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**DIAMOND MATTRESS COMPANY, INC.**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

ERICK LOPEZ, an individual on behalf of  
himself and others similarly situated,

Plaintiff,

v.

DIAMOND MATTRESS COMPANY,  
INC.; and DOES 1 to 10 inclusive,

Defendants.

Case No. BC720947

ASSIGNED FOR ALL PURPOSES TO  
JUDGE CAROLYN B. KUHL, DEPT. 12

**STIPULATION AND SETTLEMENT OF  
CLASS ACTION AND PAGA CLAIMS**

Complaint Filed: September 11, 2018  
Trial Date: Not Set

This Stipulation and Settlement of Class Action and PAGA Claims (“Settlement”) is made and entered into between Plaintiff Erick Lopez (“Plaintiff” or “Class Representative”), on behalf of himself and all other similarly situated employees, and as a proxy/agent for the State of California and the California Labor Workforce Development Agency (“LWDA”) to the extent permitted by law, on the one hand; and Defendant Diamond Mattress Company, Inc. (“Defendant”), on the other hand, (collectively, the “Parties”).

1           **1.     DEFINITIONS.**

2           The following terms, when used in Settlement, have the following meanings:

3           1.1     “Action” or “Instant Action” means the civil action titled ERICK LOPEZ, an  
4 individual on behalf of himself and others similarly situated v. DIAMOND MATTRESS  
5 COMPANY, INC., and DOES 1 to 10 inclusive, Los Angeles Superior Court, Case No. BC720947.

6           1.2     “Agreement,” “Settlement,” “Settlement Agreement,” or “Stipulation” means this  
7 Stipulation and Settlement of Class Action and PAGA Claims.

8           1.3     “Aggrieved Employees” means all persons who are employed or who have been  
9 employed by Defendant in the State of California as nonexempt employees who received any Earned  
10 Incentive pay at any time during the PAGA Period. “PAGA Period” is defined as September 13,  
11 2017 through the date of Preliminary Approval.

12          1.4     “Class” means all non-exempt employees employed by Defendant in the State of  
13 California who were paid “Earned Incentive” wages at any time from September 11, 2014 until the  
14 date of preliminary approval. The Class is estimated to consist of 123 persons. In the event that the  
15 Class exceeds 123 persons by 10% or more (i.e. if there are 136 or more settlement class members),  
16 Defendant agrees to pay a pro-rata increase into the Net Settlement Amount for each additional  
17 Settlement Class Member.

18          1.5     “Class Counsel” means Matthew B. Hayes and Kye D. Pawlenko of Hayes Pawlenko  
19 LLP.

20          1.6     “Class Member” means each person eligible to participate in this Settlement who is  
21 an individual belonging to the Class (as defined in Paragraph 1.4) and has not agreed to a general  
22 release of claims against Defendant.

23          1.7     “Class Period” means September 11, 2014 until the date of preliminary approval of  
24 the Stipulation and Settlement of Class Action and PAGA Claims.

25          1.8     “Class Representative” is Erick Lopez.

26          1.9     “Class Representative’s Released Claims” means all claims, obligations, demands,  
27 actions, rights, causes of action, and liabilities against the Releasees (as defined in Paragraph 1.32),  
28 based on the facts as set forth in the First Amended Complaint filed on December 21, 2018, whether

1 in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance,  
2 regulation, common law, or other source of law, whether known or unknown, and whether  
3 anticipated or unanticipated, including unknown claims covered by Civil Code § 1542 (as quoted in  
4 Paragraph 4.12.3) by the Class Representative, arising during the period from the beginning of the  
5 Class Representative's dates of employment with Defendant to the date on which the Court enters an  
6 order granting final approval of this Settlement, for any type of relief, including, without limitation,  
7 claims for wages, business expenses, damages, unpaid costs, penalties (including civil and waiting  
8 time penalties), liquidated damages, punitive damages, interest, attorneys' fees, litigation costs,  
9 restitution, or equitable relief with the sole exception of any claims which cannot be released as a  
10 matter of law. The Class Representative's Released Claims include, but are not limited to, the  
11 Released Claims (as defined in Paragraph 1.31) as well as any other claims under any provision of  
12 the Fair Labor Standards Act, any provision of the California Labor Code or any applicable  
13 California Industrial Welfare Commission Wage Orders, and claims under state or federal  
14 discrimination statutes, including, without limitation, the California Fair Employment and Housing  
15 Act, California Government Code § 12940 *et seq.*; the Unruh Civil Rights Act, California Civil Code  
16 § 51 *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000  
17 *et seq.*; the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; California's Private  
18 Attorneys General Act ("PAGA") (Cal. Labor Code § 2698, *et seq.*), Cal. Bus. and Prof. Code §  
19 17200 *et seq.*; the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*; any  
20 IWI California Wage Orders and California Code of Regulations, Title 8, § 11000, *et seq.*, and/or  
21 any other federal, state or local human rights, civil rights, wage-hour, pension or labor law, rule,  
22 statute, regulation, constitution or ordinance and/or public policy, contract or tort law, or any claim  
23 of retaliation under such laws, or any claim of breach of any contract (whether express, oral, written  
24 or implied from any source), or any claim of intentional or negligent infliction of emotional distress,  
25 tortious interference with contractual relations, wrongful or abusive or constructive discharge,  
26 defamation, prima facie tort, fraud, negligence, loss of consortium, malpractice, breach of duty of  
27 care, breach of fiduciary duty; and all of their implementing regulations and interpretive guidelines.  
28 However, nothing in this General Release shall prohibit or restrict Class Representative from:

(i) providing information to, or otherwise assisting in, an investigation by Congress, the Equal Employment Opportunity Commission or the NLRB, the Securities and Exchange Commission (“SEC”) or any other federal regulatory or law enforcement agency or self-regulatory organization (“SRO”);

(ii) testifying, participating, or otherwise assisting in a proceeding relating to an alleged violation of any federal law relating to fraud or any rule or regulation of the SEC or any SRO; or

(iii) complying with a lawful subpoena or other legal process, subject to the terms of this Stipulation, including but not limited to the confidentiality provisions herein, and subject to the condition that Class Representative agrees not to seek, or in any way obtain or accept, any monetary award, recovery or settlement therefrom and agrees that he understands that such limitation does not in any way restrict his ability to file and pursue such charge consistent with the confidentiality obligations set forth in this Stipulation; and further provided, however, that Class Representative does not waive any rights with respect to, or release Defendant Releasees from, any claim:

- a. for California Workers’ Compensation benefits (except that Class Representative hereby releases and waives any claims that, as a result of his termination, he is entitled to additional benefits or payments);
- b. for unemployment compensation benefits;
- c. that cannot be released by private contract; or
- d. for breach of the terms of the Stipulation between Class Representative and Defendant.

1.10 “Complaint” means the operative complaint, which is the First Amended Class Action Complaint filed with this Court on December 21, 2018. The Complaint is attached hereto as **Exhibit 1.**

1.11 “Court” means the California Superior Court for the County of Los Angeles.

1.12 “Data Form” shall mean the document substantially in the form attached hereto as **Exhibit 2.**

1.13 “Response Deadline” shall mean forty-five (45) calendar days from the initial mailing of the Notice Packet to Class Members.

1.14 “Defendant” means Defendant Diamond Mattress Company, Inc.

1.15 “Defense Counsel” means D. Chad Anderton and Kimberly M. Shappley of Littler Mendelson, P.C.

1.16 “Effective Date” means the latest of the following: (a) the Court’s grant of final approval of this Settlement if no objections by or on behalf of members of the Settlement Class have been filed or such objections have been withdrawn or otherwise settled between the parties; (b) the time for appeal has expired if an objection has been filed and no appeal was filed or it was withdrawn; or (c) the final resolution of any appeal that has been filed and this Settlement has not been wholly vacated.

1.17 “Class Representative’s Service Payment” means the amount approved by the Court to be paid to the Class Representative, not to exceed \$2,000.00 (with \$1250.00 as an enhancement payment and \$750.00 as a general release payment), for the time and work he performed in this Action. The Class Representative’s Service Payment amount shall be separate from and in addition to the Class Representative’s Individual Payment Amount as a Settlement Class Member. The Class Representative’s Service Payment shall be considered non-wages, for which an appropriate IRS Form 1099 will be issued to the Class Representative.

1.18 “Final Approval and Fairness Hearing” means the hearing set by the Court to (a) review the Settlement and determine whether the Court should give final approval to this Settlement, (b) consider any timely objections made pursuant to Paragraph 4.5.5 of this Settlement, and all responses by the Parties, (c) consider the request for Class Counsel’s Fee and Costs Award, (d) consider the Settlement Administrator’s costs, and (e) consider the Class Representative’s application for a Class Representative’s Service Payment.

1.19 “Final Judgment” shall mean the Order Granting Final Approval of the Settlement and Judgment entered by the Court.

1.20 “Fee and Costs Award” shall mean Class Counsel’s attorneys’ fees and actual costs for litigation and resolution of this Action, which shall be awarded by the Court upon Class

1 Counsel's motion/application for attorneys' fees and costs, and which shall be paid from the  
2 Maximum Settlement Amount as defined in Paragraph 1.22.

3 1.21 "Individual Payment Amount" means an individual Class Member's potential  
4 allocation of the Net Settlement Amount, as described in Paragraph 4.2.3.

5 1.22 "Maximum Settlement Amount" refers to the non-reversionary maximum total  
6 payment Defendant shall be obligated to make in the amount of One Hundred Twenty-Five  
7 Thousand U.S. Dollars and no cents (\$125,000.00) pursuant to this Settlement. The Maximum  
8 Settlement Amount shall include (a) attorney fees of up to \$41,666.66, (b) Plaintiff's reasonable  
9 litigation costs and expenses up to \$10,000.00, (c) reasonable third party administration costs not to  
10 exceed \$15,000, (d) a payment of PAGA penalties of \$7,500.00 with 75% (\$5,625.00) going to the  
11 Labor Workforce Development Agency and the remaining 25% (\$1,875.00) paid to "aggrieved  
12 employees"), and (e) a class representative Service Payment in the amount of \$2,000.00 as specified  
13 above. In the event that the Class exceeds 123 persons by 10% or more (i.e. if there are 136 or more  
14 settlement class members), Defendant shall pay a pro-rata increase into the Net Settlement Amount  
15 for each additional Settlement Class Member. Defendant's share of any employer-payroll taxes  
16 attributed to Individual Payment Amounts shall be paid separately and in addition to the Maximum  
17 Settlement Amount, and shall be determined by the Settlement Administrator.

18 1.23 "Net Settlement Amount" is the remaining portion of the Maximum Settlement  
19 Amount after deduction of the court-approved attorneys' fees and costs, Settlement Administration  
20 Costs, a PAGA payment to the LWDA in the amount of 75% (\$5,625.00) and to Aggrieved  
21 Employees in the amount of 25% (\$1,875.00) of \$7,500.00, and the Class Representative's Service  
22 Payment. The Net Settlement Amount (less applicable withholdings attributed to the portion of  
23 Individual Payment Amounts designated as wages) will be distributed to Settlement Class Members.

24 1.24 "Notice of Settlement" means the document substantially in the form attached hereto  
25 as **Exhibit 3**.

26 1.25 "Notice Packet" means the Notice of Settlement, along with the Data Form (**Exhibit**  
27 **2**), the Request for Exclusion Form (substantially in the form attached hereto as **Exhibit 4**), the  
28 Objection Form (substantially in the form attached hereto as **Exhibit 5**), and the return-envelope

1 with first-class postage prepaid, all of which shall be mailed first-class to Class Members by the  
2 Settlement Administrator.

3 1.26 “PAGA Workweek Rate” means \$1,875.00 divided by the total workweeks of all  
4 Aggrieved Employees during the PAGA Period.

5 1.27 “PAGA Dollar Allocation to Each Aggrieved Employee” means the PAGA  
6 Workweek Rate multiplied by the number of workweeks of that individual employee during the  
7 PAGA Period.

8 1.28 “Plaintiff” is Erick Lopez.

9 1.29 “Preliminary Approval Date” means the date the Court approves the Settlement, and  
10 the Exhibits thereto, and enters an Order providing for notice of settlement to the Class, an  
11 opportunity to opt out of the Class, an opportunity to submit timely objections to the Settlement, a  
12 procedure for submitting Data Forms, and setting a hearing on the fairness of the terms of  
13 Settlement, including approval of Class Counsel’s attorneys’ fees and Class Counsel’s litigation  
14 costs and the Class Representative’s Application for a Service Payment.

15 1.30 “QSF” means the Qualified Settlement Fund set up by the Settlement Administrator  
16 for the benefit of the Settlement Class Members and from which the Settlement payments shall be  
17 made.

18 1.31 “Released Claims” means all claims, demands, rights, liabilities, and causes of action  
19 that were pled in any of the Complaints in the Action or could have been pled based on the facts  
20 alleged in any of the Complaints in the Action, based on Defendant’s alleged (1) failure to pay  
21 overtime and double time wages; (2) failure to pay all minimum wages; (3) failure to furnish  
22 complete itemized wage statements; (4) waiting time penalties, and (5) a claim under the California  
23 Private Attorneys General Act of 2004; and (6) all claims for unfair business practices that could  
24 have been premised on the facts, claims, causes of action or legal theories described above. The  
25 “Release of Claims Period,” or the time period for which claims within the scope of this paragraph  
26 are released, shall be from the beginning of the Class Period through the earlier date of the date that  
27 the Court grants Preliminary Approval of this Stipulation and Settlement of Class Action and PAGA  
28 Claims and September 23, 2019 (150 days from the full execution of the Memorandum of

1 Understanding in the Action).

2 1.32 “Releasees” means the Defendant named in the Complaint, together with its past and  
3 present officers, directors, shareholders, employees, agents, principals, heirs, representatives,  
4 accountants, auditors, consultants, insurers, and their respective successors and predecessors in  
5 interest, subsidiaries, affiliates, parents, and attorneys.

6 1.33 “Settlement Administration Costs” means the fees and expenses reasonably incurred  
7 by the Settlement Administrator as a result of the procedures and processes expressly required by  
8 this Stipulation and which are not to exceed \$15,000.00 regardless of whether Final Approval is  
9 granted and Final Judgment is ordered, and shall include all costs of administering the Settlement,  
10 including, but not limited to, all tax document preparation, custodial fees, and accounting fees  
11 incurred by the Settlement Administrator; all costs and fees associated with preparing, issuing and  
12 mailing any and all Notices of Settlement and other settlement correspondence to Class Members  
13 and/or Settlement Class Members; all costs and fees associated with communicating with Class  
14 Members, Class Counsel, and Defense Counsel regarding settlement; all costs and fees associated  
15 with computing, processing, reviewing, and paying the Individual Payment Amounts, and resolving  
16 disputed claims; all costs and fees associated with calculating tax withholdings and payroll taxes,  
17 making related payment to federal and state tax authorities, and issuing tax forms relating to  
18 payments made under the Settlement; all costs and fees associated with preparing any tax returns and  
19 any other filings required by any governmental taxing authority or agency; all costs and fees  
20 associated with preparing any other notices, reports, or filings to be prepared in the course of  
21 administering Individual Payment Amounts; and any other reasonable costs and fees incurred and/or  
22 charged by the Settlement Administrator in connection with the execution of its duties under this  
23 Stipulation. In the event that the Court does not grant final approval of this Settlement and does not  
24 enter final judgment thereon, the Parties agree to share the Settlement Administration Costs incurred  
25 to date on a 50/50 basis.

26 1.34 “Settlement Administrator” means and refers to CPT Group, Inc., the entity that will  
27 be responsible for the administration of the Settlement and related matters as described in this  
28 Settlement.

1 1.35 “Settlement Class Member” means any and all Class Members who have not timely  
2 submitted a valid request for exclusion, as set forth in Paragraph 4.5.3.

3 1.36 “Settlement Proceeds” means the Maximum Settlement Amount.

4 **2. DESCRIPTION OF THE LITIGATION**

5 This Stipulation and all associated exhibits or attachments are made for the sole purpose of  
6 settling the Litigation. This Stipulation and Settlement of Class Action and PAGA Claims it  
7 evidences are made in compromise of disputed claims. The Settling Parties enter into this  
8 Stipulation on a conditional basis. In the event that the Court does not enter the Final Approval  
9 Order and Judgment, or in the event that the associated Judgment does not become a Final Judgment  
10 for any reason, this Stipulation (except for those provisions relating to non-admissibility and non-  
11 admission of liability and those provisions relating to the return of documents and discovery) shall  
12 be deemed null and void *ab initio*, shall be of no force or effect whatsoever, and shall not be referred  
13 to or utilized for any purpose whatsoever, including to support certification or oppose decertification  
14 of any claim in any action. Further, the negotiation related to this Stipulation shall remain strictly  
15 confidential and subject to the provisions of California Evidence Code Sections 1119 and any other  
16 analogous rules of evidence that might apply.

17 Defendant denies all claims as to liability, damages, penalties, interest, fees, restitution,  
18 injunctive relief, and all other forms of relief, as well as the class and PAGA allegations asserted in  
19 the Litigation. Defendant has agreed to resolve the Litigation via this Stipulation, but to the extent  
20 this Stipulation is deemed void or the Effective Date does not occur, Defendant does not waive, but  
21 rather expressly reserves, all rights to challenge all such claims and allegations in the Litigation upon  
22 all procedural and factual grounds, including, without limitation, the ability to challenge class or  
23 representative action treatment on any grounds, to move for dismissal of any or all claims, and to  
24 assert any and all other potential defenses or privileges. Named Plaintiff and Class Counsel agree  
25 that Defendant retains and reserves these rights in the event the Court does not enter the Final  
26 Approval Order and Judgment and they agree not to take a position to the contrary; specifically,  
27 Named Plaintiff and Class Counsel agree not to argue or present any argument, and hereby waive  
28 any argument, that based on this Stipulation, Defendant could not contest class certification on any

1 grounds, seek decertification, move for dismissal of any or all claims, and/or assert any and all other  
2 potential defenses and privileges if the Litigation were to proceed.

3 Similarly, to the extent the Court does not enter the Final Approval Order and Judgment, this  
4 Stipulation is otherwise deemed void, or the Effective Date does not occur, Named Plaintiff does not  
5 waive, but rather expressly reserves, all rights to prosecute all such claims and allegations in the  
6 Litigation on his own behalf and on behalf of the allegedly Aggrieved Employees, the LWDA and  
7 Class Members upon all procedural and factual grounds, including through trial. Defendant agrees  
8 that Named Plaintiff, the allegedly Aggrieved Employees, and the Class Members retain and reserve  
9 these rights and they agree not to take a position to the contrary.

10 2.1 Plaintiff is a former non-exempt California employee of Defendant, hired September  
11 6, 2017, and employed as a “Material Handler” in Defendant’s Mattress Unit Assembly Department.

12 2.2 On September 11, 2018, Plaintiff filed a class-action complaint summarized as  
13 follows: (1) “Failure to Pay Overtime and Double Time Wages,” in violation of Cal. Lab. Code §§  
14 510, 1194; (2) “Failure to Pay Minimum Wages,” in violation of Cal. Lab. Code § 1194, 1197; (3)  
15 “Failure to Furnish Complete Itemized Wage Statements” in violation of Cal. Lab. Code § 226; (4)  
16 “Unfair Business Practices” in violation of Bus. & Prof. Code § 17200, *et seq.*; and (5) “Waiting  
17 Time Penalties,” in violation of Cal. Lab. Code § 203.

18 2.3 On December 14, 2018, the Parties attended an Initial Status Conference with the  
19 Court and the parties advised the Court that they wished to mediate this matter. The Court ordered  
20 that the stay as to discovery and pleadings remain in effect, and Plaintiff was granted permission to  
21 file a first amended complaint to add a PAGA claim.

22 2.4 On December 21, 2018, Plaintiff filed a first amended class-action complaint to add a  
23 claim under California’s Private Attorney General Act summarized as follows: (1) failure to include  
24 the value of Plaintiff’s and other aggrieved employees’ “Earned Incentive” wages in their regular  
25 rate of pay when calculating overtime, double time, and compensation for rest and recovery periods,  
26 in violation of Cal. Lab. Code § 510; and (2) failure to timely pay all wages owing to Plaintiff and  
27 other aggrieved employees at the time of their termination of employment because they were never  
28

1 paid the correct premium overtime and double time rates of pay or the correct minimum wage rate  
2 for rest and recovery periods, in violation of Cal. Lab. Code §§ 201, 202, and 203. Defendant filed  
3 an answer on January 22, 2019.

4         2.5     In or around January 2019, the Parties agreed to the terms of the proposed mediation,  
5 including the date, mediator, and payment of fees. Further, in advance of mediation, Defendant  
6 informally produced time and payroll records for the putative class members.

7         2.6     On April 25, 2019, the Parties attended a mediation session in Irvine, California with  
8 Todd Smith, Esq., an experienced class action mediator. At this mediation, the Parties discussed  
9 Plaintiff's claims and Defendant's defenses thereto. The Parties also analyzed the potential exposure  
10 of Defendant on Plaintiff's claims, including Defendant's potential liability for penalties and interest,  
11 as well as potential risks that Plaintiff would face in litigating this Action through a contested class  
12 certification, trial, and potential appeal(s). The mediation lasted the entire day and allowed the  
13 Parties to better understand each other's respective positions as to the claims, defenses, Defendant's  
14 exposure and discounts to such exposure/liability. The mediation resulted in the preparation of a  
15 Memorandum of Understanding and agreement to resolve the Action based on the terms set forth  
16 herein for the amount of One Hundred Twenty-Five Thousand Dollars (\$125,000.00), for an overall  
17 and comprehensive settlement inclusive of attorney's fees, costs, claims administration, an  
18 enhancement award to the named Plaintiff, and PAGA civil penalties.

19         2.7     Defense Counsel has explained to Class Counsel that it believes Defendant (1) has  
20 substantial factual and legal defenses to the claims asserted in the Action, which render the outcome  
21 of the Action substantially uncertain, and (2) believes that class certification would not be granted.  
22 Class Counsel has explained to Defense Counsel that it believes (1) certification would be proper,  
23 (2) decertification will not happen, and that (3) Plaintiff will prevail on summary judgment or at trial  
24 on all claims certified by the Court. The proposed Settlement provides expeditious relief and  
25 benefits to Class Members, Aggrieved Employees and the LWDA (much sooner than would be  
26 possible than if the Parties' disputed positions were to be litigated in continued and ongoing  
27 litigation though trial and appeal).

28         2.8     Taking into account all relevant factors, present and potential, the Parties believe that

1 this Settlement is a fair, adequate, and reasonable settlement of this Action and have arrived at this  
2 Settlement after extensive arms-length negotiations.

### 3 **3. LIMITATION ON EFFECT OF SETTLEMENT**

4 3.1 In the event that this Settlement is terminated or cancelled pursuant to its terms, the  
5 Parties shall be deemed to have reverted to their respective status as of the date and time  
6 immediately prior to the execution of the Settlement.

7 3.2 This Settlement shall not constitute, in this or any other proceeding, an admission of  
8 any kind by Defendant, including without limitation, that certification of a class is appropriate or  
9 proper or that Plaintiff could establish any of the requisite elements for class treatment of any of the  
10 claims in the Action. In the event that the Settlement is not finally approved, or the Settlement is  
11 otherwise terminated, Defendant expressly reserves all rights to challenge this Action and the  
12 propriety of class certification on all available grounds.

13 3.3 The Class Representative and Class Counsel agree that Defendant retains and  
14 reserves these rights, and agree not to argue or present any argument, and hereby waive any  
15 argument that, based on this Settlement, Defendant cannot challenge claims and allegations in the  
16 Action upon any grounds, including, without limitation, challenging class treatment or asserting any  
17 and all other potential defenses or privileges.

18 3.4 Defendant specifically and generally denies any and all liability or wrongdoing of any  
19 sort with regard to any of the claims alleged, and makes no concession or admission of liability of  
20 any sort. Nonetheless, Defendant has concluded that further conduct of the Action would be  
21 undesirable, and Defendant wants the Action to be fully and finally settled in the manner and upon  
22 the terms and conditions set forth in this Settlement.

### 23 **4. OPERATIVE TERMS OF SETTLEMENT**

24 The Parties to this Action agree as follows:

25 4.1 The Parties will cooperate in obtaining an order from the Court approving the  
26 Settlement. The Parties agree to use their best efforts to expedite the preparation and submission of  
27 the Settlement and related documents. The Parties further agree to fully cooperate in the drafting  
28 and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall

1 take all steps that may be requested by the Court or that are otherwise necessary to the approval and  
2 implementation of this Settlement, and shall otherwise use their respective best efforts to obtain  
3 Court approval of this Settlement.

4 4.1.1 If this Stipulation is terminated or canceled pursuant to its terms, the Parties shall be  
5 released from all remaining obligations under the terms of the Stipulation. In such an event, the  
6 Parties agree to share all costs incurred from carrying out the terms of the Stipulation, prior to its  
7 termination or cancellation, including but not limited to any Settlement Administration Costs on a  
8 50/50 basis.

9 4.2 Allocation of the Net Settlement Amount

10 4.2.1 All Settlement Class Members will receive their Individual Payment Amount without  
11 the need to complete or submit claim forms.

12 4.2.2 Each Settlement Class Member's Individual Payment Amount shall be calculated as  
13 described in Paragraph 4.2.3.

14 4.2.3 Each Settlement Class Member's Individual Payment Amount shall be determined by  
15 (i) dividing the Settlement Class Member's total number of workweeks worked for Defendant in  
16 California during the Class Period by the total number of workweeks worked by all Settlement Class  
17 Members for Defendant in California during the Class Period, and (ii) multiplying that pro rata share  
18 by the allocated Net Settlement Amount. Any workweeks during the Class Period in which a  
19 Settlement Class Member did not actually work (for example, while classified as exempt, while on a  
20 leave of absence, *etc.*) are not included in calculating that Settlement Class Member's Individual  
21 Payment Amount. The calculation of a Settlement Class Member's total workweeks worked in  
22 California shall be construed from Defendant's records. Each Settlement Class Member's Individual  
23 Payment Amount shall be distributed to that Settlement Class Member, less applicable withholdings  
24 attributed to the portion of Individual Payment Amounts designated as wages, as described in  
25 Paragraph 4.2.5(a).

26 4.2.4 For each Class Member who submits a valid and timely request for exclusion, the  
27 Settlement Administrator shall proportionally increase the payments to each participating Class  
28 Member such that the total Settlement payout equals one hundred percent (100%) of the Net

1 Settlement Amount.

2 4.2.5 The Parties recognize that the Individual Payment Amounts to be paid to Class  
3 Members reflect settlement of a dispute over claimed wages, interest, and penalties. All Individual  
4 Payment Amounts to Settlement Class Members are allocated as follows:

5 (a) One-third (1/3) of the Individual Payment Amounts shall be allocated for payment of  
6 disputed wages to Settlement Class Members. For this portion of the Individual Payment Amounts,  
7 Settlement Class Members shall receive a W-2 form.

8 (b) Two-thirds (2/3) of the Individual Payment Amounts shall be allocated for disputed  
9 penalties and interest. This portion of the Individual Payment Amounts consists of other income, not  
10 wages, for which Settlement Class Members shall receive a 1099 form as and if required by law.

11 4.2.6. PAGA Dollar Allocation To Individual Aggrieved Employees

12 (a) As established herein, the total PAGA allocation is \$7,500.00 with \$5,625.00 going to  
13 the LWDA and \$1,875.00 being paid to the Aggrieved Employees.

14 (b) The PAGA Dollar Allocation to Individual Aggrieved Employees is set forth in the  
15 definitions section above and shall be paid to each individual Aggrieved Employee at the time the  
16 class Individual Payment Amounts are made. Each Aggrieved Employee will receive his/her  
17 respective PAGA Dollar Allocation to Individual Aggrieved Employees without the need to  
18 complete or submit any claim forms. Such payments are penalties and are nonwage payments  
19 thereby resulting in issuance of 1099 forms for same.

20 4.2.7 The Employer's Share of Payroll Taxes

21 (a) The Settlement Administrator shall remit and report the applicable portions of the  
22 payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties and  
23 undertakings set forth in Paragraph 1.33. The employer's share of payroll taxes attributed to the  
24 Individual Payment Amounts shall be paid separately and in addition to the Maximum Settlement  
25 Amount as set forth in Paragraph 1.22. The Settlement Administrator shall furnish its own Employer  
26 ID Number and calculate all settlement checks and payroll deductions based on the information that  
27 will be provided by Defendant.

28 (b) Other than the withholding and reporting requirements set forth in Paragraphs 1.33

1 and 4.2.5, Settlement Class Members shall be solely responsible for the reporting and payment of  
2 their share of any federal, state and/or municipal income or other taxes on payments made pursuant  
3 to this Settlement. No party has made any representation to any of the other Parties as to the  
4 taxability of any payments pursuant to this Settlement, including the payments to Class Members,  
5 the payments to Class Counsel, the payment to the Class Representative, the payroll tax liability of  
6 Defendant, or the allocation of Settlement proceeds to wage and non-wage income as provided in  
7 Paragraph 4.2.5, or otherwise as to the tax implications of any provision of this Settlement.

#### 8 4.3 Preliminary Approval

9 4.3.1 Plaintiff will seek to obtain the Court's preliminary approval of the Settlement as  
10 directed by the Court. Plaintiff will submit this Settlement to the Court for preliminary approval of  
11 its terms and for approval of the steps to be taken to obtain final approval of the Settlement. Plaintiff  
12 will request that the Court's preliminary approval of this Settlement be embodied in the Preliminary  
13 Approval Order.

14 4.4 Notice to Class Members. The Settlement Administrator shall disseminate the Notice  
15 Packet in the manner described below, with the Settlement Administration Costs being paid from the  
16 Maximum Settlement Amount.

17 4.4.1 No later than twenty-one (21) days after the entry of the Preliminary Approval Order,  
18 Defendant shall provide the Settlement Administrator with the following information for each Class  
19 Member: name, last known mailing address, last known telephone number, social security number,  
20 positions held, and the total number of workweeks in California during the Class Period. No later  
21 than ten (10) business days after receipt of such Class Member information, the Settlement  
22 Administrator will perform a national change of address ("NCOA") search, update the addresses per  
23 the results of the NCOA search, and then mail the Notice Packet (as defined in Paragraph 1.25) to  
24 each Class Member by first-class mail, postage prepaid.

25 4.4.2 In the event that a Notice Packet sent by mail is returned as undeliverable, the  
26 Settlement Administrator will make reasonable efforts to obtain a valid mailing address by using the  
27 Social Security number of the Class Member and standard skip tracing devices to conduct a search  
28 for a correct mailing address and by contacting Class Counsel and Defense Counsel. Such efforts

1 shall include conducting a reasonable search for the correct address of any Class Member whose  
2 Notice Packet is returned as undeliverable and contacting Defendant for an updated address for  
3 current employees. Following each search that results in a corrected address, the Settlement  
4 Administrator shall promptly resend the Notice Packet to the Class Member by first-class mail,  
5 postage prepaid. Following each search that results in no corrected address, the Settlement  
6 Administrator shall resend the Notice Packet to the Class Member, postage prepaid, to the original  
7 address; only one (1) such re-mailing to the same address shall ever occur, per address. The  
8 Settlement Administrator shall make one (1) attempt to re-mail the Notice Packet within ten (10)  
9 business days from the date of the return of the Notice Packet. In any event, such efforts must be  
10 completed no less than fifteen (15) business days before the date of the Final Approval and Fairness  
11 Hearing.

12 4.4.3 If Defendant and the Settlement Administrator determine, based upon further review  
13 of available data, that a person previously identified as being a Class Member should not be so  
14 included or identify a person who should have been included as a Class Member but was not so  
15 included, Defendant and the Settlement Administrator shall promptly delete or add such person as  
16 appropriate and immediately notify Class Counsel prior to such deletions or additions (and the  
17 reasons thereof).

18 4.4.4 All costs of mailing of the Notice Packet, whether foreseen or not, shall be paid from  
19 the Maximum Settlement Amount, including the cost of searching for Class Members' addresses as  
20 provided in Paragraphs 4.4.1 and 4.4.2.

21 4.4.5 The Settlement Administrator shall maintain an internal web page at its website  
22 (<http://www.cptgroup.com>) dedicated to providing Class Members pertinent information regarding  
23 this Settlement, including, without limitation, the following: (i) the name of the lawsuit; (ii) the  
24 name of the Court; (iii) Settlement Administrator's name and contact information; and (iv) Class  
25 Counsel's names and contact information. Also, available on the website will be the following  
26 documents in PDF-format for download: Complaint, Stipulation and Settlement of Class Action and  
27 PAGA Claims, Notice of Settlement, Request for Exclusion Form, Data Form, Objection Form, and  
28 Preliminary Approval Order.

1           4.4.6 Compliance with these procedures shall constitute due and sufficient notice to Class  
2 Members of this Settlement and shall satisfy the requirement of due process. Nothing else shall be  
3 required of, or done by, the Parties, Class Counsel, and Defense Counsel to provide notice of the  
4 proposed Settlement.

5           4.4.7 Other than the obligations set forth in this Agreement, Defendant shall have no  
6 additional obligation to identify or locate any Class Member or have any liability in connection with  
7 the provision of information to the Settlement Administrator.

8           4.5 Responses to Notice

9           4.5.1 The Notice of Settlement shall provide Class Members with information as to how  
10 they may challenge the information in the Data Form, which shall be available for download at  
11 (<http://www.cptgroup.com/>). Class Members will have until the Response Deadline (as defined in  
12 Paragraph 1.13) within which to complete and postmark their return-mailing envelope containing a  
13 Data Form for return to the Settlement Administrator. Except as provided by Paragraph 4.5.2 and  
14 4.5.3, no Data Forms will be considered if the postmark on the return-mailing envelope is marked  
15 after the Response Deadline, or in the case of an illegible postmark on the return-mailing envelope,  
16 if the Data Form is received by the Settlement Administrator past the Response Deadline.

17           4.5.2 For Class Members who are re-mailed the Notice Packet due to it being  
18 undeliverable, the deadline by which to submit a Data Form, Request for Exclusion Form, or  
19 Objection Form will be the later of: (a) ten (10) business days from the date the Notice Packet was  
20 re-mailed; or (b) the Response Deadline.

21           4.5.3 If a Data Form is timely submitted, but is deficient or incomplete, the Settlement  
22 Administrator will return the Data Form (or, if deemed necessary, a new Data Form) to the Class  
23 Member within five (5) business days of receipt of the Data Form with a deficiency notice  
24 explaining the deficiencies and stating that the Class Member must correct and resubmit the Data  
25 Form within ten (10) business days from the date of mailing of the deficiency notice. Neither the  
26 Parties nor any of their counsel shall discourage any Class Member from submitting a Data Form.

27           4.5.4 Class Members, with the exception of the Class Representative, may opt-out of the  
28 Settlement. Class Members who wish to exercise this option must submit a Request for Exclusion

1 Form as provided in this Paragraph. The Request for Exclusion Form shall be in substantially  
2 similar form as the document attached as **Exhibit 4**. Class Members will have until the Response  
3 Deadline (as defined in Paragraph 1.13) within which to complete and postmark their return-mailing  
4 envelope containing a Request for Exclusion Form for return to the Settlement Administrator. The  
5 date of the postmark on the return-mailing envelope shall be the exclusive means used to determine  
6 whether a Request for Exclusion Form has been timely submitted, if the post mark on the return-  
7 mailing envelope is legible. If the post mark on the return-mailing envelope is not legible, then the  
8 date the return-mailing envelope is received by the Settlement Administrator shall be the exclusive  
9 means to determine whether a Request for Exclusion Form has been timely submitted.

10 By submitting a Request for Exclusion Form, a Class Member shall be deemed to have  
11 exercised his or her option to opt-out of the class action lawsuit. Any member of the Class who  
12 requests exclusion from the Settlement will not be entitled to any share of the Settlement, will not be  
13 bound by the Settlement, and will not have any right to object, appeal or comment thereon. Class  
14 Members who fail to submit a valid and timely Request for Exclusion Form shall be bound by all  
15 terms of the Settlement and the Final Judgment entered in this Action, regardless of whether they  
16 otherwise have requested exclusion from the Settlement. The Settlement Administrator shall forward  
17 all Request for Exclusion Forms received to Class Counsel and Defense Counsel within one (1)  
18 business day of receipt. Also, not later than the filing of Plaintiff's Motion for Final Approval of  
19 Class Action Settlement, the Settlement Administrator shall enable Class Counsel to file the  
20 declaration of the Settlement Administrator advising the Court of a complete list of all members of  
21 the Class who have timely requested exclusion from the Settlement, and which shall authenticate all  
22 Request for Exclusion Forms received. The Settlement Administrator's declaration shall also include  
23 all Request for Exclusion Forms received as exhibits to the declaration.

24 4.5.5 Any person or entity who does not request exclusion but who wishes to object to this  
25 Settlement may submit an Objection Form as provided in this Paragraph. The Objection Form shall  
26 be in substantially similar form as the document attached as **Exhibit 5**. Class Members will have  
27 until the Response Deadline (as defined in Paragraph 1.13) within which to complete and postmark  
28 their return-mailing envelope containing an Objection Form. If the post mark on the return-mailing

1 envelope is not legible, then the date the return-mailing envelope is received by the Settlement  
2 Administrator shall be the exclusive means to determine whether the Objection Form has been  
3 timely submitted.

4 Any person or entity who fails to submit such a timely written Objection Form shall not be  
5 precluded from appearing at the Final Approval and Fairness Hearing should s/he wish to appear.  
6 Either of the Parties may file a responsive document to the Objection Form, or other similar  
7 document purporting to object to the Settlement, with the Court no later than five (5) calendar days  
8 before the Final Approval and Fairness Hearing. The Settlement Administrator shall forward Class  
9 and Defense Counsel copies of all Objection Forms or other documents purporting to object to the  
10 Settlement, within one (1) business day of receipt. Also, not later than the filing of Plaintiff's Motion  
11 for Final Approval of Class Action Settlement, the Settlement Administrator shall enable Class  
12 Counsel to file a declaration under penalty of perjury advising the Court with a complete list of all  
13 members of the Class who have submitted Objection Forms, and shall authenticate all Objection  
14 Forms received. The Settlement Administrator's declaration shall also include all Objection Forms  
15 received as exhibits to the declaration.

16 4.5.6 If any individual whose name does not appear on the updated Class list provided to  
17 the Settlement Administrator believes that he or she is a member of the Class, he or she shall have  
18 the opportunity to dispute his or her exclusion from the Class. If an individual believes he or she is a  
19 member of the Class, he or she must notify the Settlement Administrator in writing no later than the  
20 Response Deadline (as defined in Paragraph 1.13). The Parties will meet and confer regarding any  
21 such individual(s) in an attempt to reach an agreement as to whether any such individual(s) should  
22 be regarded as a member of the Class. If the Parties so agree, the Settlement Administrator will mail  
23 a Notice Packet (as defined in Paragraph 1.25 to the individual(s), and treat the individual(s) as a  
24 member of the Class for all other purposes. Such an individual will have all of the same rights as  
25 any other member of the Class under this Agreement, and shall have up until the latter of ten (10)  
26 business days from the mailing of the Notice Packet or the Response Deadline in which to submit a  
27 Data Form, Request for Exclusion Form, or Objection Form.

28 4.5.7 If more than six percent of the total number of Class Members submit timely and

1 valid Request for Exclusion Forms (i.e., if there are more than 7 opt outs), then Defendant shall have  
2 the option to void the Settlement. Defendant must notify Plaintiff of its decision to exercise this  
3 option within five (5) business days of receiving a report from the Settlement Administrator after the  
4 close of the Response Deadline, which shows that the total number of timely and valid requests for  
5 exclusion exceeds six percent of the total number of Class Members.

6 4.5.8 Neither the Parties nor their respective counsel will solicit or otherwise encourage any  
7 Class Member, directly or indirectly, to request exclusion from the Settlement or object to the  
8 Settlement.

9 4.6 Data Dispute Procedures

10 4.6.1 Any Settlement Class Member who disputes the total number of workweeks worked  
11 for Defendant in California during the Class Period as identified in the Settlement Class Member's  
12 Notice of Settlement shall complete the Data Form and provide the completed form together with  
13 any supporting information or documentation to the Settlement Administrator by the timelines  
14 prescribed by paragraphs 4.5.1 and 4.5.2, identifying the total number of workweeks worked that the  
15 Settlement Class Member contends s/he worked during the Class Period. If a Settlement Class  
16 Member does not timely dispute the information contained in the Settlement Class Member's Notice  
17 of Settlement, the information contained in the Notice of Settlement mailed to the Settlement Class  
18 Member shall govern the calculation of his or her Individual Payment Amount.

19 4.6.2 The Settlement Administrator must forward all Data Forms to Defendant within one  
20 (1) business day of receipt. Defendant shall review and respond to each submitted Data Form  
21 disputing the total number of workweeks worked by the Settlement Class Member in California  
22 during the Class Period within ten (10) business days of receipt, and shall transmit a copy of their  
23 response to the Settlement Administrator and Class Counsel. Defendant's response shall state  
24 whether Defendant agrees with or disputes the information provided in the Data Form.

25 (a) If Defendant agrees with all of the information provided in the Data Form disputing  
26 the total number of workweeks worked by the Settlement Class Member in California during the  
27 Class Period, the information and/or documentation provided by the Settlement Class Member shall  
28 govern the calculation of his or her Individual Payment Amount.

(b) If Defendant disagrees with any of the information provided in a Data Form disputing the total number of workweeks worked by the Settlement Class Member in California during the Class Period, it shall follow the procedure set forth in Paragraph 4.6.3 of this Settlement.

4.6.3 In the event that Defendant disagrees with the information provided in a Data Form disputing the work weeks worked by the Settlement Class Member during the Class Period, Defense Counsel will promptly advise Class Counsel in writing of the dispute and provide Class Counsel with copies of information sufficient to resolve the dispute. Copies of all Data Forms and correspondence with the person(s) submitting Data Forms shall be made available to Class Counsel upon request. Defense Counsel and Class Counsel shall attempt in good faith to resolve any such dispute within ten (10) business days of Class Counsel's receipt of Defense Counsel's notice of a dispute as to the Data Form. Class Counsel shall have full discretion on behalf of the Settlement Class Members to resolve such disputes with Defense Counsel, except that any and all payment relating to the disputed entitlement must be from the Net Settlement Amount. If Defense Counsel and Class Counsel are unable to resolve the Data Form dispute within ten (10) business days, a final and binding determination on the dispute shall be made by the Settlement Administrator.

#### 4.7 Application for Class Counsel's Attorneys' Fees and Litigation Costs

4.7.1 Class Counsel shall apply to the Court for the Fee and Costs Award as defined in paragraph 1.20. Class Counsel shall request an award of attorneys' fees for an amount not to exceed Forty-One Thousand Six-Hundred and Sixty-Six dollars and Sixty-Six cents (\$41,666.66) and litigation costs actually incurred in an amount not to exceed Ten Thousand Dollars (\$10,000.00). Defendant agrees not to oppose this request.

#### 4.8 Application for Class Representative's Service Payment

4.8.1 Class Counsel, on behalf of the Class Representative, shall apply to the Court for the Class Representative's Service Payment (as defined in Paragraph 1.17) for an amount not to exceed Two Thousand U.S. Dollars (\$2,000.00) (allocated as described above) from the Maximum Settlement Amount.

#### 4.9 Final Approval and Fairness Hearing

4.9.1 On the date set forth in the Notice of Settlement, the Court shall hold the Final

1 Approval and Fairness Hearing where objections, if any, may be heard. Defendant reserves its right  
2 to file papers in advance of the Final Approval and Fairness Hearing.

3 4.10 Final Judgment. If the Court approves this Settlement at the Final Approval and  
4 Fairness Hearing, the Parties request that the Court enter the Final Judgment after the Maximum  
5 Settlement Amount is fully funded.

6 4.11 Distribution of Settlement Proceeds

7 4.11.1 Within fifteen (15) business days after the Effective Date, Defendant shall deliver the  
8 Settlement Proceeds plus the estimated amount for employer-related payroll taxes by wiring the  
9 funds into the QSF, set up and controlled by the Settlement Administrator. The payment of Court-  
10 approved Class Counsel's Fee and Costs Award, and Class Representative's Service Payment  
11 requested pursuant to this Settlement shall be paid within five (5) business days after Defendant  
12 wires the Settlement Proceeds into the QSF. The payment of \$5,625.00 to the Labor Workforce  
13 Development Agency, representing 75% of PAGA civil penalties, shall be paid within five (5)  
14 business days after Defendant wires the Settlement Proceeds into the QSF.

15 4.11.2 The QSF shall be an interest-bearing account(s) at a federally-insured bank(s) that is  
16 mutually acceptable to the Parties and the Settlement Administrator that is FDIC insured for the full  
17 amount deposited. The Parties agree that the QSF shall be a non-reversionary fund and that under no  
18 circumstance will there be any reversion to Defendant of any of the funds from the Settlement  
19 Proceeds or the QSF.

20 4.11.3 The Settlement Administrator shall distribute checks via first-class mail to Settlement  
21 Class Members for their respective Individual Payment Amounts and to Aggrieved Employees for  
22 their respective PAGA Dollar Allocation to Individual Aggrieved Employees no later than ten (10)  
23 business days after Defendant wires the Settlement Proceeds into the QSF.

24 4.11.4 After ninety (90) days of issuance, funds from undeposited checks will be held by the  
25 Settlement Administrator. If the Class Member/Aggrieved Employee to whom the undeposited  
26 check is issued does not contact Class Counsel or the Settlement Administrator concerning his or her  
27 Individual Payment Amount/PAGA Dollar Allocation to Individual Aggrieved Employee within  
28 one-hundred eighty (180) calendar days of issuance, such checks shall be delivered to the State

1 Controller's Office Unclaimed Property Fund. The failure by any Class Member/Aggrieved  
2 Employee to claim or deposit any check issued by the Settlement Administrator shall have no effect  
3 on that Class Member's/Aggrieved Employee's release of all Released Claims (as defined in  
4 paragraph 1.29). The Settlement Administrator shall also enable Class Counsel to file a declaration  
5 attesting the distribution of the Maximum Settlement Amount and the distribution of any "residual"  
6 funds in accordance with this Paragraph.

7 4.11.5 The Settlement Administrator shall also remit all amounts withheld from Individual  
8 Payment Amounts attributed to the wage portion of the payments and all employer-related payroll  
9 taxes to the Internal Revenue Service and California E.D.D., and/or any other proper entity to whom  
10 withholdings and employer-related payroll taxes attributed to Individual Payment Amounts are due,  
11 no later than one hundred and eighty (180) days after issuance of Individual Payment Amounts as set  
12 forth in paragraph 4.11.3. In the event that the estimated amount of Defendant's employer-related  
13 payroll taxes exceeds the amount wired to the QSF, any excess monies shall revert to Defendant.

14 4.11.6 No person shall have any claim against the Settlement Administrator, Defendant or  
15 any of the Releasees, the Class Representative, the Class Members, or Class Counsel based on  
16 payments made substantially in accordance with this Settlement, or further Orders of this Court.

17 4.12 Release of Claims

18 4.12.1 Contingent upon full and final payment by Defendant of the Maximum Settlement  
19 Amount consistent with Paragraph 4.11.1, the Class Representative and each Class  
20 Member/Aggrieved Employee shall be deemed to have fully, finally, and forever released the  
21 Releasees from all Released Claims.

22 4.12.2 In addition, the Class Representative shall be deemed to have fully, finally, and  
23 forever released the Releasees from the Class Representative's Released Claims, contingent upon  
24 full and final payment by Defendant of the Maximum Settlement Amount consistent with Paragraph  
25 4.11.1.

26 4.12.3 With respect to the Class Representative's Released Claims *only*, the Class  
27 Representative shall be deemed to have expressly waived and relinquished, to the fullest extent  
28

1 permitted by law, the provisions, rights, and benefits he may otherwise have had pursuant to  
2 Paragraph 1542 of the California Civil Code, which provides as follows:

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

6 4.13 Miscellaneous Provisions

7 4.13.1 Unless otherwise specifically provided herein, all notices, demands, or other  
8 communications given hereunder shall be in writing and shall be addressed as follows:

9 To the Plaintiffs and the Class:

10 Kye D. Pawlenko  
11 Matthew B. Hayes  
Hayes Pawlenko LLP  
595 E. Colorado Blvd., Ste. 303  
Pasadena, CA 91101

12 To Defendant:

13 D. Chad Anderton  
14 Kimberly M. Shappley  
Littler Mendelson, P.C.  
2050 Main Street, Suite 900  
15 Irvine, CA 92614

16  
17 4.13.2 Defendant shall not take any adverse action against any Class Member/Aggrieved  
18 Employee because of the Action or because of the existence of, and/or participation in, the  
19 Settlement, or because they choose to benefit from the Settlement or to object to the Settlement.  
20 Neither Party shall take any action to discourage Class Members from participating in the  
21 Settlement.

22 4.13.3 Each of the Parties has cooperated in the drafting and preparation of this Settlement.  
23 Hence, in any construction made to this Settlement, the same shall not be construed against any of  
24 the Parties.

25 4.13.4 The Class Representative, by signing this Settlement, is bound by the terms herein  
26 and further agrees not to request to be excluded from the Settlement and not to object to any terms of  
27 this Settlement. Any such request for exclusion or objection shall therefore be void and of no force  
28 or effect. Defendant, Class Counsel, and the Class Representative waive their rights to file an

1 appeal, writ, or any challenge whatsoever to the terms of this Settlement.

2 4.13.5 Neither Class Counsel nor any other attorneys acting for, or purporting to act for, the  
3 Class, Class Members, Aggrieved Employees or Class Representatives, may recover or seek to  
4 recover any amounts for fees, costs, or disbursements from the Releasees or the Settlement except as  
5 expressly provided herein.

6 4.13.6 This Settlement may not be changed, altered, or modified, except in writing signed by  
7 the Parties hereto or their counsel of record. This Settlement may not be discharged except by  
8 performance in accordance with its terms or by a writing used by the Parties hereto.

9 4.13.7 This Agreement, including Exhibits, constitutes the full, complete and entire  
10 understanding, agreement and arrangement between the Class Representative and Settling  
11 Plaintiffs/Aggrieved Employees on the one hand, and Defendant on the other hand, with respect to  
12 the settlement of the Action and Released Claims against Defendant. Except those set forth  
13 expressly in the Agreement, there are no other agreements, covenants, promises, representations or  
14 arrangements between the Parties with respect to the Settlement of the Action and the Released  
15 Claims against Defendant.

16 4.13.8 This Settlement shall be binding upon and inure to the benefit of the Parties hereto  
17 and their respective heirs, trustees, executors, successors, and assigns.

18 4.13.9 This Settlement may be executed in one or more counterparts. All executed  
19 counterparts and each of them shall be deemed to be one and the same instrument.

20 4.13.10 In the event that one or more of the Parties to this Settlement institutes any legal  
21 action, arbitration, or other proceeding to enforce the provisions of this Settlement or to declare  
22 rights and/or obligations under this Settlement, the successful party or parties shall be entitled to  
23 recover from the unsuccessful party or parties reasonable attorneys' fees and costs.  
24 Notwithstanding the entry of Final Judgment, the Court shall retain jurisdiction of this matter solely  
25 for the purposes of interpreting and enforcing the terms of this Agreement and the Judgment.

26 4.13.11 This Settlement and the Exhibits hereto shall be considered to have been negotiated,  
27 executed, and delivered, and to have been wholly performed, in the State of California, and the rights  
28 and obligations of the Parties to the Settlement shall be construed and enforced in accordance with,

1 and governed by, the substantive laws of the State of California (including Cal. Code Civ. P. §  
2 664.6) without giving effect to that State's choice of law principles.

3 4.13.12 Paragraph titles or captions contained in the Settlement are inserted as a matter of  
4 convenience and for reference, and in no way define, limit, extend, or describe the scope of this  
5 Settlement, or any provision thereof.

6 4.13.13 Before declaring any provision of this Settlement invalid, the Court shall first  
7 attempt to construe the provisions valid to the fullest extent possible consistent with applicable  
8 precedents so as to define all provisions of this Settlement valid and enforceable.

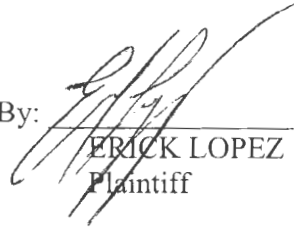
9 4.13.14 The Parties agree to the Court staying and holding all proceedings in the Action,  
10 except such proceedings necessary to implement and complete the Settlement, in abeyance pending  
11 the settlement hearings to be conducted by the Court.

12 4.13.15 The Parties agree to keep the Settlement confidential through Preliminary Approval.  
13 Thereafter, the Parties agree that they will make no comments to the media or otherwise publicize  
14 the terms of the Settlement. Class Counsel and Defense Counsel agree to make no reference to the  
15 Settlement on their respective websites and/or on their respective social media.

16 4.13.16 All terms of this Agreement and the Exhibits thereto shall be governed by and  
17 interpreted according to the law of the State of California.

18 IN WITNESS WHEREOF, this Settlement is executed by the Parties and their duly authorized  
19 attorneys, as of the day and year herein set forth.

20  
21 Dated: July 19, 2019

By:   
ERICK LOPEZ  
Plaintiff

22  
23  
24 Dated: \_\_\_\_\_, 2019

DIAMOND MATTRESS COMPANY, INC.

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

25  
26 Its: \_\_\_\_\_  
27 Defendant  
28

1 and governed by, the substantive laws of the State of California (including Cal. Code Civ. P. §  
2 664.6) without giving effect to that State's choice of law principles.

3 4.13.12 Paragraph titles or captions contained in the Settlement are inserted as a matter of  
4 convenience and for reference, and in no way define, limit, extend, or describe the scope of this  
5 Settlement, or any provision thereof.

6 4.13.13 Before declaring any provision of this Settlement invalid, the Court shall first  
7 attempt to construe the provisions valid to the fullest extent possible consistent with applicable  
8 precedents so as to define all provisions of this Settlement valid and enforceable.

9 4.13.14 The Parties agree to the Court staying and holding all proceedings in the Action,  
10 except such proceedings necessary to implement and complete the Settlement, in abeyance pending  
11 the settlement hearings to be conducted by the Court.

12 4.13.15 The Parties agree to keep the Settlement confidential through Preliminary Approval.  
13 Thereafter, the Parties agree that they will make no comments to the media or otherwise publicize  
14 the terms of the Settlement. Class Counsel and Defense Counsel agree to make no reference to the  
15 Settlement on their respective websites and/or on their respective social media.

16 4.13.16 All terms of this Agreement and the Exhibits thereto shall be governed by and  
17 interpreted according to the law of the State of California.

18 IN WITNESS WHEREOF, this Settlement is executed by the Parties and their duly authorized  
19 attorneys, as of the day and year herein set forth.

20  
21 Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
ERICK LOPEZ  
Plaintiff

22  
23  
24 Dated: August 2, 2019

DIAMOND MATTRESS COMPANY, INC.

By: Breana Pannigan

25  
26 Its: VP  
Defendant

1 APPROVED AS TO FORM AND CONTENT:  
2

3  
4 Dated: July 25, 2019

HAYES PAWLENKO LLP

By: 

KYED D. PAWLENKO

MATTHEW B. HAYES

Attorneys for Plaintiff and the Class

5  
6  
7 Dated: August 2, 2019

LITTLER MENDELSON, P.C.

By: 

D. CHAD ANDERTON

Attorneys for Defendant

Diamond Mattress Company, Inc.