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18  
19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 COUNTY OF SAN DIEGO, NORTHERN DIVISION

21  
22 AZIZI BARANAUSKAS, individually and on  
behalf of all others similarly situated,

23 Plaintiffs,

24 vs.

25 HEALTHCARE MANAGEMENT  
26 SERVICES, LLC, a California limited liability  
company; MEK ARDEN, LLC, a California  
27 limited liability company; MEK  
ASSOCIATES, LLC, a California limited  
28 liability company; MEK ESCONDIDO, LLC.

CASE NO. 37-2017-00013171-CU-OE-NC  
[Assigned for All Purposes to:  
The Hon. Timothy M. Casserly, Dept. N-31]

**CLASS ACTION**

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

1 a California limited liability company; MEK  
2 KENNEDY, LLC, a California limited  
3 liability company; MEK L.V. PROPERTY,  
4 LLC, a California limited liability company;  
5 MEK LEISURE GLEN, LLC, a California  
6 limited liability company; MEK LONG  
7 BEACH, LLC, a California limited liability  
8 company; MEK NORWOOD PINES, LLC, a  
9 California limited liability company; MEK  
OFFICE PROPERTY, LLC, a California  
limited liability company; MEK PALOMAR  
PROPERTY, LLC, a California limited  
liability company; MEK R.O. PROPERTY,  
LLC, a California limited liability company;  
MEK SACRAMENTO, LLC, a California  
limited liability company; and DOES 1  
through 300, inclusive,

10 Defendants.

Action Filed: April 7, 2017  
Trial Date: None Set

**Exhibits:**

Exhibit 1 - Class Notice  
Exhibit 2 - Change of Address Form  
Exhibit 3 - Preliminary Approval Order  
Exhibit 4 - Final Approval Order and  
Judgment

13 **IT IS HEREBY STIPULATED AND AGREED** by and between Plaintiff Azizi

14 Baranauskas (“Plaintiff”), on behalf of herself and all others similarly situated to her, on the one  
15 hand, and Defendants Healthcare Management Services, LLC; MEK Arden, LLC; MEK  
16 Associates, LLC; MEK Escondido, LLC; MEK Kennedy, LLC; MEK L.V. Property, LLC; MEK  
17 Leisure Glen, LLC; MEK Long Beach, LLC; MEK Norwood Pines, LLC; MEK Office Property,  
18 LLC; MEK Palomar Property, LLC; MEK R.O. Property, LLC; MEK Sacramento LLC; Palomar  
19 Heights Care Center, LLC; and B.V. General, Inc. (“Defendants”), on the other hand, subject to  
20 the approval of the Court, that this class action is hereby compromised and settled pursuant to the  
21 terms and conditions set forth below in this Stipulation and Settlement Agreement of Class Action  
22 Claims:

23 **DEFINITIONS**

24 1. “Action” means the putative class action entitled “*Azizi Baranauskas v. Healthcare*  
25 *Management Services*” pending in the Superior Court for the State of California, County of San  
26 Diego – Northern Division, Case No. 37-2017-00013171-CU-OE-NC.

27 2. “Agreement” means this Stipulation and Settlement Agreement of Class Action  
28 Claims.

1           3.       “Attorneys’ Fees and Costs Payment” means such payment of attorneys’ fees and  
2 litigation costs as the Court may authorize to be paid to Class Counsel for the services they have  
3 rendered to the Plaintiff and the Class and expenses they have incurred in prosecuting the Action.  
4 The Attorneys’ Fees and Costs Payment will be paid out of—and will not increase—the  
5 Maximum Settlement Amount.

6           4.       “Class” means the aggregate group of Class Members, which Defendants represent  
7 there are approximately 4,397 Class Members.

8           5.       “Class Counsel” means the law firms of Hogue & Belong and Law Offices of  
9 Devon K. Roepcke, PC.

10          6.       “Class Members” include all non-exempt employees who worked for Defendants  
11 from April 7, 2013 to the date of preliminary approval of the Settlement.

12          7.       “Class Notice” (or “Notice”) means the Court-approved Notice of Class Action  
13 Settlement, substantially in the form attached as Exhibit 1, and the Change of Address Form  
14 attached as Exhibit 2. The Class Notice will notify Class Members of the conditional certification  
15 of the Class, Preliminary Approval of the Settlement, and scheduling of the Final Approval  
16 Hearing, and will provide Class Members with individualized information upon which a  
17 Settlement Payment will be calculated and paid.

18          8.       “Class Period” means April 7, 2013 to the date of the preliminary approval of the  
19 Settlement.

20          9.       “Named Plaintiff Service Payment” means the amount that the Court may authorize  
21 to be paid to the Plaintiff over and above her individual Settlement Payment, in recognition of her  
22 work and efforts in obtaining the benefits of the Settlement for the Class, for undertaking the risk  
23 for the payment of costs in the event this matter had not successfully resolved, and for executing a  
24 General Release of all claims against Released Parties, including claims for wrongful termination,  
25 constructive termination, discrimination, harassment, retaliation, and all other claims that are not  
26 being released by other class members. Plaintiff Azizi Baranauskas will request, and Defendants  
27 will not oppose, a Named Plaintiff Service Payment in the amount of \$10,000.00. The Named  
28 Plaintiff Service Payment shall be paid out of—and will not increase—the Maximum Settlement

1 Amount.

2 10. "Complaint" means the complaint filed against Defendants on April 7, 2017, by  
3 Plaintiff Azizi Baranauskas and amended on May 16, 2017. On June 21, 2019, the Court granted  
4 Plaintiff's Motion for Leave to File a Second Amended Complaint ("SAC" or "Operative  
5 Complaint") that added a Private Attorneys General Act ("PAGA") cause of action. The SAC  
6 alleges the following: (1) failure to pay all overtime wages; (2) failure to pay minimum/regular  
7 wages; (3) failure to pay wages upon separation of employment; (4) failure to provide meal  
8 periods or compensation in lieu; (5) failure to provide accurate itemized wage statements; (6)  
9 failure to indemnify/reimburse; (7) unfair business practices; and (8) civil penalties under the  
10 PAGA predicated on the Labor Code violations asserted in causes of action (1) through (7).

11 11. "Court" means the Superior Court of the State of California County of San Diego –  
12 Northern Division.

13 12. "Defendants" mean Healthcare Management Services, LLC; MEK Arden, LLC;  
14 MEK Associates, LLC; MEK Escondido, LLC; MEK Kennedy, LLC; MEK L.V. Property, LLC;  
15 MEK Leisure Glen, LLC; MEK Long Beach, LLC; MEK Norwood Pines, LLC; MEK Office  
16 Property, LLC; MEK Palomar Property, LLC; MEK R.O. Property, LLC; MEK Sacramento LLC;  
17 Palomar Heights Care Center, LLC; and B.V. General, Inc.

18 13. "Effective Date of Settlement" means (1) if no objection is filed or otherwise  
19 presented to the Court, the date on which the Court grants final approval of the Settlement and  
20 enters judgment; or (2) if an objection is filed or otherwise presented to the Court, the date upon  
21 which the Court's order granting final approval of the Settlement becomes non-appealable.

22 14. "Final Approval" means that the Final Approval Order and Judgment have been  
23 entered.

24 15. "Final Approval Hearing" means a hearing held before the Court to consider Final  
25 Approval of the Settlement, and in what amount attorneys' fees and litigation costs should be  
26 awarded to Class Counsel, and a service payment awarded to the Plaintiff, and the merits of any  
27 objections to the Settlement, if any.

28 16. "Final Approval Order and Judgment" means an order/judgment issued by the

1 Court in substantially similar to the form attached as Exhibit 4, approving the Settlement and this  
2 Agreement as binding upon the Parties and the Class Members.

3 17. "General Release" means the release in which the Plaintiff, in her individual  
4 capacity and with respect to her individual claims only, and in exchange for her Named Plaintiff  
5 Service Award, agrees to release the Released Parties from all claims, demands, rights, liabilities  
6 and causes of action of every nature and description whatsoever, known or unknown, asserted or  
7 that might have been asserted, whether in tort, contract, or for violation of any collective  
8 bargaining agreement, and/or any state or federal statute, rule or regulation arising out of, relating  
9 to, or in connection with any act or omission by or on the part of any of the Released Parties  
10 committed or omitted during the Class Period, including a waiver of Civil Code §1542. Said  
11 Section reads as follows:

12 **Section 1542. [General Release – Claims Extinguished.] A**  
13 **general release does not extend to claims that the creditor or**  
14 **releasing party does not know or suspect to exist in his or her**  
15 **favor at the time of executing the release, which if known by him**  
16 **or her, would have materially affected his or her settlement with**  
17 **the debtor or released party.**

18 18. "Maximum Settlement Amount" (or "MSA") means the total amount Released  
19 Parties will pay under this Settlement. The MSA consists of the Settlement Administration  
20 Payment, Attorneys' Fees and Costs Payment, the Named Plaintiff Service Payment, the PAGA  
21 Payment, and the Net Settlement Amount. The MSA is equal to, and shall not exceed,  
22 \$3,100,000.00. The MSA is non-reversionary and no portion will revert to Defendants under any  
23 circumstances. The Parties agree, covenant, and represent that Defendants shall be required to pay  
24 only the Maximum Settlement Amount and the Tax Obligations.

25 19. "Net Settlement Amount" means the amount remaining after the Court-approved  
26 deductions from the Maximum Settlement Amount for the Settlement Administration Payment,  
27 Attorneys' Fees and Costs Payment, the Named Plaintiff Service Payment, and the PAGA  
28 Payment.

1           20.    “Objection/Exclusion Deadline” means the date forty-five (45) calendar days after  
2 the date on which the Settlement Administrator first mails the Class Notice to all Class Members  
3 (judged by the postmark date).

4           21.    “PAGA Payment” means an allocation from the Maximum Settlement Amount of  
5 \$50,000.00 of which 75% (\$37,500.00) will be paid to the California’s Labor and Workforce  
6 Development Agency (“LWDA”) for all applicable civil penalties under the California Labor  
7 Code’s Private Attorney General Act of 2004, as amended, California Labor Code §§ 2699 et seq.  
8 and of which 25% (\$12,500.00) will remain with the Maximum Settlement Amount for  
9 distribution, on a proportionate basis, to all eligible Participating Class Members.

10          22.    “Participating Class Member” means a Class Member who does not timely request  
11 to be excluded from the Settlement and who will receive a Settlement Payment, without the need  
12 to return a claim form.

13          23.    “Parties” means Plaintiff and all Defendants.

14          24.    “Party” means any of said Parties.

15          25.    “Plaintiff” and/or “Class Representative” means Azizi Baranauskas.

16          26.    “Preliminary Approval” means the Court has entered the Preliminary Approval  
17 Order, preliminarily approving the terms and conditions of this Settlement, including the form and  
18 manner of providing notice to the Class.

19          27.    “Preliminary Approval Order” means the order issued by the Court substantially  
20 similar to the form attached as Exhibit 3, preliminarily approving the terms and conditions of this  
21 Settlement, including the form and manner of providing notice to the Class.

22          28.    “Released Claims” means all claims, causes of action or legal theories of relief  
23 alleged or otherwise raised, or that could have been raised based on the factual allegations that are  
24 pled in the Operative Complaint, including the following: (1) failure to pay all overtime wages; (2)  
25 failure to pay minimum/regular wages; (3) failure to pay wages upon separation of employment;  
26 (4) failure to provide meal periods or compensation in lieu; (5) failure to provide accurate itemized  
27 wage statements; (6) failure to indemnify/reimburse; (7) unfair business practices; and (8) civil  
28 penalties under the PAGA predicated on the Labor Code violations asserted in causes of action (1)

1 through (7), and all damages, penalties, interest, attorneys' fees, litigation costs, restitution,  
2 equitable relief, and other amounts or types of relief recoverable under said claims, causes of  
3 action, or legal theories of relief, or any other claims that were or could have been asserted based  
4 on the facts alleged in the Action. The period of the Released Claims shall extend to the limits of  
5 the Class Period. The Released Claims exclude the release of any claims not permitted to be  
6 released by law and exclude all claims and causes of action for any type of discrimination,  
7 harassment, or retaliation as well as any type of employment wrongful termination. In addition to  
8 the Released Claims, the Plaintiff agrees to the General Release of Released Parties.

9       29. "Released Parties" means Defendants, and all of Defendants' affiliated companies  
10 and their respective parent companies, subsidiaries, affiliates, shareholders, members, partners,  
11 agents (including, without limitation, any investment bankers, investors, accountants, auditors,  
12 consultants, insurers, reinsurers, attorneys and any past, present or future officers, directors,  
13 principals, heirs, joint employers, client employers, and employees), predecessors, successors,  
14 joint venturers, and assigns.

15       30. "Settlement" means the terms and conditions set forth in this Agreement.

16       31. "Settlement Administrator" means CPT Group, Inc.

17       32. "Settlement Administration Payment" means the payment to the Settlement  
18 Administrator for the actual and direct costs reasonably charged by the Settlement Administrator  
19 for its services in administering the Settlement. The Parties currently project the Settlement  
20 Administration Payment to be approximately \$40,000.00, which shall be paid from the Maximum  
21 Settlement Amount.

22       33. "Settlement Payment" means the gross amount (including any taxes or other  
23 standard withholdings) each Participating Class Member is entitled to receive from the Net  
24 Settlement Amount.

25       34. "Tax Obligations" means the employer's/Released Parties' share of payroll taxes,  
26 including, but not limited to, FICA, Medicare, ETT, FUTA, and SUTA, etc., with respect to the  
27 portion of the Maximum Settlement Amount that is treated as wages. The Tax Obligations shall  
28 be paid by Defendants in addition to the Maximum Settlement Amount, in a ratio based upon the

1 amount of their contribution to the Maximum Settlement Amount.

2 35. "Work Week(s)" means any pay period during the Class Period for which a Class  
3 Member received a paycheck, Class Members' Work Weeks equal the number of paychecks they  
4 received.

### 5 PROCEDURAL HISTORY

6 36. On April 7, 2017, Plaintiff filed her Class Action Complaint alleging the following  
7 causes of action: (1) failure to pay overtime; (2) failure to pay minimum wages; (3) failure to pay  
8 all wages due at termination; (4) meal and rest break violations; (5) inaccurate wage statements;  
9 and (6) failure to reimburse.

10 37. On May 16, 2017, Plaintiff filed her First Amended Class Action Complaint  
11 alleging the following causes of action: (1) failure to pay overtime; (2) failure to pay minimum  
12 wages; (3) failure to pay all wages due at termination; (4) failure to provide meal periods or  
13 compensation thereof; (5) inaccurate wage statements; and (6) failure to reimburse.

14 38. On May 19, 2017, Plaintiff sent correspondence to the California Labor and  
15 Workforce Development Agency ("LWDA"), notifying the agency of her intent to pursue a claim  
16 for civil penalties against Defendants pursuant to the California Labor Code Private Attorneys  
17 General Act ("PAGA").

18 39. On June 21, 2017, Defendant Healthcare Management Services, LLC filed its  
19 Answer to Plaintiff's First Amended Complaint.

20 40. On September 18, 2017, Defendants MEK Arden, LLC; MEK Associates, LLC;  
21 MEK Escondido, LLC; MEK Kennedy, LLC; MEK L.V. Property, LLC; MEK Leisure Glen,  
22 LLC; MEK Long Beach, LLC; MEK Norwood Pines, LLC; MEK Office Property, LLC; MEK  
23 Palomar Property, LLC; MEK R.O. Property, LLC; and MEK Sacramento LLC filed their Answer  
24 to Plaintiff's First Amended Complaint.

25 41. On September 20, 2018, Defendants Palomar Heights Care Center, LLC and B.V.  
26 General, Inc. filed their Answer to Plaintiff's First Amended Complaint.

27 42. On June 21, 2019, the Court granted Plaintiff's Motion for Leave to File a Second  
28 Amended Complaint ("SAC" or "Operative Complaint") that added a Private Attorneys General



1 Act (“PAGA”) cause of action. The SAC alleges the following: (1) failure to pay all overtime  
2 wages; (2) failure to pay minimum/regular wages; (3) failure to pay wages upon separation of  
3 employment; (4) failure to provide meal periods or compensation in lieu; (5) failure to provide  
4 accurate itemized wage statements; (6) failure to indemnify/reimburse; (7) unfair business  
5 practices; and (8) civil penalties under the PAGA predicated on the Labor Code violations asserted  
6 in causes of action (1) through (7).

7 43. On November 13, 2018, the parties mediated this case before Steve Pearl, an  
8 experienced employment mediator. The parties were unable to resolve the matter on that date.  
9 After the exchange of several thousand documents and over a dozen depositions, the Parties were  
10 able to reach an agreement to the material terms of this Agreement through arm’s length  
11 negotiations that were facilitated by the Mediator as set forth in the Memorandum of  
12 Understanding fully executed by the Parties on July 16, 2019.

### 13 PLAINTIFF’S CLAIMS

14 44. Plaintiff has claimed and continues to claim that the Released Claims have merit  
15 and give rise to Released Parties’ liability. Neither this Agreement nor any documents referred to,  
16 or any action taken to carry out this Agreement is (or may be construed or used as) an admission  
17 by or against the Class Members or Class Counsel or any Party or Counsel as to the merits or lack  
18 thereof of the claims asserted, except as to the Released Claims.

### 19 NO ADMISSION OF LIABILITY

20 45. This Agreement represents a compromise and settlement of the Action. Neither  
21 this Agreement, nor any document referred to or contemplated, nor any action taken to carry out  
22 this Agreement may be construed as, or may be used as an admission, concession or indication by  
23 or against Released Parties that Plaintiff’s claims in the Action have merit or that they have any  
24 fault, wrongdoing, or liability to Plaintiff or the Class on those claims whatsoever, including any  
25 concession that certification of a class would be appropriate in this or any other case.

26 46. This Agreement is made for the sole purpose of consummating settlement of all  
27 causes of action contained in the Operative Complaint in this Action. By entering into this  
28 Agreement, none of the Parties admit the allegations or contentions of any other Party, and each

1 Party is entering into this Agreement for the sole purpose of resolving this matter and avoiding the  
2 time and expense incident to protracted litigation. Released Parties specifically deny all of  
3 Plaintiff's claims as to liability and remedies, as well as Plaintiff's class and representative  
4 allegations, and expressly reserve all rights to challenge all such claims and allegations upon all  
5 procedural and substantive grounds, including the assertion of any and all defenses and cross-  
6 claims if the Court does not approve this Agreement and/or if the Settlement does not become  
7 effective as defined. Released Parties also retain all rights to argue that any orders or rulings made  
8 in this case are not final rulings and have no precedential impact in this Action or any other  
9 proceeding.

10 **STIPULATION FOR CLASS CERTIFICATION**

11 47. The Parties stipulate and agree to the conditional certification of the Class for  
12 purposes of this Settlement only. Should, for whatever reason, the Settlement not become  
13 effective, the fact that the Parties were willing to stipulate to class certification as part of the  
14 Settlement shall have no bearing on, and shall not be admissible in connection with, the issue of  
15 whether a class should be certified in a non-settlement context in this Action. Should the  
16 Settlement not become effective for any reason, nothing from the settlement process, including  
17 documents created or obtained from the settlement process and settlement administration, shall be  
18 admissible evidence in this Action, or disclosed or used in any way contrary to law or any Party's  
19 interests.

20 **INADMISSIBILITY OF SETTLEMENT AGREEMENT**

21 48. Whether or not the Settlement is finally approved, neither the Settlement, nor any  
22 of its terms, nor any document, statement, proceeding or conduct related to this Agreement, nor  
23 any reports or accounts thereof, shall in any event be:

24 A. Construed as, offered or admitted in evidence as, received as, or deemed to  
25 be evidence for any purpose adverse to the Released Parties, including, but not limited to,  
26 evidence of a presumption, concession, indication or admission by any of the Released Parties of  
27 any liability, fault, wrongdoing, omission, concession or damage;

28 B. Disclosed, referred to or offered or received in evidence against any of the

1 Released Parties, in any further proceeding in the Action, or in any other civil, criminal or  
2 administrative action or proceeding except for purposes of settling this Action pursuant to the  
3 terms of this Agreement or enforcing the release of the Released Claims; or

4 C. Used in any other way or for any other purpose.

5 **INVESTIGATION IN THE CLASS ACTION**

6 49. The Parties have conducted significant investigation of the facts and law both  
7 before and after the Action was filed. Defendants produced thousands of documents consisting of  
8 a sampling of employee punch reports, payroll records, wage and hour policies and procedures  
9 during the class period. In addition, there have been over a dozen depositions in this matter,  
10 including two sessions of Plaintiff, nine person most qualified depositions, three persons in their  
11 individual capacity, and two expert depositions.

12 50. Counsel for the Parties also engaged in conferences with each other and  
13 interviewed and obtained declarations from numerous witnesses. Counsel for the Parties have  
14 further investigated the applicable law as applied to the facts discovered regarding the alleged  
15 claims in the Action and potential defenses and the damages claimed by the Class.

16 **FAIRNESS AND BENEFITS OF SETTLEMENT TO THE CLASS**

17 51. Plaintiff recognizes the expense and length of continued proceedings necessary to  
18 continue the litigation against Defendants through trial and through any possible appeals. Plaintiff  
19 has also taken into account the uncertainty and risk of the outcome of further litigation, and the  
20 difficulties and delays inherent in such litigation, including those involved in class certification.  
21 Plaintiff is also aware of the burdens of proof necessary to establish liability for the claims  
22 asserted in the Action, Defendants' defenses, and the difficulties in establishing damages for the  
23 Class. Plaintiff has also considered the lengthy and significant negotiations facilitated by the  
24 Mediator Steve Pearl, as well as those to reach agreement on the terms of this Settlement. Based  
25 on the foregoing, Plaintiff, Class Counsel, Defendants, and Defendants' Counsel have determined  
26 that the Settlement set forth in this Agreement, and its terms, are fair, adequate, equitable and  
27 reasonable, are the product of good faith, arm's length negotiations between the Parties, are  
28 consistent with public policy, fully comply with applicable provisions of law, and are in the best

1 interests of all Class Members.

2 **RELEASE AS TO ALL CLASS MEMBERS**

3 52. Plaintiff and all Class Members agree that, upon the Effective Date of Settlement,  
4 they shall be deemed to have, and by operation of the Final Approval Order and Judgment shall  
5 have, released the Released Parties from the Released Claims. The Settlement Payments shall be  
6 paid to Participating Class Members specifically in exchange for the release of the Released  
7 Parties from the Released Claims.

8 **GENERAL RELEASE BY PLAINTIFF ONLY**

9 53. In addition to the releases made by the Participating Class Members as set forth  
10 above, Plaintiff will, as of the Effective Date, make the additional following General Release of all  
11 Claims, known or unknown, in exchange and consideration of the Named Plaintiff Service  
12 Payment. Plaintiff agrees to the General Release of the Released Parties. Plaintiff also agrees to  
13 release all wage and hour claims, including, but not limited to, unpaid overtime or minimum  
14 wages, meal and rest period violations, unreimbursed business expenses, untimely payment of  
15 wages, wage statement violations, penalties under the Private Attorneys General Act and all other  
16 Released Claims. Also, without limiting the generality of the foregoing: PLAINTIFF ALSO  
17 SPECIFICALLY AGREES AND ACKNOWLEDGES WAIVER OF ANY RIGHT TO  
18 RECOVERY BASED ON STATE OR FEDERAL AGE, SEX, GENDER, CITIZENSHIP,  
19 PREGNANCY, RACE, COLOR, NATIONAL ORIGIN, MARITAL STATUS, RELIGION,  
20 VETERAN STATUS, DISABILITY, SEXUAL ORIENTATION, MEDICAL CONDITION OR  
21 OTHER ANTI-DISCRIMINATION LAWS, INCLUDING, WITHOUT LIMITATION,  
22 TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, THE AMERICANS WITH DISABILITIES  
23 ACT AND THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT, OR BASED ON  
24 THE FAMILY AND MEDICAL LEAVE ACT, THE EMPLOYEE RETIREMENT INCOME  
25 SECURITY ACT, THE WORKER ADJUSTMENT AND RETRAINING ACT, THE FAIR  
26 LABOR STANDARDS ACT AND THE CALIFORNIA LABOR CODE, ALL AS AMENDED,  
27 WHETHER SUCH CLAIM BE BASED UPON AN ACTION FILED BY EMPLOYEES OR BY  
28 A GOVERNMENTAL AGENCY.

1           54.     The General Release includes any unknown claims that Plaintiff does not know or  
2 suspect to exist in her favor at the time of the General Release, which, if known by her, might have  
3 affected her settlement with, and release of, the Released Parties or might have affected her  
4 decision not to object to this Settlement or the General Release.

5           55.     With respect to the General Release, Plaintiff stipulates and agrees that, upon the  
6 Effective Date, Plaintiff shall be deemed to have, and by operation of the Final Judgment shall  
7 have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions,  
8 rights and benefits of Section 1542 of the California Civil Code, or any other similar provision  
9 under federal or state law, which provides:

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

15           56.     Plaintiff may hereafter discover facts in addition to or different from those she now  
16 knows or believes to be true with respect to the subject matter of the General Release, but Plaintiff  
17 upon the Effective Date shall be deemed to have, and by operation of the Final Judgment shall  
18 have, fully, finally, and forever settled and released any and all of the claims released pursuant to  
19 the General Release whether known or unknown, suspected or unsuspected, contingent or non-  
20 contingent, which now exist, or heretofore have existed upon any theory of law or equity now  
21 existing or coming into existence in the future, including, but not limited to, conduct that is  
22 negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard  
23 to the subsequent discovery or existence of such different or additional facts.

24                   **FUNDING OF MAXIMUM SETTLEMENT AMOUNT**

25           57.     Defendants will pay to the Settlement Administrator the Maximum Settlement  
26 Amount (“MSA”) of \$3,100,000.00 in two payments: (1) \$1,550,000.00 paid on April 15, 2020;  
27 and (2) \$1,550,000.00 paid on October 15, 2020. Defendants are also required to pay, and will  
28 deliver to the Settlement Administrator, their share of taxes, including the employer’s portion of

1 payroll taxes, including but not limited to FICA, FUTA, and SDI contributions.

2 **NOTICE/APPROVAL OF SETTLEMENT AND**  
3 **SETTLEMENT IMPLEMENTATION**

4 58. As part of this Settlement, the Parties agree to the following procedures for  
5 obtaining Preliminary Approval of the Settlement, certifying the Class, and providing notice to  
6 the Class:

7 A. Preliminary Approval Hearing. Class Counsel shall notice a hearing before  
8 the Court to request Preliminary Approval of the Settlement. In conjunction with this hearing,  
9 Class Counsel will submit this Agreement (including Exhibits) which sets forth the terms of this  
10 Settlement.

11 B. Certification of Class. Simultaneous with the filing of the Agreement and  
12 solely for purposes of this Settlement, Class Counsel will request that the Court enter the  
13 Preliminary Approval Order, preliminarily approving the proposed Settlement, certifying the Class  
14 for settlement purposes only, setting a date for the Final Approval Hearing, and approving the  
15 proposed Class Notice. The Preliminary Approval Order shall provide for the manner and timing  
16 of mailing the Class Notice and related matters set forth in this Agreement.

17 C. Information Regarding Class. Within fourteen (14) calendar days of  
18 Preliminary Approval, Defendants shall provide the Settlement Administrator with a list showing  
19 the name, most current mailing address and telephone numbers indicated in Released Parties'  
20 records, employee social security number, and the number of Work Weeks for each Class Member  
21 during the Class Period ("Class Data List").

22 D. Class Notice to Class Members. The Settlement Administrator shall mail  
23 by first class U.S. mail, as set forth below, the Class Notice, Change of Address Form approved by  
24 the Court, and a preprinted return envelope to all persons who are shown by Released Parties'  
25 records to be Class Members.

26 E. Settlement Administrator. The Settlement Administrator selected by the  
27 Parties shall be CPT Group, Inc., which shall be responsible (a) for printing and mailing in both  
28 English and Spanish, the Class Notice, Change of Address Form and preprinted return envelope

1 (“Notice Packet”) as directed by the Court; (b) receiving and reviewing all communications from  
2 Class Members and others seeking information on eligibility as a Class Member; (c) establishing  
3 and setting up, and maintaining through the conclusion of settlement after which it will be shut  
4 down, a static website to host relevant information and documents about the Settlement; (d)  
5 consulting with counsel for the Parties as necessary concerning the Work Weeks for the Class  
6 Members, resolution of disputed claims, and status of the settlement process, (e) receiving and  
7 tracking Class Member requests for exclusions and other communications; (f) calculating and  
8 timely informing Defendants of all Tax Obligations arising from the Settlement Payments; (g)  
9 setting up an interest-bearing escrow account for receipt of the Maximum Settlement Amount; (h)  
10 calculating all payments and awards, including applicable taxes and withholdings, from the  
11 Maximum Settlement Amount; (i) calculating and performing distribution of Settlement Payments  
12 to Participating Class Members; (j) preparing and mailing payments for the Named Plaintiff  
13 Service Payment, Attorneys’ Fees and Costs Payment, PAGA Payment, and Tax Obligations; (k)  
14 submitting tax documents to applicable taxing authorities; (l) handling uncashed checks; (m)  
15 cooperating with counsel for the Parties as necessary to prepare declarations in support of the  
16 motion for preliminary and/or final approval of the Settlement; and (n) for such other tasks as the  
17 Parties set forth in this Agreement or as the Parties mutually agree or the Court orders the  
18 Settlement Administrator to perform. The Parties each represent they do not have any financial  
19 interest in the Settlement Administrator or otherwise have a relationship with the Settlement  
20 Administrator that could create a conflict of interest. The Parties agree to cooperate in the  
21 settlement administration process and to make all reasonable efforts to control and minimize the  
22 Settlement Administration Payment.

23 **CLASS NOTICE**

24 59. The Parties agree to the following procedures for giving notice of this Settlement to  
25 the Class:

26 A. After conducting a National Change of Address (“NCOA”) search on all  
27 Class Members and making the address corrections indicated, the Settlement Administrator shall  
28 mail the Notice Packet to each Class Member by first class U.S. Mail within ten (10) business

1 days of receipt of the Class Data List. The Class Notice shall include instructions on receiving a  
2 Settlement Payment, and timeline and manner in which to submit objections or to request  
3 exclusion from the Settlement. Class Members who do not return a timely request for exclusion  
4 are Participating Class Members who will be sent their individual Settlement Payment  
5 automatically without the need to return a claim form. The envelope containing the Notice Packet  
6 shall include the following language on the exterior:

7 **IMPORTANT LEGAL DOCUMENT:**

8 **You may be entitled to money from a class action**  
9 **settlement; your prompt reply to correct an**  
10 **incorrect address is required.**

11 B. Any Notice Packet returned to the Settlement Administrator with a  
12 forwarding address shall be re-mailed by the Settlement Administrator within five (5) business  
13 days of receipt of the returned Notice Packet. Any Notice Packets returned to the Settlement  
14 Administrator as non-deliverable shall be researched by the Settlement Administrator using the  
15 Class Member's social security number to determine any possible new address, and if a new  
16 address is located, the Notice Packet shall be re-mailed by the Settlement Administrator within  
17 five (5) business days of receipt of the returned Notice Packet. Settlement Class Members who  
18 received a re-mailed Notice Packet shall have their Objection/Exclusion Deadline extended fifteen  
19 (15) calendar days from the original Response Deadline.

20 C. Class Members will be responsible for keeping the Settlement  
21 Administrator apprised of any changes of address to ensure receipt of their Settlement Payments  
22 checks.

23 D. The Settlement Administrator shall provide Class Counsel, at least five (5)  
24 court days prior to the deadline for the filing of the Final Approval Motion, a declaration of due  
25 diligence and proof of mailing with regard to (i) the mailing of the Notice to the Class, (ii)  
26 attempts to locate Class Members, and (iii) the number of Class Members whose Notice Packets  
27 were returned as undeliverable after all attempts to locate a correct address. Class Counsel will  
28 file the declaration of due diligence with the Court concurrently with the filing of the Final



1 Approval Motion.

2 **PROCEDURE FOR OBJECTING TO OR REQUESTING EXCLUSION**  
3 **FROM THE SETTLEMENT**

4 60. Class Members who wish to object to the Settlement or to be excluded from the  
5 Class shall submit objections and/or requests for exclusion from the Class, using the following  
6 procedures:

7 A. Procedure for Objecting. The Class Notice shall provide that only Class  
8 Members may object to the Settlement and that Class Members who wish to object to the  
9 Settlement must return to the Settlement Administrator no later than the Objection/Exclusion  
10 Deadline. Any Objecting Class Member(s) must also make themselves available for deposition  
11 between the time the objection is filed and the date of the Final Approval/Settlement Fairness  
12 Hearing, and the objection must include the date when the objecting Class Member(s) will be  
13 available for deposition. Any objections not so submitted shall be argued to be waived. Anyone  
14 wishing to appear at the Settlement Final Approval/Fairness Hearing to object to the Settlement  
15 shall expressly so provide in his or her written objections. Class Member(s), or his or her  
16 attorney, intending to make an appearance at the Final Approval/Settlement Fairness Hearing,  
17 must deliver to Class Counsel and Defendant's counsel and file with the court, as soon as  
18 practicable, but no later than fifteen (15) calendar days prior to the Final Approval/Settlement  
19 Fairness Hearing, a Notice of Intention to Appear. The Notice of Intention to Appear must: (a)  
20 identify by name, address, telephone number, and detailed summary of testimony, all witnesses for  
21 whom the Settlement Class Member and/or their attorney intends to present any testimony (if  
22 any); and (b) identify all exhibits the Settlement Class Member and/or their attorney intends to  
23 offer in support of the objection and attach complete copies of all such exhibits. A Class Member  
24 who objects to the settlement will still be considered a Member of the Settlement Class unless he  
25 or she submits a valid and timely request for exclusion pursuant to Paragraph 60.B below. If any  
26 objecting Class Member wishes to speak at the Final Approval Hearing, that Class Member's  
27 written objection should include a request to speak at the Final Approval Hearing. The Class  
28 Notice will advise Class Members of this option. Class Counsel shall file copies of such

1 objections at the time the Motion for Order Granting Final Approval of Class Action Settlement is  
2 filed with the Court. Any Class Member who fails to timely file such a written statement of his or  
3 her intention to object shall be precluded from making any objection to this settlement, unless  
4 otherwise permitted by the Court. The date of the postmark on the return mailing envelope shall  
5 be the exclusive means used to determine whether an objection has been timely submitted. In the  
6 event that the postmark is illegible, the objection shall be deemed untimely unless it is received  
7 within five (5) calendar days after the Objection/Exclusion Deadline.

8           B.     Procedure for Requesting Exclusion. The Class Notice shall provide that  
9 Class Members who wish to exclude themselves from the Class must submit to the Settlement  
10 Administrator a written statement (as directed by the Class Notice) requesting exclusion from the  
11 Class (also referred to as “opt out”) no later than the Objection/Exclusion Deadline. Such written  
12 request for exclusion must contain the name, address, telephone number and the last four (4) digits  
13 of the social security number of the person requesting exclusion and must be postmarked on or  
14 before the Objection/Exclusion Deadline. In the event that the postmark is illegible, the request  
15 for exclusion shall be deemed untimely unless it is received within five (5) calendar days after the  
16 Objection/Exclusion Deadline. Any person who properly opts out of the Class using this  
17 procedure will not be entitled to any payment from the Maximum Settlement Amount and will not  
18 be bound by the Settlement or have any right to object, appeal or comment thereon. Class  
19 Members who fail to submit a valid and timely request for exclusion in the manner described in  
20 this paragraph, shall receive a Settlement Payment and shall be bound by all terms of the  
21 Settlement and any Judgment entered in this Action if the Settlement is approved by the Court,  
22 regardless of whether they ineffectively or untimely request exclusion from the Settlement.

23           C.     Option to Reject the Settlement. No later than ten (10) business days after  
24 the close of the regular or extended Objection/Exclusion Deadline, whichever is later, the  
25 Settlement Administrator shall provide to Class Counsel and Defendants’ Counsel a complete list  
26 of all persons who have timely requested exclusion from the Class. If more than five percent (5%)  
27 of the putative Class opts out of the Class Action by submitting timely requests for exclusion,  
28 Defendants will have the option at their sole discretion of rejecting the Settlement in its entirety.

1 Counsel for Defendants must make such election to reject the Settlement in a writing served on  
2 Class Counsel within thirty (30) days after expiration of the opt-out period set forth above. If  
3 Defendants make this election, they will assume full responsibility for the payment of the  
4 Settlement Administrator's fees and costs through the date of their election.

5 **NO SOLICITATION OF SETTLEMENT OBJECTIONS OR EXCLUSIONS**

6 61. The Parties agree to use their best efforts to carry out the terms of this Settlement.  
7 At no time shall any of the Parties or their counsel or agents (or the Settlement Administrator)  
8 seek to solicit or otherwise encourage anyone to submit written objections to the Settlement or  
9 requests for exclusion from the Class or encourage anyone to appeal from the Court's Judgment.

10 **CALCULATION OF SETTLEMENT PAYMENTS**

11 **AND TAX OBLIGATIONS PAYMENT**

12 62. The Settlement Administrator shall have the authority and obligation to calculate  
13 the amounts of Settlement Payments in accordance with the methodology set forth in this  
14 Agreement and orders of the Court.

15 A. Waiting Time Amount: Ten percent (10%) of the Net Settlement Amount  
16 shall be designated as the "Waiting Time Amount." Each participating Settlement Class Member  
17 who separated their employment from Defendants between April 7, 2014 and the end of the Class  
18 Period shall receive an equal, pro-rata share of the Waiting Time Amount.

19 B. Wage Statement / PAGA Amount: Ten percent (10%) of the Net  
20 Settlement Amount plus the sum of \$12,500 (representing the employees' share of the PAGA  
21 Payment) shall be designated as the "Wage Statement / PAGA Amount." Each participating Class  
22 Member who was employed by Defendants at any time from April 7, 2016 to the end of the Class  
23 Period shall receive a portion of the Wage Statement / PAGA Amount proportionate to the number  
24 of workweeks that he or she worked during the aforementioned time period.

25 C. Non-Exempt Amount: The remainder of the Net Settlement Amount shall  
26 be known as the "Non-Exempt Amount." Each participating Settlement Class Member shall  
27 receive a portion of the Non-Exempt Amount proportionate to the number of workweeks that he or  
28 she worked during the Class Period.

1           63.     The Parties agree that the formula for allocating the Settlement Payments to the  
2 Class is reasonable and that the payments are designed to provide a fair settlement to the Class,  
3 despite the uncertainties of the compensation and penalties alleged to be owed to the Class and the  
4 calculation of them.

5           64.     The Parties agree that twenty percent (20%) of each Settlement Payment shall be  
6 deemed wages for which the Settlement Administrator shall make all ordinary deductions from  
7 each Participating Class Member's gross Settlement Payment for local, state, and federal taxes and  
8 withholdings or any other applicable payroll deductions. The Parties further agree that forty  
9 percent (40%) of the gross Settlement Payment represents the payment of penalties, and that forty  
10 percent (40%) represents the payment of interest. The amounts allocated as wages shall be  
11 reported on IRS Form W-2. The amounts allocated as penalties and interest shall be reported on  
12 the IRS form 1099. The W-2 and 1099 forms shall be provided to the respective Participating  
13 Class Members, the Plaintiff, and applicable governmental authorities by the Settlement  
14 Administrator.

15           65.     Each Participating Class Member will be responsible for paying all applicable  
16 local, state, and federal taxes on Settlement Payments paid under the terms of this Settlement, as  
17 described above. Each Participating Class Member shall cooperate with Defendants and the  
18 Settlement Administrator and provide documentation as requested to demonstrate such payment  
19 should any taxing authority challenge the allocation of the Settlement Payments.

20           66.     It shall be the responsibility of the Settlement Administrator or its designee to  
21 timely calculate and withhold from Settlement Payments payable to Participating Class Members  
22 all tax obligations; to timely calculate and withhold from the Maximum Settlement Amount the  
23 appropriate payroll deductions; to calculate and report to Defendants the necessary employer Tax  
24 Obligations, and to prepare and deliver the necessary tax documentation for signature by all  
25 necessary parties and, thereafter, to cause the appropriate deposits of withholding taxes and  
26 informational and other tax return filing to occur. Once received from Defendants, the Settlement  
27 Administrator shall pay the Tax Obligations arising out of the Settlement Payments to the  
28 appropriate taxing authorities within thirty (30) days of each distribution.

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**ATTORNEYS' FEES AND COSTS PAYMENT AND PLAINTIFF'S PAYMENT**

67. Class Counsel shall be paid up to \$1,033,333.33 or 33% of the Maximum Settlement Amount, as attorneys' fees, and Class Counsel's reasonable litigation costs and expenses, estimated not to exceed \$100,000.00. The amounts paid in fees and costs shall be for all claims for attorneys' fees, expenses or costs past, present and future incurred in the Action. Defendants shall not oppose Class Counsel's Attorney's Fees and Costs Payment request in these amounts. Class Counsel shall submit their application for an award of attorney's fees and costs to the Court at least one week prior to the Participating Class Members deadline to object to the Settlement.

68. The Attorneys' Fees and Costs Payment to Class Counsel shall constitute full satisfaction of any obligation to pay any amounts to any person, attorney or law firm for attorneys' fees, expenses or costs in the Action incurred by any attorney on behalf of the Plaintiff and the Class, and shall relieve Released Parties of any other claims or liability to any other attorney or law firm for any attorneys' fees, expenses and/or costs to which any of them may claim to be entitled on behalf of the Plaintiff and/or the Class.

69. Plaintiff shall be paid up to \$10,000.00 designated as Named Plaintiff Service Payment for having initiated this Action, work performed in furtherance of the Action, and the risks associated with the payment of attorneys' fees and costs in the event this matter had not successfully concluded, among other things. Defendants shall not oppose Plaintiff's Service Payment request in this amount. The Named Plaintiff Service Payment approved by the Court shall be a part of, and paid from, the Maximum Settlement Amount. This payment shall not have any state or federal taxes withheld and shall be reported on IRS Form 1099 and provided to the Plaintiff and applicable governmental authorities by the Settlement Administrator. Plaintiff shall be responsible for characterizing this payment for tax purposes and for paying any taxes owing.

70. Plaintiff will receive a Settlement Payment in addition to the Named Plaintiff Service Payment.

**PAGA PAYMENT**

71. The Parties have allocated a total of \$50,000.00 to settle the claims of the Class

1 under Labor Code § 2699. Labor Code § 2699(i) requires any settlement under this section be  
2 distributed 75% to the State’s Labor Workforce Development Agency (“LWDA”) for enforcement  
3 of labor laws and education of employers and 25% to the aggrieved employees. Accordingly,  
4 \$37,500.00 will be issued and paid to the LWDA, and the remaining \$12,500.00 will remain in the  
5 Net Settlement Amount to be distributed pursuant to the formula set forth herein.

6 **DEFENDANTS’ LEGAL FEES**

7 72. All of Defendants’ own legal fees, costs and expenses incurred in the Action shall  
8 be borne by Defendants.

9 **FINAL APPROVAL HEARING AND ENTRY OF ORDER AND JUDGMENT**

10 73. Following the Objection/Exclusion Deadline, the Parties will ask the Court to  
11 conduct a Final Approval Hearing. Upon final approval of the Settlement by the Court at or after  
12 the Final Approval Hearing, the Parties shall present the Final Approval Order and the Judgment  
13 to the Court for its approval and entry. Class Counsel shall submit the final approval papers to  
14 Defendants’ Counsel for their review no less than three (3) business days prior to filing such  
15 papers with the Court.

16 **PROCEDURE FOR PAYMENT OF SETTLEMENT PAYMENTS**

17 74. Following Final Approval, and solely for purposes of this Agreement, the  
18 Settlement Payments shall be distributed in accordance with the following eligibility  
19 requirements:

20 A. Class Members Who Opt Out of Class. Class Members who submit valid  
21 and timely requests for exclusion pursuant to the Class Notice are not Participating Class  
22 Members, are not entitled to any Settlement Payment and will not be bound by this Settlement or  
23 any order or judgment entered by the Court approving this Settlement.

24 B. Participating Class Members. All Participating Class Members shall  
25 receive a Settlement Payment under the plan of allocation and will be bound by the terms of the  
26 Settlement and any order or judgment entered by the Court approving this Settlement.

27 75. Class Members will receive Settlement Payments automatically without the  
28 necessity of returning Claim Forms, as long as they do not return a timely request for exclusion.

1           76. Settlement Payments to Participating Class Members shall be paid pursuant to the  
2 formula and at the times set forth in this Agreement. Each Notice Packet mailed to Settlement  
3 Class Members shall contain a Notice of Settlement Award, which shall disclose the amount of the  
4 Settlement Class Member's estimated individual Settlement Payment, as well as all of the  
5 information that was used from Defendants' records in order to calculate the individual Settlement  
6 Payment, including their number of workweeks worked during the Class Period. Settlement Class  
7 Members will have the opportunity, should they disagree with Defendants' records regarding the  
8 information stated in their Notice of Settlement Award, to provide documentation and/or an  
9 explanation to show contrary information. Any such dispute, including any supporting  
10 documentation, must be mailed to the Settlement Administrator and postmarked by the  
11 Objection/Exclusion Deadline. If there is a dispute, the Settlement Administrator will consult with  
12 the Parties to determine whether an adjustment is warranted. Any disputes that remain unresolved  
13 as of the Final Approval Hearing shall be submitted to the Court for a final determination.

14           77. Any Settlement Payment checks issued to Participating Class Members shall  
15 remain valid and negotiable until one hundred eighty (180) calendar days after the date of issuance  
16 of the Settlement Payment checks and may thereafter automatically be canceled if not cashed by a  
17 Participating Class Member within that time. The sums represented by uncashed checks will be  
18 transmitted to the California State Bar's Justice Gap Fund , in the name of the Class Member(s).  
19 The Parties agree that such a distribution complies with the provisions of California Code of Civil  
20 Procedure § 384, as good cause exists for such a distribution because it will further the underlying  
21 purpose of the class action, which is to return allegedly unpaid wages to the Class Members.

22           78. No person shall have any claim against the Released Parties, Defendants' Counsel,  
23 the Plaintiff, the Class, Class Counsel or the Settlement Administrator based on mailings,  
24 calculations, distributions and payments made in accordance with or pursuant to this Agreement.

#### 25                                   **NULLIFICATION OF SETTLEMENT AGREEMENT**

26           79. In the event: (i) the Court does not enter any Order as requested; (ii) the Court does  
27 not finally approve the Settlement; (iii) the Court does not enter a Judgment which becomes final  
28 as a result of the occurrence of the Effective Date; or (iv) the Settlement does not become effective

1 for any other reason, including Defendants' decision to reject the Settlement in the event more  
2 than five percent (5%) of the putative Class timely requests exclusion as set forth herein, or an  
3 objection which is sustained in the trial court and on all appeals, this Agreement shall be null and  
4 void and any order or judgment entered by the Court in furtherance of this Settlement shall be  
5 treated as withdrawn or vacated by stipulation of the Parties. In such a case, the Parties shall be  
6 returned to their respective statuses as of the date and time immediately before the execution of  
7 this Agreement, and the Parties shall proceed in all respects as if this Agreement had not been  
8 executed. In the event an appeal is filed from the Court's Judgment, or any other appellate review  
9 is sought prior to the Effective Date, administration of the Settlement shall be stayed pending final  
10 resolution of the appeal or other appellate review.

#### 11 **NOTIFICATION AND CERTIFICATION BY SETTLEMENT ADMINISTRATOR**

12 80. The Settlement Administrator shall keep Defendants' Counsel and Class Counsel  
13 apprised of all distributions of Settlement Payments and upon completion of administration of that  
14 portion of the Settlement, the Settlement Administrator shall provide written certification of  
15 progress of such completion to counsel for all Parties and the Court as requested.

#### 16 **PRIVACY OF DOCUMENTS AND INFORMATION**

17 81. Class Counsel agrees none of the documents and information provided to them by  
18 Defendants shall be used for any purpose other than prosecution and resolution of this Action.

#### 19 **GENERAL PROVISIONS**

20 82. Exhibits. The terms of this Agreement include the terms included in Exhibits 1-4,  
21 which are incorporated by reference as though fully set forth. Any exhibits to this Agreement are  
22 an integral part of the Settlement. Any changes to exhibits following preliminary approval by the  
23 Court, shall be approved by all Parties, but shall not be re-submitted to the Court if changes are  
24 minor, clerical and do not materially alter the originally submitted documents.

25 83. Headings. The descriptive headings of any paragraphs or sections of this  
26 Agreement are inserted for convenience of reference only and do not constitute a part of this  
27 Agreement.

28 84. Interim Stay of Proceedings. The Parties agree to hold all proceedings in the



1 Action, except such proceedings necessary to implement and complete the Settlement, in abeyance  
2 pending the Final Approval Hearing to be conducted by the Court.

3 85. Amendment or Modification. This Agreement may be amended or modified only  
4 by a written instrument signed by counsel for all Parties or their successors-in-interest.

5 86. Entire Agreement. This Agreement and any attached Exhibits constitute the entire  
6 agreement among these Parties, and no oral or written representations, warranties, inducements or  
7 covenants have been made to any Party concerning this Agreement or its Exhibits other than the  
8 representations, warranties, inducements and covenants contained and memorialized in such  
9 documents. All prior or contemporaneous negotiations, agreements, understandings, and  
10 representations, whether written or oral, are expressly superseded and are of no further force and  
11 effect. Each of the Parties acknowledge that they have not relied on any promise, representation  
12 or warranty, express or implied, not contained in this Agreement.

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

23 88. Binding Agreement. Subject to the limitations in Paragraph 79, the Parties intend  
24 this Agreement shall be fully enforceable and binding on all Parties, including Class Members,  
25 and that it shall be admissible and subject to disclosure in any proceeding to enforce its terms,  
26 notwithstanding the mediation confidentiality provisions that otherwise might apply under federal  
27 or state law. The Parties further agree that this Agreement is enforceable pursuant to California  
28 Code of Civil Procedure section 664.6.

1           89.    Binding on Successors. This Agreement shall be binding upon, and inure to the  
2 benefit of, the heirs, beneficiaries or successors of the Parties.

3           90.    Assignment. None of the rights, commitments, or obligations recognized under  
4 this Agreement may be assigned by any Party, Class Member, Class Counsel, or Defendants'  
5 Counsel without the express written consent of each other Party and their respective counsel. The  
6 representations, warranties, covenants, and agreements contained in this Agreement are for the  
7 sole benefit of the Parties under this Agreement and shall not be construed to confer any right or  
8 any remedy to any other person.

9           91.    California Law Governs. All terms of this Agreement and the Exhibits shall be  
10 governed by and interpreted according to the laws of the State of California.

11          92.    Venue. Any adjudicated dispute regarding the interpretation or validity of or  
12 otherwise arising out of this Agreement, or relating to the Action or the Released Claims, shall be  
13 subject to the exclusive jurisdiction of the Court in which the Parties seek approval of this  
14 Settlement, and the Plaintiff, Class Members, and Defendants agree to submit to the personal and  
15 exclusive jurisdiction and venue of that Court.

16          93.    Counterparts. This Agreement may be executed in one or more counterparts. All  
17 executed counterparts and each of them shall be deemed to be one and the same instrument.

18          94.    Facsimile and Electronic Signatures. A signed facsimile or electronic version of  
19 this Agreement shall have the same force and effect as a signed original of this Agreement.

20          95.    Jurisdiction of the Court. The Court shall retain jurisdiction solely with respect to  
21 the interpretation, implementation and enforcement of the terms of this Agreement and all orders  
22 and judgments entered in connection with the Agreement, and the Parties and their counsel submit  
23 to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing this  
24 Agreement and all related orders and judgments entered in connection. In the event judicial  
25 intervention or enforcement is necessary, the prevailing party shall be entitled to an award or  
26 attorneys' fees, costs and interest.

27          96.    Cooperation and Drafting. Each of the Parties has cooperated in the drafting and  
28 preparation of this Agreement; and the drafting of this Agreement shall not be construed against

1 any of the Parties.

2 97. Invalidity of Any Provision. The Parties request that before declaring any  
3 provision of this Agreement invalid, the Court shall first attempt to construe all provisions valid to  
4 the fullest extent possible consistent with applicable precedents.

5 98. Plaintiff's Waiver of Right to be Excluded and Object. Plaintiff agrees to sign this  
6 Agreement and by signing this Agreement is bound by the terms stated and further agrees not to  
7 request to be excluded from the Class and agrees not to object to any of the terms of this  
8 Agreement. Any such request for exclusion or objection shall be void and of no force or effect.

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11 **[SIGNATURES ON FOLLOWING PAGE]**

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**PLAINTIFF AND DEFENDANTS**

Dated: August 19, 2019

Azyr Baranka  
Plaintiff

Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Defendants

**COUNSEL FOR THE PARTIES**

Dated: August 19, 2019

HOGUE & BELONG  
LAW OFFICES OF DEVON K. ROEPCKE, PC

By: Devon K. Roepcke  
Jeffrey L. Hogue  
Tyler J. Belong  
Devon K. Roepcke  
Attorneys for Plaintiff, the Class, and  
the Aggrieved Employees

Dated: \_\_\_\_\_, 2019

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: \_\_\_\_\_  
Jeffrey S. Ranen  
Katherine C. Den Bleyker  
Jack E. Jimenez  
Attorneys for Defendants

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PLAINTIFF AND DEFENDANTS

Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Plaintiff

Dated: Aug 23<sup>rd</sup>, 2019

M. Mett  
Defendants

COUNSEL FOR THE PARTIES

Dated: \_\_\_\_\_, 2019

HOGUE & BELONG  
LAW OFFICES OF DEVON K. ROEPCKE, PC

By: \_\_\_\_\_  
Jeffrey L. Hogue  
Tyler J. Belong  
Devon K. Roepcke  
Attorneys for Plaintiff, the Class, and  
the Aggrieved Employees

Dated: Aug 23, 2019

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: [Signature]  
Jeffrey S. Ranch  
Katherine C. Den Bleyker  
Jack E. Jimenez  
Attorneys for Defendants