., an objection by the LWDA),
7 this Settlement Agreement shall be null and void. However, before becoming null and void, the
8 Parties and counsel shall meet and confer in good faith to attempt to resolve the issue. Should this
9 Settlement Agreement be nullified, any order or award entered by the Court in furtherance of this
10 Settlement Agreement shall be treated as void from the beginning, and the Stipulations and
11 Recitals contained herein shall be of no force or effect, and shall not be treated as an admission by
12 the Parties or their Counsel. In such a case, the Parties and any funds to be awarded under this
13 Settlement Agreement shall be returned to their respective statuses as of the date and time
14 immediately prior to the execution of this Settlement Agreement, and the Parties shall proceed in
15 all respects as if this Settlement Agreement had not been executed, except that any fees already
16 incurred by the Settlement Administrator shall be paid by the Parties. A reduction in attorneys'
17 fees or costs, or a reduction in the Class Representative Incentive Award, shall not be grounds for
18 nullification of the Settlement Agreement.

19 3. Settlement Terms Bind All Class Members Who Do Not Request Exclusion. Any
20 Class Member who does not affirmatively request to be excluded from the Settlement Agreement
21 by submitting a timely and valid Request for Exclusion will be bound by all its terms, including
22 those pertaining to the Released Claims, as well as any Judgment that may be entered confirming
23 the Settlement. Eligible PAGA Members will receive their share of the employee portion of the
24 PAGA Penalties and will be deemed to have released any claims arising out of PAGA, regardless
25 of whether they request to be excluded from the release of their class claims.

26 **XII. OBJECTION PROCEDURES.**

27 To object to the Settlement Agreement, a Class Member should postmark a valid Notice of
28 Objection to the Settlement Administrator before the Response Deadline. The Notice of Objection

1 should be signed by the Class Member and contain all information required by this Settlement
2 Agreement. The postmark date will be deemed the exclusive means for determining that the
3 Notice of Objection is timely. Class Members regardless of whether or not they submit a written
4 objection to the Settlement Administrator will have the right to appear at the Final Approval
5 Hearing in order to have their objections heard by the Court. Neither the Parties nor their counsel
6 will solicit or otherwise encourage Class Members to submit written objections to the Settlement
7 Agreement or appeal from the Order and Judgment. Class Counsel will not represent any Class
8 Members with respect to any such objections to this Settlement.

9 **XIII. CERTIFICATION REPORTS REGARDING INDIVIDUAL SETTLEMENT**

10 **PAYMENT CALCULATIONS.**

11 1. Weekly Reports. The Settlement Administrator will provide Defendant's counsel
12 and Class Counsel a weekly report that certifies: (a) the number and names of Participating Class
13 Members from the Settlement Class who have disputed their anticipated Individual Settlement
14 Payment; (b) the number of Class Members who have submitted valid Requests for Exclusion; and
15 (c) any objections submitted to the Settlement along with a copy of any such objection.

16 Additionally, the Settlement Administrator will provide to counsel for both Parties any updated
17 reports regarding the administration of the Settlement Agreement as needed or requested.

18 2. Declaration re Notice Administration. Within fourteen (14) calendar days of the
19 response deadline, the Settlement Administrator shall provide Class Counsel a declaration
20 regarding administration of the Notice Packet, which shall name all individuals who chose to
21 exclude themselves from or object to the Settlement.

22 3. Uncashed Settlement Checks. Any checks issued by the Claims Administrator to
23 Participating Class Members will be negotiable for at least one hundred eighty (180) calendar
24 days. Those funds represented by settlement checks returned as undeliverable and those
25 settlement checks remaining uncashed for more than one hundred eighty (180) calendar days after
26 issuance shall be forwarded to the Controller of the State of California pursuant to the Unclaimed
27 Property Law, California Civil Code § 1500, *et seq.*, to be held in trust for those Participating
28 Class Members and PAGA Members who did not timely cash their Settlement checks. The

1 Parties agree that C.C.P. Section 384(b), permits the Court for good cause to approve an
2 alternative distribution method for uncashed checks when it better serves the public's interest, and
3 that such good cause exists here for payment to be made to the California State Unclaimed
4 Property Fund for the benefit of the Class Members. The Parties agree that this disposition results
5 in no "unpaid residue" under California Civil Procedure Code § 384, as all payments to the
6 Participating Class Members and PAGA Members will be paid out, whether or not these
7 individuals cash their Settlement checks. Therefore, Defendant will not be required to pay any
8 interest on such amounts.

9 4. Certification of Completion. Upon completion of administration of the Settlement,
10 the Settlement Administrator will provide a written declaration under oath to certify such
11 completion to the Court and counsel for all Parties.

12 **XIV. TAX TREATMENT OF INDIVIDUAL SETTLEMENT PAYMENTS.**

13 All Individual Settlement Payments will be allocated as follows: twenty percent (20%) of
14 each Individual Settlement Payment will be allocated as wages and eighty percent (80%) will be
15 allocated as non-wages (40% to interest and 40% to penalties). The portion allocated to wages
16 will be reported on an IRS Form W-2 and the portions allocated to non-wages will be reported on
17 an IRS Form-1099 by the Claims Administrator. The gross Individual Settlement Payments will
18 be reduced by any required legal deductions for each Class Member. All standard employee
19 payroll deductions will be made for state and federal withholding taxes, including any other
20 applicable payroll deductions owed by the Participating Class Members as a result of the wage
21 component, resulting in a net wage component. The Settlement Administrator will issue a check
22 and W-2 Form to each Class Member for the wage component. No withholding shall be made on
23 the interest and penalty portions of the gross Individual Settlement Payment. The Settlement
24 Administrator will issue a second check and IRS Form 1099 for the remaining interest and penalty
25 component. The Settlement Administrator shall be responsible for issuing the payments and
26 calculating and withholding all required state and federal taxes. The Parties and the Settlement
27 Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement
28 Payments under the terms of this Settlement Agreement. Any disputes not resolved concerning

1 the administration of the Settlement will be resolved by the Court, under the laws of the State of
2 California. Prior to any such involvement of the Court, counsel for the Parties will confer in good
3 faith to resolve the dispute without the necessity of involving the Court.

4 **XV. ADMINISTRATION OF TAXES BY THE CLAIMS ADMINISTRATOR.**

5 1. Tax Liability. Defendant makes no representation as to the tax treatment or legal
6 effect of the payments called for hereunder, and Plaintiff and Participating Class Members are not
7 relying on any statement, representation, or calculation by Defendant or by the Claims
8 Administrator in this regard. Plaintiff and Participating Class Members understand and agree they
9 will be solely responsible for the payment of their share of any taxes and penalties assessed on the
10 payments described herein.

11 2. Circular 230 Disclaimer. EACH PARTY TO THIS SETTLEMENT AGREEMENT
12 (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH
13 PARTY TO THIS SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING
14 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
15 PROVISION OF THIS SETTLEMENT AGREEMENT, AND NO WRITTEN
16 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
17 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY
18 SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
19 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
20 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
21 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
22 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
23 ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B) HAS NOT
24 ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE
25 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
26 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
27 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY
28 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE

1 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
2 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
3 OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF
4 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
5 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
6 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
7 SETTLEMENT AGREEMENT.

8 **XVI. RELEASE BY CLASS MEMBERS.**

9 1. No Prior Assignments. The Parties and their counsel represent, covenant, and
10 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to
11 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
12 action, cause of action or right herein released and discharged.

13 2. Class Release. It is the desire of the Named Plaintiffs, Class Members (except
14 those who exclude themselves from the Settlement), and Defendant to fully, finally, and forever
15 settle, compromise, and discharge the Released Claims as to the Released Parties. Thus, following
16 the Effective Date and after Defendant fully funds the Class Settlement Amount, and except as to
17 such rights or claims as may be created by this Settlement Agreement, the Class Members shall
18 fully release and discharge the Released Parties from any and all Released Claims for the entire
19 Class Period. This release shall be binding on all Class Members who have not timely submitted a
20 valid and complete Request for Exclusion, including each of their respective attorneys, agents,
21 executors, representatives, guardians ad litem, heirs, successors, and assigns, and shall inure to the
22 benefit of the Released Parties, who shall have no further or other liability or obligation to any
23 Settlement Class Member with respect to the Released Claims, except as expressly provided
24 herein.

25 3. Release of Additional Claims and Rights by Named Plaintiffs (“Named Plaintiffs’
26 Released Claims”). Following the Effective Date and upon the complete funding of the Class
27 Settlement Amount, as a material condition of receiving any portion of the Class Representative
28 Incentive Award, Named Plaintiffs agree to execute a separate stand-alone agreement and release

1 all claims related to their employment with Defendant, including all claims alleged in the Action,
2 and be bound by a Civil Code Section 1542 release and waiver of all claims known and unknown,
3 without exception, except as may be prohibited by law. This specifically excludes claims for
4 unemployment insurance, disability, social security, and workers' compensation (except for claims
5 pursuant to Labor Code Sections 132a and 4553).

6 **XVII. PRELIMINARY APPROVAL HEARING.**

7 1. Plaintiff will obtain a hearing before the Court to request Preliminary Approval of
8 the Settlement Agreement and the entry of a Preliminary Approval Order for: (a) conditional
9 certification of the Settlement Class for settlement purposes only, (b) Preliminary Approval of the
10 proposed Settlement Agreement, and (c) setting a date for a Final Approval/Settlement Fairness
11 Hearing.

12 2. The Preliminary Approval Order will provide for the Notice Packet to be sent to all
13 Class Members as specified herein. In conjunction with the Preliminary Approval hearing,
14 Plaintiff will submit this Settlement Agreement and will include the proposed Notice Packet.

15 3. Class Counsel will be responsible for drafting all documents necessary to obtain
16 preliminary approval. Class Counsel will provide Defendant's Counsel the opportunity to review
17 these papers five (5) business days prior to filing. Class Counsel shall consider in good faith, but
18 shall not be required to accept revisions or suggested changes by Defendant's Counsel. Defendant
19 shall not oppose Plaintiff's Motion for Preliminary Approval. Any failure by the Court to fully
20 and completely approve the Settlement Agreement, which has the effect of preventing the full and
21 complete approval of the terms of the Settlement Agreement as set forth herein, will result in this
22 Settlement Agreement and all obligations under this Settlement Agreement being nullified and
23 voided.

24 **XVIII. FINAL SETTLEMENT APPROVAL HEARING AND ENTRY OF JUDGMENT.**

25 1. Upon expiration of the Response Deadline, a Final Approval/Settlement Fairness
26 Hearing will be conducted to determine the Final Approval of the Settlement Agreement, along
27 with the amounts properly payable for: (a) Individual Settlement Payments; (b) the LWDA
28

1 Payment; (c) the Attorneys' Fees and Costs; (d) the Class Representative Incentive Payment; and
2 (e) all Settlement Administration Costs.

3 2. Class Counsel will be responsible for drafting all documents necessary to obtain
4 Final Approval and shall draft a Proposed Final Approval Order and Judgment, which includes all
5 individuals who opted-out of the proposed settlement. Not later than sixteen (16) court days
6 before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final
7 approval of the Settlement that includes a request for approval of the PAGA settlement under
8 Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment
9 (collectively "Motion for Final Approval"). Class Counsel will provide Defendant's Counsel the
10 opportunity to review these papers five (5) business days prior to filing. Class Counsel shall
11 consider in good faith, but shall not be required to accept, revisions or suggested changes by
12 Defendant's Counsel. Defendant shall not oppose Final Approval of this settlement. Any failure
13 by the Court to fully and completely grant final approval of the Settlement will result in this
14 Settlement Agreement entered into by the Parties and all obligations under this Settlement
15 Agreement being nullified and voided. Upon such failure, any order or award entered by the
16 Court in further of this Settlement Agreement shall be treated as void from the beginning, and the
17 stipulations and agreements contained herein shall be of no force or effect and shall not be treated
18 as an admission by the Parties or their counsel. In such a case, the Parties and any funds to be
19 awarded under this Settlement shall be returned to their respective statuses as of the date and time
20 immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects
21 as if this Settlement Agreement had not been executed, except that any fees already incurred by
22 the Claims Administrator shall be paid equally by the Parties.

23 **XIX. JUDGMENT AND CONTINUED JURISDICTION.**

24 After entry of the Final Approval Order, the Court shall have continuing jurisdiction solely
25 for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement;
26 (ii) settlement administration matters; and (iii) such post-Final Judgment matters as may be
27 appropriate under court rules or as set forth in this Agreement.

28

1 **XX. OTHER PROVISIONS.**

2 1. Exhibits Incorporated by Reference. The terms of this Settlement include the terms
3 set forth in any attached Exhibits, which are incorporated by this reference as though fully set
4 forth herein. Any Exhibits to this Settlement are an integral part of the Settlement.

5 2. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute
6 the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral
7 agreements may be deemed binding on the Parties.

8 3. Amendment or Modification. This Settlement Agreement may be amended or
9 modified only by a written instrument signed by counsel for all Parties or their successors-in-
10 interest and approved by the Court.

11 4. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant
12 and represent that they are expressly authorized by the Parties whom they represent to negotiate
13 this Settlement Agreement, and to take all appropriate action required or permitted to be taken by
14 such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other
15 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
16 counsel will cooperate with each other and use their best efforts to effect the implementation of the
17 Settlement. If the Parties are unable to reach agreement on the form or content of any document
18 needed to implement the Settlement, or on any supplemental provisions that may become
19 necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the
20 mediator, Joel Grossman, Esq., to resolve such disagreement.

21 5. Binding on Successors and Assigns. This Settlement Agreement will be binding
22 upon, and inure to the benefit of, the successors or assigns of the Parties hereto as previously
23 defined.

24 6. California Law Governs. All terms of this Settlement Agreement and Exhibits
25 hereto will be governed by and interpreted according to the laws of the State of California, except
26 for the FLSA claims, which shall be governed by federal law.

27 7. Execution and Counterparts. This Settlement Agreement is subject only to the
28 execution of all Parties. However, the Settlement Agreement may be executed in one or more

1 counterparts. All executed counterparts and each of them, including facsimile and scanned copies
2 of the signature page, will be deemed to be one and the same instrument. The Parties may execute
3 this Settlement Agreement electronically (e.g., DocuSign), and such copies shall have the same
4 force and effect as an executed original.

5 8. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
6 this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have
7 arrived at this Settlement after arm's-length negotiations and in the context of adversarial
8 litigation, taking into account all relevant factors, present and potential. The Parties further
9 acknowledge that they are each represented by competent counsel and that they have had an
10 opportunity to consult with their counsel regarding the fairness and reasonableness of this
11 Settlement.

12 9. Invalidity of Any Provision. Before declaring any provision of this Settlement
13 Agreement invalid, the Court will first attempt to construe the provision as 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 10. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
17 class certification for purposes of this Settlement only; except, however, that either party may
18 appeal any Court order that materially alters the Settlement Agreement's terms. Provided the
19 Judgment is consistent with the terms and conditions of this Agreement, the Parties, their
20 respective counsel, and all Participating Class Members who did not object to the Settlement as
21 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
22 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
23 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver
24 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
25 Parties' obligations to perform under this Agreement will be suspended until such time as the
26 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
27 the amount of the Net Settlement Amount.

28

1 11. Class Action Certification for Settlement Purposes Only. The Parties agree to
2 stipulate to class action certification only for purposes of the Settlement. If, for any reason, the
3 Settlement is not approved, the stipulation to certification will be void. The Parties further agree
4 that certification for purposes of the Settlement is not an admission that class action certification is
5 proper under the standards applied to contested certification motions and that this Settlement
6 Agreement will not be admissible in this or any other proceeding as evidence that either: (a) a
7 class action should be certified or (b) Defendant is liable to Plaintiff or any Class Member, other
8 than according to the Settlement's terms.

9 12. Non-Admission of Liability. The Parties enter into this Settlement Agreement to
10 resolve the dispute that has arisen between them and to avoid the burden, expense and risk of
11 continued litigation. In entering into this Settlement Agreement, Defendant does not admit, and
12 specifically denies, that it has violated any federal, state, or local law; violated any regulations or
13 guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal
14 requirements; breached any contract; violated or breached any duty; engaged in any
15 misrepresentation or deception; or engaged in any other unlawful conduct with respect to its
16 employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the
17 negotiations connected with it, shall be construed as an admission or concession by Defendant of
18 any such violations or failures to comply with any applicable law. Except as necessary in a
19 proceeding to enforce the terms of this Settlement Agreement, this Settlement Agreement and its
20 terms and provisions shall not be offered or received as evidence in any action or proceeding to
21 establish any liability or admission on the part of Defendant or to establish the existence of any
22 condition constituting a violation of, or a non-compliance with, federal, state, local or other
23 applicable law.

24 13. Captions. The captions and section numbers in this Settlement Agreement are
25 inserted for the reader's convenience, and in no way define, limit, construe or describe the scope
26 or intent of the provisions of this Settlement Agreement.

27 14. Waiver. No waiver of any condition or covenant contained in this Settlement
28 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered

1 to imply or constitute a further waiver by such party of the same or any other condition, covenant,
2 right or remedy.

3 15. Enforcement Action. If one or more of the Parties institutes any legal action or
4 other proceeding against any other Party or Parties to enforce the provisions of this Settlement or
5 to declare rights and/or obligations under this Settlement, the successful Party or Parties will be
6 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, in
7 connection with any enforcement actions, to the extent permitted by California law.

8 16. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
9 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
10 construed more strictly against one party than another merely by virtue of the fact that it may have
11 been prepared by counsel for one of the Parties, it being recognized that, because of the arms-
12 length negotiations between the Parties, all Parties have contributed to the preparation of this
13 Settlement Agreement.

14 17. Representation by Counsel. The Parties acknowledge that they have been
15 represented by counsel throughout all negotiations that preceded the execution of this Settlement
16 Agreement and that this Settlement Agreement has been executed with the consent and advice of
17 counsel and reviewed in full. Further, Plaintiff and Class Counsel warrant and represent that there
18 are no liens on the Settlement Agreement.

19 18. All Terms Subject to Court Approval. All amounts and procedures described in
20 this Settlement Agreement herein will be subject to final approval by the Court.

21 19. Cooperation and Execution of Necessary Documents. All Parties will cooperate in
22 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
23 this Settlement Agreement. The Parties and their counsel agree not to take any action to encourage
24 any Class Members to request exclusion from and/or object to the Settlement. Defendant agrees not
25 to obtain waivers or Pick Up Stix agreements from the Class Members during the Settlement
26 approval process and will work in good faith to reach an agreement approved by the Court.
27 Defendant further agrees that it will not oppose Plaintiff's motion for preliminary approval or
28 motion for final approval.

1 20. Confidentiality. Neither Named Plaintiffs nor Class Counsel shall issue any press
2 release or announcement of any kind related in any way to the Settlement. Named Plaintiffs and
3 Class Counsel agree that, prior to preliminary approval of the Settlement, they will keep the terms
4 of this Settlement confidential except for purposes of communicating with Named Plaintiffs only.
5 Named Plaintiffs shall be informed that the Settlement is confidential and shall be advised to keep
6 the settlement confidential. From and after preliminary approval of the settlement, the Class
7 Members (including Named Plaintiffs and Class Counsel) may: (1) as required by law; (2) as
8 required under the terms of the settlement; or (3) as required under counsel’s duties and
9 responsibilities as Class Counsel, comment regarding the specific terms of the settlement. In all
10 other cases, Named Plaintiffs and Class Counsel agree to limit their statements regarding the terms
11 of the settlement, whether oral, written or electronic (including the world wide web), to say the
12 Class Action has been resolved and that Named Plaintiffs and Class Counsel are satisfied with the
13 settlement terms. Nothing in this Paragraph is intended to interfere with Class Counsel’s duties
14 and obligations to faithfully discharge their duties as Class Counsel, including but not limited to,
15 communicating with Class Members regarding the Settlement.

16 21. Binding Agreement. The Parties warrant that they understand and have full
17 authority to enter into this Settlement, intend that this Settlement Agreement will be fully
18 enforceable and binding on all Parties, and agree that it will be admissible and subject to
19 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
20 provisions that otherwise might apply under federal or state law. Plaintiffs, and not their
21 respective representative(s), must personally execute this Settlement Agreement.

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

26 23. Stay of Litigation. The Parties agree that upon the execution of this Agreement the
27 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
28 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the

1 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
2 process.

3 Dated: September 27, 2022

DocuSigned by:
Thomas Pena
794DF1338C4244D...
Plaintiff Thomas Pena

4
5 Dated: September __, 2022

Erich Ulbrich

6
7 Dated: September __, 2022

Mark Ramsey

8
9
10 **Ayzenberg Group, Inc.**

11 Dated: September __, 2022

Edgar Davtyan, Chief Financial Officer

12
13
14 **APPROVED AS TO FORM:**

15
16 Dated: September __, 2022

HARRIS RUBLE

Alan Harris
Attorneys for Plaintiff

17
18 **SHEPPARD, MULLIN, RICHTER & HAMPTON LLP**

19 Dated: September __, 2022

Ronda D. Jamgotchian
Attorneys for Defendant

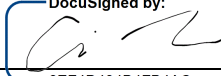
20
21
22
23
24
25
26
27
28

1 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
2 process.

3 Dated: September __, 2022

Plaintiff Thomas Pena

5 Dated: September 27, 2022

DocuSigned by:


Erich Ulbrich

8 Dated: September __, 2022

Mark Ramsey

11 **Ayzenberg Group, Inc.**

12 Dated: September __, 2022

Edgar Davtyan, Chief Financial Officer

14 **APPROVED AS TO FORM:**

16 Dated: September __, 2022

HARRIS RUBLE

Alan Harris
Attorneys for Plaintiff

19 Dated: September __, 2022

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

Ronda D. Jamgotchian
Attorneys for Defendant

28

1 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
2 process.

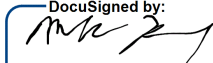
3 Dated: September __, 2022

Plaintiff Thomas Pena

5 Dated: September __, 2022

Erich Ulbrich

8 Dated: September 9/26/2022

DocuSigned by:


Mark Ramsey

11 **Ayzenberg Group, Inc.**

12 Dated: September __, 2022

Edgar Davtyan, Chief Financial Officer

14 **APPROVED AS TO FORM:**

16 Dated: September __, 2022

HARRIS RUBLE

Alan Harris
Attorneys for Plaintiff

19 Dated: September __, 2022

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

Ronda D. Jamgotchian
Attorneys for Defendant

28

1 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
2 process.

3 Dated: September __, 2022

Plaintiff Thomas Pena

5 Dated: September __, 2022

Erich Ulbrich

8 Dated: September __, 2022

Mark Ramsey

11 9/22/2022

12 Dated: September __, 2022

Avzenberg Group, Inc.
DocuSigned by:
Edgar Davtyan
F6F82CD169484BC... _____

Edgar Davtyan, Chief Financial Officer

14 **APPROVED AS TO FORM:**

16 Dated: September 27, 2022

HARRIS RUBLE
Alan Harris

Alan Harris
Attorneys for Plaintiff

18 9/22/2022

19 Dated: September __, 2022

SHERRARD MULLIN, RICHTER &
DocuSigned by:
Ronda Jamgotchian
414DE45AC6FE4FF... _____

Ronda D. Jamgotchian
Attorneys for Defendant