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8 Victor Lopez, individually and on behalf of all others  
9 similarly situated

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20 West MB Management LLC

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
22 **FOR THE COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE**

23 VICTOR LOPEZ, an Individual, on behalf of  
24 himself and all others similarly situated

25 Plaintiffs,

26 v.

27 WEST MB MANAGEMENT LLC and DOES  
28 1 through 100, Inclusive

Defendants.

CASE NO. 19STCV41500

**CLASS ACTION**

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

[Assigned for All Purposes to:  
The Hon. Ann I. Jones]

Action Filed: November 19, 2019  
Trial Date: None Set

Subject to final approval by the Court, which counsel and parties agree to pursue and recommend in good faith, Plaintiff Victor Lopez, individually ("Named Plaintiff") and on behalf of all employees similarly situated, and Defendant WEST MB MANAGEMENT LLC (hereinafter

1 “Defendant”) hereby agree to the following binding settlement of the class action case captioned  
2 as *Victor Lopez v West MB Management LLC*. filed in the Los Angeles Superior Court, Case No.  
3 19STCV41500 (the “Action”).

4 **I. DEFINITIONS**

5 As used herein, the following terms are defined as:

6 1. “Action” means, and refers to, the case captioned *Victor Lopez v West MB*  
7 *Management LLC* in the California Superior Court for the County of Los Angeles, Case No.  
8 19STCV41500.

9 2. “Agreement,” “Settlement,” or “Stipulation” mean and refer to this Joint  
10 Stipulation and Settlement of Class Action Claims.

11 3. “Aggregate Workweek Number” means, and refers to, the sum of all of the Class  
12 Members’ Total Workweeks which will be used to calculate Participating Class Members’  
13 Individual Settlement Payments. The Settlement Payments to be paid to Participating Class  
14 Members shall be each individual Class Member’s proportional share of the Aggregate Workweek  
15 Number. Defendant represents that there are no more than 450 Class Members. If the number of  
16 Class Members at the time of preliminary approval increases by more than ten percent (10%) of  
17 the number set forth herein, then the Gross Fund Value shall increase in the exact proportionate  
18 amount as any increase in class size beyond the ten percent (10%) (e.g., 12% increase = 2%  
19 proportionate increase in Gross Fund Value).

20 4. “Attorneys’ Fees and Cost Award” means and refers to the amount authorized by  
21 the Court to be paid to Class Counsel for the services they have rendered, and expenses they have  
22 incurred, in prosecuting the Action. As set forth infra in Section III, Paragraph 8, Class Counsel  
23 shall request, and Defendant will not oppose, an award of attorneys’ fees of up to One Hundred  
24 Thirty Two Thousand Dollars (\$132,000) or Thirty-Three percent (33 %) of the Gross Fund Value  
25 and a Cost Award of up to Fifteen Thousand Dollars (\$15,000). The Attorneys’ Fees and Cost  
26 Award shall come out of the Gross Fund Value and will not increase the amount of the Gross  
27 Fund Value.

28 5. “Settlement Administrator” means, and refers to, CPT GROUP, or another

1 settlement administration provider upon which the Named Plaintiff, Class Counsel, Defendant, and  
2 Defendant's Counsel mutually agree.

3 6. "Settlement Administration Costs" means, and refers to, the amount that will be paid  
4 to the Settlement Administrator, and includes all costs incurred in administering the Settlement,  
5 which will be paid from the Gross Fund Value, as defined in Section I, Paragraph 37, infra. The  
6 Parties agree to work in good faith to minimize, as much as possible, the Settlement Administration  
7 Costs. Defendant will not object to any application for approval of the Settlement Administration  
8 Costs, provided the Settlement Administration Costs are paid out of the Gross Fund Value and will  
9 not increase the Gross Fund Value.

10 7. "Class" and "Class Member" mean and refer to a member of the class conditionally  
11 certified for settlement purposes only during the applicable Class Period, consisting of all current  
12 and former non-exempt employees who worked for Defendant in California at any time from  
13 November 19, 2015 through the date of preliminary approval of class action settlement.

14 8. "Class Counsel" and "Plaintiff's Counsel" means and refers to Bruce Kokozyan, Esq.  
15 of Kokozyan Law Firm, APC.

16 9. "Class List and Data Report" means a list of Class Members that Defendant will  
17 diligently and in good faith compile from its Human Resources, and/or Payroll employee  
18 information database. The Class List and Data Report shall be in excel format, and shall include  
19 each Class Member's full name; employee ID while employed with Defendant; dates of employment  
20 during which he or she was employed by Defendant; last known home address; and the last four  
21 digits of his or her Social Security number. Because Social Security numbers are included in the  
22 list, the Settlement Administrator will maintain the list in confidence, and shall only access and use  
23 the list to administer the settlement in conformity with the Court's orders.

24 10. "Class Period" means and refers to the period from November 19, 2015 through the  
25 date the Court grants preliminary approval of class action settlement.

26 11. "Complaint" means, and refers to, the operative complaint in this Action.

27 12. "Court" means and refers to the Superior Court of the State of California for the  
28 County of Los Angeles.

1 13. "Defendant" means and refers to West MB Management LLC.

2 14. "Defendant's Counsel" or "Defense Counsel" shall mean Rachel Lee and Vi Applen  
3 of Lewis, Brisbois Bisgaard & Smith LLP.

4 15. "Effective Date" the date on which the Court's final approval Order becomes final,  
5 meaning either : (a) if no one objects to the Settlement, then the Effective Date will be the date of  
6 Final Approval, as defined in Section I, Paragraph 18, infra; (b) if a Class Member timely objects to  
7 the Settlement and is overruled, and if an appeal is not timely sought from the Final Order and  
8 Judgment, then the Effective Date will be sixty five (65) days after service of the Final Order and  
9 Judgment by Plaintiff on Defendant and any Objectors; or (c) if a Class Member timely objects to  
10 the settlement and if a timely appeal is sought from the Final Order and Judgment, then the Effective  
11 Date shall be twenty (20) days after the applicable appellate court has rendered a final decision or  
12 opinion affirming the trial court's final approval, and the applicable date for seeking further  
13 appellate review has passed, or twenty (20) days after any such Appeal has been either dismissed or  
14 withdrawn by the appellant or the time for filing an appeal expires.

15 16. "Excluded Class Members" means and refers to all Class Members who timely and  
16 validly submit a written request to be excluded from the Class on or before the Objection/Exclusion  
17 Deadline Date.

18 17. "Final Approval" means and refers to the Court's order granting final approval of  
19 the Settlement.

20 18. "Final Approval Date" means and refers to the date on which the Court's Final  
21 Approval Order is entered.

22 19. "Final Approval Hearing" or "Final Fairness Hearing" means and refers to the  
23 hearing at which the Court considers whether to approve the Settlement and to enter the Final  
24 Approval Order.

25 20. "General Release" means and refers to the release in which the Named Plaintiff, in  
26 his/her individual capacity and with respect to his individual claims only, and in exchange for his  
27 Service Award, agrees to release the Released Parties from all claims, demands, rights, liabilities  
28 and causes of action of every nature and description whatsoever, known or unknown, asserted or

1 that might have been asserted, whether in tort, contract, and/or any state or federal statute, rule or  
2 regulation arising out of, relating to, or in connection with any act or omission by or on the part of  
3 any of the Released Parties including a waiver of Civil Code §1542.

4 21. "Individual Settlement Payment" means and refers to the amount to be paid to each  
5 individual Participating Class Members from the Net Fund Value. The estimated Individual  
6 Settlement amount shall be indicated on the Notice. Individual Settlement Payment for each  
7 individual Participating Class Member will result from the calculations set forth in Section III,  
8 paragraph 12, *infra*, less all applicable state and federal withholding taxes, including FICA, FUTA  
9 and SDI contributions and any other applicable payroll deductions required by law as a result of the  
10 payment of the amount allocated to such Participating Class Member under the terms of this  
11 Stipulation.

12 22. "Named Plaintiff" means Victor Lopez.

13 23. "Net Fund Value" or "NFV" means, and refers to, the funds available to be  
14 distributed to Participating Class Members from the Gross Fund Value after payment of any  
15 Attorneys' Fees and Cost Awards, Service Award, Settlement Administration Costs, and the  
16 PAGA payment.

17 24. "Notice" or "Notice Packet" means and refers to the "Notice of Class Action  
18 Settlement" that the Court directs to be sent via regular mail to all Class Members (substantially in  
19 the forms annexed hereto as Exhibit 1).

20 25. "Objection/Exclusion Deadline" means and refers to the date no later than forty  
21 five (45) calendar days after the date the Notice Packets are mailed (judged by the postmark date)  
22 to Class Members by the Settlement Administrator, on or before which a Class Member, may (1)  
23 validly submit a Notice of Objection, (2) submit a Request for Exclusion, or (3) challenge with  
24 documentary evidence his or her Total Workweeks.

25 26. "PAGA Payment" means and refers to Twelve Thousand Dollars (\$12,000) of the  
26 Gross Fund Value, which constitutes penalties pursuant to California's Private Attorneys General  
27 Act of 2004 (California Labor Code § 2699 *et seq.*, or "PAGA,") and pursuant to Labor Code  
28 Section 2699(i), which will be distributed as follows: 25% to the Participating Class Members and

1 75% to the California Labor and Workforce Development Agency, which shall be Nine Thousand  
2 Dollars (\$9,000). The 25% portion of the PAGA Payment that shall be paid to the PAGA  
3 members shall remain within the Net Fund Value so that it is available to be included within the  
4 calculation of the Participating Class Members' Individual Settlement Payments. All Class  
5 Members shall automatically receive their portion of the PAGA Penalties regardless of their  
6 decision to opt-out of the Settlement if the PAGA payment is approved by the Court.

7 27. "PAGA Period" means the period from December 20, 2018 to the Court's granting  
8 of Preliminary Approval of the class action settlement.

9 28. "PAGA Members" means all current and former non-exempt employees of  
10 Defendants who were employed by Defendant in the State of California at any time during the  
11 PAGA Period.

12 27. "Participating Class Member" means and refers to any and all Class Members who  
13 are not Excluded Class Members.

14 28. "Parties" means, and refers to Defendant, the Named Plaintiff, and the Class  
15 Members.

16 29. "Preliminary Approval Order" means, and refers to, the Order issued by the Court  
17 preliminarily approving the terms of the Settlement.

18 30. "Preliminary Approval Date" means and refers to the date that the Court enters the  
19 Preliminary Approval Order.

20 31. "Preliminary Approval Hearing" means and refers to the hearing on Named  
21 Plaintiff's Motion for Preliminary Approval, as discussed in Section III, Paragraph 10, *infra*.

22 32. "Qualified Settlement Fund" means and refers to the fund to be established by the  
23 Settlement Administrator pursuant to Internal Revenue Code Section 1.468B-1 into which  
24 Defendant will deposit the Gross Fund Value within fourteen (14) days following the Effective  
25 Date. Defendant shall also deposit the employer's share of payroll taxes into the Qualified  
26 Settlement Fund within fourteen (14) days following the Effective Date.

27 33. "Released Claims" is defined as follows: Upon the Effective Date and after  
28 Defendant fully funds the Gross Fund Value, Participating Class Members shall fully and finally

1 release and discharge the Released Parties from all claims, rights, demands, damages, liabilities  
2 and causes of action, contingent or vested, in law or in equity and arising at any time during the  
3 Class Period, for unpaid wages or other compensation, and/or related penalties, interest, costs,  
4 attorneys' fees, punitive damages, and/or injunctive or other equitable remedies, allegedly owed or  
5 available, for claims arising out of, or related to the claims, allegations and operative facts asserted  
6 in the operative complaint, or which could have been asserted in the operative, including claims:  
7 (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to pay overtime  
8 wages at the legal overtime rate; (4) failure to provide meal periods; (5) failure to provide paid rest  
9 periods; (6) failure to timely furnish accurate itemized wage statements (Labor Code section 226);  
10 (7) Violation of Labor Code section 203; (8) Unfair Business Practices in Violation of Business  
11 and Professions Code section 17200, et. seq. based on the preceding claims; (9) Violation of the  
12 California Private Attorney's General Act (PAGA) based on the preceding claims pursuant to  
13 Plaintiff's notice to the LWDA , the relevant Wage Orders issued by the Industrial Welfare  
14 Commission, any and all claims for attorneys' fees and costs, and/or California Code of Civil  
15 Procedure section 1021. Further, any Participating Class Member who cashes his or her  
16 settlement check will be deemed to have opted into the action for purposes of the Fair Labor  
17 Standards Act (29 U.S.C. § 203 et seq.) ("FLSA") and, their Released Claims include any and all  
18 claims those Settlement Class Members may have under the FLSA arising during the Settlement  
19 Period relating to the alleged claims. These releases are only for the Class Period of this  
20 settlement.

21 34. "Released Parties" means and refers to Defendant West MB Management , LLC  
22 and its respective former, current and future parent companies, subsidiaries, affiliates, employees,  
23 managers, investors, shareholders, members, agents (including, without limitation, any investment  
24 bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers,  
25 directors and employees) predecessors, successors, and assigns.

26 35. "Service Award" means and refers to the amount that the Court authorizes to be  
27 paid to the Named Plaintiff over and above his/her Individual Settlement Payment, in recognition  
28 of Named Plaintiff's efforts in assisting with the prosecution of the Action on behalf of the Class

1 Members and in return for executing a General Release of all Claims against Released Parties.  
2 Named Plaintiff will request, and Defendant will not oppose, a Service Award up to Seven  
3 Thousand Five Hundred Dollars (\$7,500). Named Plaintiff will be issued an IRS Form 1099 in  
4 connection with his Service Award.

5 36. "Settlement Award" means and refers to the total portion of the Net Fund Value  
6 payable to each Class Member after deduction of all applicable state and federal employment  
7 withholding taxes, FICA and FUTA contributions and any other applicable payroll deductions  
8 required by law.

9 37. "Gross Fund Value" means, and refers to, the total amount that Defendant will be  
10 required to pay by this Stipulation. The Gross Fund Value consists of the Attorneys' Fees and  
11 Costs Award, the Service Award, the Settlement Administration Costs, the PAGA Payment and  
12 the Net Fund Value. The Gross Fund Value is equal to, and shall not exceed Four Hundred  
13 Thousand Dollars (\$400,000). The Parties further agree, covenant, and represent that Defendant  
14 shall be required to pay no more than the Gross Fund Value of Four Hundred Thousand Dollars  
15 (\$400,000) plus also the employer side share of payroll taxes, as described below. There is no  
16 reversion to Defendant of the Gross Fund Value as this is a common fund settlement.

17 38. "Workweek" is defined as any regular workweek in which a class member worked  
18 one shift for Defendant.

19 39. "Total Workweeks" means and refers to the total of all the Workweeks a Class  
20 Member was employed during the Class Period. The total number of Workweeks between the later  
21 of either a Class Member's first date of employment with Defendant or the beginning of the Class  
22 Period, inclusive, and the earlier of either the Class Member's last day of employment with  
23 Defendant or the end of the Class Period, inclusive, shall be a Class Member's Total Workweeks  
24 for purposes of determining the Participating Class Member's Individual Settlement Payment.

25 **II. RECITALS**

26 This Stipulation is made by the Named Plaintiff on behalf of himself/herself and each of the  
27 other Class Members, on the one hand, and the Defendant, on the other hand, in this Action, and is  
28 subject to the approval of the Court.



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**A. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY**

At or about the time that the Named Plaintiff files his/her motion for preliminary approval of this Settlement, the Named Plaintiff shall request certification of the Class as defined in Section I, Paragraph 7, *supra*, for settlement purposes only.

**Limitation on Effect of Certification.**

The certification of the Class – for settlement purposes only – shall not constitute, in this or any other proceeding, an admission of any kind by Defendant, including without limitation, that certification of a class or collective action for trial purposes is appropriate or proper or that Named Plaintiff could establish any of the requisite elements for class or collective treatment of any of the claims in the Action. In the event that the Settlement is not finally approved, or the Settlement is otherwise terminated or rendered null and void, the certification of the Class shall be automatically vacated and shall not constitute evidence or a binding determination that the requirements for certification of a class or collective action for trial purposes in this Action or in any other actions are satisfied. In such circumstances, Defendant expressly reserves all rights to challenge the Class certification for any purpose other than settlement purposes in this Action, or in any other action, on all available grounds as if no class had been certified for settlement purposes in the Action, and no reference to the prior certification of a class, or any documents related thereto, shall be made available for any purpose. Additionally, the Parties stipulate that to further the certification for settlement purposes, and for no other purpose or effect, the Named Plaintiff is typical of other Class Members and can represent the Class.

**B. INVESTIGATION IN THE CLASS ACTION**

The Parties have conducted significant investigation of the facts and law during the prosecution of this Action. Discovery and investigation included: the exchange of informal discovery between Plaintiff and Defendant including the production by Plaintiff of all documents related to Plaintiff’s employment with Defendant; the production of documents by Defendant including Defendant’s employee handbooks, policies and procedures regarding the payment of wages, time keeping, overtime, meal and rest periods; and the production of detailed class-wide payroll and time punch data by Defendant. Plaintiff’s counsel retained an expert to review timekeeping records and payroll records and to assist in the preparation of a damage analysis for this litigation. Also there were

1 numerous conferences between representatives of the Parties and a full day-long mediation session  
2 on January 21, 2021 with Steve Rottman, Esq. , an experienced mediator of wage-and-hour class  
3 actions .

4 **C. BENEFITS OF SETTLEMENT TO CLASS MEMBERS**

5 Named Plaintiff and Class Counsel recognize the expense and length of continued  
6 proceedings necessary to litigate their disputes through trial and through any possible appeals.  
7 Named Plaintiff has also taken into account the uncertainty and risk of the outcome of further  
8 litigation, and the difficulties and delays inherent in such litigation. Named Plaintiff and Class  
9 Counsel are also aware of the burdens of proof necessary to establish liability for the claims  
10 asserted in the Action, both generally and in response to Defendant's defenses thereto (many of  
11 which have been shared at the mediation and in settlement discussions). Named Plaintiff and Class  
12 Counsel have also taken into account the extensive settlement negotiations conducted. Named  
13 Plaintiff and Class Counsel have also taken into account Defendant's agreement to enter into a  
14 settlement that confers substantial relief upon the Class Members. Based on the foregoing, Named  
15 Plaintiff and Class Counsel have determined that the Settlement set forth in this Agreement is a  
16 fair, adequate and a reasonable settlement, and is in the best interests of the Class Members.

17 **D. DEFENDANT'S REASONS FOR SETTLEMENT**

18 Defendant has concluded that any further defense of this litigation would be protracted and  
19 expensive for all Parties. Substantial amounts of Defendant's time, energy and resources have  
20 been and, unless this Settlement is made, will continue to be devoted to the defense of the Claims  
21 asserted by the Class. Defendant has also taken into account the risks of further litigation in  
22 reaching its decision to enter into this Settlement. Defendant has, therefore, agreed to settle in the  
23 manner and upon the terms set forth in this Agreement to put to rest the Claims as set forth in the  
24 Action.

25 **E. DEFENDANT'S DENIAL OF WRONGDOING**

26 Defendant does not admit any wrongdoing and contend that it has fully complied with the  
27 law at all times in all respects. This Agreement is a compromise of disputed claims. Nothing  
28 contained in this Agreement and no documents referred to herein and no action taken to carry out

1 this Agreement may be construed or used as an admission by or against the Defendant or  
2 Defendant's Counsel as to the merits or lack thereof of the Claims asserted. Whether the  
3 Settlement is finally approved, neither this Settlement, nor any terms, document, statement,  
4 proceeding or conduct related to settlement, nor any reports or accounts thereof, shall in any event  
5 be (a) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for  
6 any purpose, including, but not limited to, evidence of a presumption, concession, indication, or  
7 admission by Defendant of any fault, wrongdoing, liability and/or unlawful activity whatsoever or  
8 any effort to certify a class or collective action; or (b) disclosed, referred to, or offered or received  
9 in evidence, in any further proceeding in this action, or any other civil, criminal or administrative  
10 action or proceeding, except for purposes of settling this Action or enforcing this Settlement, or as  
11 a defense to any claims released by the Settlement.

12 **F. NAMED PLAINTIFF'S CLAIMS**

13 Named Plaintiff has claimed and continues to claim that the Released Claims have merit  
14 and give rise to liability on the part of Defendant. This Agreement is a compromise of disputed  
15 claims. Nothing contained in this Agreement and no documents referred to herein and no action  
16 taken to carry out this Agreement may be construed or used as an admission by or against the  
17 Named Plaintiff or Class Counsel as to the merits or lack thereof of the Claims asserted.

18 **III. STIPULATION AND AGREEMENT**

19 ***NOW, THEREFORE, IT IS HEREBY STIPULATED,*** by and among the Named Plaintiff  
20 on behalf of the Class Members, on the one hand, and Defendant, on the other hand, and subject to  
21 the approval of the Court, that the Action is hereby being compromised and settled pursuant to the  
22 terms and conditions set forth in this Agreement, subject to the definitions and recitals set forth in  
23 Sections I and II, *supra*, which by this reference become an integral part of this Agreement, and  
24 subject to the following terms and conditions:

25 1. **Full Investigation.** Named Plaintiff and Class Counsel have fully investigated the  
26 factual and legal bases for the causes of action asserted in the Action.

27 2. **Release As To All Participating Class Members.**

28 Upon the Effective Date and after Defendant fully funds the Gross Fund Value, the

1 Participating Class Members, including the Named Plaintiff, release the Released Parties for the  
2 Released Claims for the Class Period.

3       3.     General Release By Named Plaintiff Only. In addition to the releases made by the  
4 Participating Class Members as set forth in Section I, Paragraphs 33 *supra*, Named Plaintiff, in  
5 exchange for, *inter alia*, the Service Award as requested or as otherwise authorized by the Court,  
6 will, as of the Effective Date, make the additional following General Release of all Claims, known  
7 or unknown, in exchange and consideration of the sum set forth in Section I, Paragraph 35, *supra*.  
8 Upon the Effective Date and Defendant fully funding the Gross Fund Value, Named Plaintiff  
9 agrees to the General Release of the Released Parties. Named Plaintiff also agrees to release all  
10 wage and hour Claims, including, but not limited to, overtime wages, meal and rest period  
11 sanctions, penalties under the Private Attorneys General Act and all other Released Claims. Also,  
12 without limiting the generality of the foregoing: **NAMED PLAINTIFF** also specifically agrees  
13 and acknowledges waiver of any right to recovery based on state or federal age, sex, gender,  
14 citizenship, pregnancy, race, color, national origin, marital status, religion, veteran status,  
15 disability, sexual orientation, medical condition or other anti-discrimination laws, including,  
16 without limitation, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act  
17 and the California Fair Employment and Housing Act, or based on the Family and Medical Leave  
18 Act, the Employee Retirement Income Security Act, the Worker Adjustment and Retraining Act,  
19 and the California Labor Code, all as amended, whether such claim be based upon an action filed  
20 by employees or by a governmental agency.

21       The General Release as to Named Plaintiff includes any unknown Claims that Named  
22 Plaintiff does not know or suspect to exist in his favor at the time of the General Release, which, if  
23 known by him, might have affected his settlement with, and release of, the Released Parties or  
24 might have affected his decision not to object to this Settlement or the General Release.

25       With respect to the General Release, Named Plaintiff stipulates and agrees that, upon the  
26 Effective Date, Named Plaintiff shall be deemed to have, and by operation of the Final Judgment  
27 shall have, expressly waived and relinquished, to the fullest extent permitted by law, the  
28 provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar

1 provision under federal or state law, which provides:

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

6 Named Plaintiff may hereafter discover facts in addition to or different from those he  
7 now knows or believes to be true with respect to the subject matter of the General Release, but  
8 Named Plaintiff upon the Effective Date shall be deemed to have, and by operation of the Final  
9 Judgment shall have, fully, finally, and forever settled and released any and all of the claims released  
10 pursuant to the General Release whether known or unknown, suspected or unsuspected, contingent  
11 or non-contingent, which now exist, or heretofore have existed upon any theory of law or equity  
12 now existing or coming into existence in the future, including, but not limited to, conduct that is  
13 negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard  
14 to the subsequent discovery or existence of such different or additional facts.

15 4. Service Award. Subject to Court approval, and expressly in exchange for the  
16 release of all Released Claims and for her time and effort in bringing and prosecuting this matter,  
17 Named Plaintiff shall be paid a Service Award up to a total of Seven Thousand Five Hundred  
18 Dollars (\$7,500), or such other distribution or lower amount as the Court may order. The Service  
19 Award shall be paid from the Gross Fund Value and shall not increase the Gross Fund Value. The  
20 Service Award shall be paid to the Named Plaintiff by the Settlement Administrator no later than  
21 ten (10) business days after Defendant delivers the Gross Fund Value to the Settlement  
22 Administrator for deposit into the Qualified Settlement Fund. The Parties agree that a decision by  
23 the Court to award Named Plaintiff an amount less than the amount stated above shall not be a  
24 basis for Class Counsel to void this Stipulation. The Settlement Administrator shall issue Named  
25 Plaintiff an IRS Form 1099 for the Service Award. Any amount awarded for service payments to  
26 the Named Plaintiff less than the requested amounts will result in the non-awarded funds to be  
27 awarded to Participating Class Members on a proportionate basis to the amount of their Individual  
28 Settlement Payment. The Named Plaintiff shall be solely and legally responsible to pay any and all  
applicable taxes on this payment. The Service Award shall be paid in addition to the Named  
Plaintiff's share of the Settlement Amount as a Participating Class Member.

1           5.     Tax Liability. Defendant makes no representations as to the tax treatment or legal  
2 effect of the payments called for hereunder, and Named Plaintiff and Participating Class Members  
3 are not relying on any statement or representation by Defendant in this regard. Named Plaintiff  
4 and Participating Class Members understand and agree that except for Defendant's payment of the  
5 employer's portion of any payroll taxes, they will be solely responsible for the payment of any  
6 taxes and penalties assessed on the payments described herein.

7           6.     CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT (FOR  
8 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY  
9 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER  
10 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS  
11 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR  
12 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS  
13 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE  
14 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN  
15 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31  
16 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED  
17 EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX  
18 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS  
19 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE  
20 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO  
21 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY  
22 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY  
23 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE  
24 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER  
25 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY  
26 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF  
27 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE  
28 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY

1 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS  
2 AGREEMENT.

3 7. Creation Of The Qualified Settlement Fund And Administration Of The Settlement.

4 Within fourteen (14) days after the Effective Date, Defendant shall deliver the Gross Fund  
5 Value of Four Hundred Thousand Dollars (\$400,000) as required by this Stipulation into the  
6 Qualified Settlement Fund created by the Settlement Administrator. Defendant shall also  
7 simultaneously deliver to the Settlement Administrator, Defendant's (Employer) share of payroll  
8 taxes, including but not limited to, FICA, FUTA and SDI contributions. In addition to the  
9 employer's portion of payroll taxes, payments from the Qualified Settlement Fund shall be made  
10 (1) for the Service Award to the Named Plaintiff, as specified in this Agreement and approved by  
11 the Court; (2) the Attorneys' Fees and Cost Award to be paid to Class Counsel, as specified in this  
12 Agreement and approved by the Court; (3) the Settlement Administration Costs; and (4) the  
13 amount allocated to PAGA penalties to be paid to the California Labor Workforce and  
14 Development Agency. The balance remaining shall constitute the Net Fund Value from which  
15 Individual Settlement Payments shall be made to Participating Class Members, less applicable  
16 taxes and withholdings.

17 8. Attorneys' Fees And Cost Award. Defendant agrees not to oppose or impede any  
18 application or motion by Class Counsel for attorneys' fees not in excess of One Hundred Thirty  
19 Two Thousand Dollars (\$132,000) or Thirty-Three percent (33 %) of the Gross Fund Value.  
20 Defendant further agrees not to oppose any application or motion by Class Counsel for the  
21 reimbursement of any actual costs associated with Class Counsel's prosecution of this matter not  
22 in excess of Fifteen Thousand Dollars (\$15,000). Class Counsel will provide verification of the  
23 cost amount that it is seeking to be reimbursed. Any amount awarded for attorneys' fees and costs  
24 to Class Counsel less than One Hundred Thirty Two Thousand Dollars (\$132,000) and Fifteen  
25 Thousand Dollars (\$15,000), respectively, will result in the non-awarded amounts to be awarded  
26 to Participating Class Members on a proportionate basis to the amount of their Individual  
27 Settlement Payments. Class Counsel shall be paid any Court-approved fees and costs no later than  
28 ten (10) business days after Defendant delivers the required funds to the Settlement Administrator

1 for deposit into the Qualified Settlement Fund. Class Counsel shall be solely and legally  
2 responsible to pay all applicable taxes on the payment made to Class Counsel. Forms 1099 --  
3 MISC, Box 14 shall be provided to Class Counsel for the payments made, and Class Counsel shall  
4 provide, before the Effective Date, properly completed Forms W-9.

5 9. Settlement Administrator. The Settlement Administrator shall be paid for the costs  
6 of administration of the Settlement out of the Gross Fund Value as deposited in the Qualified  
7 Settlement Fund. The estimate of such costs of administration for the disbursement of the Gross  
8 Fund Value is no more than Seventeen Thousand Dollars (\$17,000.) Any amount awarded for  
9 costs of administration to Settlement Administrator, or such other entity upon whom the Parties  
10 mutually agree, less than Seventeen Thousand Dollars (\$17,000) will result in the non-awarded  
11 amount to be awarded to Participating Class Members on a proportionate basis to the amount of  
12 their Individual Settlement Payments. This estimate includes all tasks required of the Settlement  
13 Administrator by this Agreement including the issuance of the Notice, the issuance of settlement  
14 checks, the required tax reporting on the settlement amounts, including the issuing of W2 and  
15 1099 forms (if any), the handling of Class Member questions and disputes and the calculation of  
16 employee withholding taxes and the employer payroll taxes, which will be remitted to the tax  
17 authorities by the Claims Administrator. At least sixteen (16) court days prior to the Final  
18 Approval Hearing, the Settlement Administrator shall provide the Court and all counsel for the  
19 Parties with a statement detailing the costs of administration of the Gross Fund Value and the  
20 breakdown of the Gross Fund Value.

21 10. Preliminary Settlement Hearing/Alterations to this Agreement. As part of this  
22 Settlement, the Parties agree to the following procedures for obtaining preliminary Court approval  
23 of the Settlement:

- 24 a. Plaintiff shall file a Motion for Preliminary Approval and request a hearing before  
25 the Court to request preliminary approval of the Settlement and to request the entry  
26 of the Preliminary Approval Order.
- 27 b. Simultaneous with and/or included in the filing of the Motion for Preliminary  
28 Approval, and solely for purposes of this Settlement, Named Plaintiff will request



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the Court to enter the Preliminary Approval Order, preliminarily approving the proposed Settlement, conditionally certifying the Class, for settlement purposes only, and setting a date for a Final Approval Hearing.

- c. In conjunction with the Motion for Preliminary Approval, Named Plaintiff will submit this Stipulation and Settlement of Class Action Agreement, which sets forth the terms of this Settlement Agreement, and will include proposed forms of all notices and other documents as attached hereto necessary to implement the Settlement. The Order shall provide for Notice of the Settlement to be sent to Class Members as specified herein. The Parties agree that Defendant's Counsel will be provided copies of all proposed notices and documents to review and provide input prior to delivery of same to Class Members.
- d. In the event any provision of the Settlement is rejected by the Court, the Parties will work in good faith to negotiate alteration of the rejected term(s). The Parties agree to use the services of mediator Steve Rottman, Esq. if informal efforts to negotiate alteration have been exhausted.
- e. If, following the Parties' good faith efforts and mediation, the Parties cannot agree on alterations, or if ultimately the Court does not grant preliminary or final approval of the Settlement in its entirety, or if the Court's final approval of the Settlement agreement is reversed or materially modified on appellate review, then this Settlement will become null and void. In such case, the Settlement shall not be used or be admissible in any subsequent proceedings, either in this Action, in this Court, or in any other Court, proceeding or forum.

11. Settlement Administration/Management. The Individual Settlement Payments shall be managed and administered as follows:

- a. Claims administrator, CPT Group, or such other entity upon whom the Parties mutually agree, shall be retained to serve as Settlement Administrator. The Parties each represent they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

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- b. Defendant shall provide the Settlement Administrator the Class List and Data Report within fourteen (14) days of the Preliminary Approval Date.
- c. Within fourteen (14) days of receipt of the Class List and Data Report, the Settlement Administrator shall mail the Notice Packet to each Class Member in accordance with Section III, Paragraph 13, *infra*.
- d. Participating Class Members will be eligible to receive an Individual Settlement Payment, calculated in accordance with Section III, Paragraph 12, *infra*.
- e. The Settlement Administrator shall provide Defendant's Counsel and Class Counsel a weekly report showing the names and number of Class Members who have objected to or requested exclusion from the Settlement (if any). Sixteen (16) court days prior to the Final Approval Hearing, the Settlement Administrator shall provide Defendant's Counsel and Class Counsel a final report showing the names and number of Class Members who have objected to or requested exclusion from the Settlement.
- f. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the Settlement.
- g. The Settlement Administrator shall be responsible for: establishing and maintaining a Qualified Settlement Fund; calculating the individual settlement payment to each Participating Class Member and the portion of the PAGA Payment each PAGA Member shall receive; translating the Class Notice to Spanish; printing and mailing the Notices as directed by the Court; conducting address searches for mailed Notices that are returned as undeliverable; receiving and reporting the objections/requests for exclusion and challenges to the Individual Settlement Payments submitted by Class Members; mailing Individual Settlement Payments to Participating Settlement Class Members; printing and issuing Settlement Payments, preparing IRS W2 and 1009 Tax Forms and any other filings required by any governmental taxing authority; providing declarations and/or other information to the Court as requested by the Parties and/or the Court; mailing the payment to the Labor Workforce Development

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Agency; and other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform (including the calculation and remittance of employer taxes which will be paid by Defendant in addition to Gross Fund Value). The Settlement Administrator shall keep Defendant, Defendant’s Counsel and Class Counsel timely apprised of the performance of all Settlement Administrator responsibilities.

- h. The Settlement Administrator, on Defendant’s behalf, shall have the authority and obligation to make payments, credits and disbursements, including payments and credits in the manner set forth herein to Participating Class Members, calculated in accordance with the methodology set out in this Agreement and orders of the Court.
- i. Any tax return filing required by this Agreement shall be made by the Settlement Administrator. Any expenses incurred in connection with such filing shall be a cost of administration of the Settlement.
- j. No person shall have any claim against Defendant or Defendant’s Counsel, the Named Plaintiff, Class Members, the Class, Class Counsel or the Settlement Administrator based on distributions and payments made in accordance with this Agreement.
- k. The Claims Administrator will provide to Defendant, as soon as practicable, but no later than 60 days after Preliminary Approval is granted, a fully-executed IRS W-9 form and a completed Supplier Profile and ACH Enrollment Form which Defendant requires to process and issue any payment.

12. Calculation Of Individual Settlement Payments.

This is an “all paid” settlement. There will be no reversion to Defendant. As such, if any Class Member timely and validly requests exclusion , that will not affect the amount of the Net Fund Value and their settlement share will be apportioned amongst participating Class Members.

The Individual Settlement Payments will be calculated as follows:

- a. Defendant will provide the Settlement Administrator each Class Members’ Total Workweeks in the Class List and Data Report or provide the Settlement Administrator the required information to calculate each Class Members’ Total

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- Workweeks, which shall be presumed to be correct.
- b. The Settlement Administrator will calculate the Aggregate Workweek Number by adding the sum of all of the Class Members' Total Workweeks.
  - c. The Settlement Administrator will divide the Net Fund Value by the Aggregate Workweek Number to calculate the weekly settlement amount.
  - d. The Settlement Administrator will calculate each Class Members' Individual Settlement Payment by first multiplying his or her Total Workweeks by the weekly settlement amount. Each Class Members' estimated Individual Settlement Award will be indicated on the Notice.
  - e. The Individual Settlement Award estimates indicated on the Notice are subject to change, depending on factors including: (i) how many Class Members become Excluded Class Members (resulting in their Total Workweeks being removed from the final Aggregate Workweek Number, thereby increasing the final weekly settlement amount; (ii) any changes to the Total Workweeks resulting from challenges to Total Workweeks submitted by Class Members resulting in workweek adjustments, which may increase or decrease the final Aggregate Workweek Number and the final weekly settlement amount; and (iii) any increases or reductions in the Net Fund Value which may result from, inter alia, changes to the actual amount of PAGA Payment, and/or Settlement Administration Costs approved by the Court. All Class Members shall receive their pro-rata share of any portion of the Net Fund Value allocated to PAGA penalties, irrespective of whether they opted out of the Settlement.
  - f. Each Participating Class Member's Individual Settlement Payment will be allocated as follows: (a) 20% as wages; and (b) 40 % as interest and; and (c) 40% as penalties. The portion allocated to wages ("Wage Component") shall be reported on an IRS Form W-2 and the portions allocated to interest and penalties (the "Non-Wage Component") shall be reported on an IRS Form-1099 by the Claims Administrator.
  - g. The employee's portion of employment taxes, including payroll deductions for state and federal withholding taxes, and any other applicable payroll deductions, shall be

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made from each Participating Class Members Wage Component, resulting in a “Net Wage Component.” The Claims Administrator will issue a W-2 for the Wage Component.

- h. No withholding shall be made on the Non-Wage Component of the settlement. The Claims Administrator will issue an IRS Form 1099 for the Non-Wage Component.
- i. Calculation of PAGA Portion of Individual Settlement Payments. The settlement administrator will calculate the total Workweeks for all PAGA Members by adding the number of Workweeks worked by each PAGA Member during the PAGA Period. The respective Workweeks for each PAGA Member will be divided by the total Workweeks for all PAGA Members, resulting in the Payment Ratio for each PAGA Member. Each PAGA Member’s Payment Ratio will then be multiplied by the employee portion of the PAGA Payment to calculate each PAGA Member’s estimated share of the PAGA Payment. PAGA Members shall receive this portion of their Individual Settlement Payment regardless of whether they opt out of participation regarding the class claims.
- j. The Settlement Administrator, on Defendant’s and Class Counsel’s collective behalf, shall have the authority and obligation to make payments, credits and disbursements, including payments and credits in the manner set forth herein, to Class Members calculated in accordance with the methodology set out in this Agreement and orders of the Court. The Settlement Administrator shall be responsible for calculating and withholding all required state and federal taxes.
- k. No person shall have any claim against Defendant, Defendant’s Counsel, the Named Plaintiff, Plaintiffs, the Class, Class Counsel, or the Settlement Administrator based on any errors or omissions in the distributions and payments that are required to be made in accordance with the terms of this Agreement.

13. Notice To Class Members. Notice of the Settlement shall be provided to all Class Members using the following procedures:

- a. Notice By First-Class Mail. Within fourteen (14) days after receipt of the Class List and Data Report, the Claims Administrator shall mail the Notice of Class Action Settlement, which

1 includes the proposed settlement terms and hearing date for court approval (substantially in the form  
2 annexed hereto as Exhibit 1), which has been mutually approved by counsel for the Parties, to the  
3 Class Members via first-class regular U.S. Mail. Prior to mailing, the Claims Administrator will  
4 perform a search based on the National Change of Address Database information to update and  
5 correct for any known or identifiable address changes. If a new address is obtained by a way of a  
6 returned Notice Packet, then the Claims Administrator shall promptly forward the original Notice  
7 Packet to the updated address via first-class regular U.S. mail indicating on the original Notice  
8 Packet the date of such re-mailing. The Response Deadline for Requests for Exclusion, Objections  
9 or workweek disputes will be extended ten (10) calendar days for any Class Member who is re  
10 mailed a Notice Packet by the Settlement Administrator, unless the 10th day falls on a Sunday or  
11 Federal holiday, in which case the Response Deadline will be extended to the next day on which the  
12 U.S. Postal Service is open.

13       b. No Requirement for a Claim Form. Class Members shall not be required to submit a  
14 Claim Form to receive an Individual Settlement Payment.

15       c. Objection/Exclusion Deadline Date and Deadline to Challenge Total Workweeks: Class  
16 Members will have forty five (45) calendar days from the mailing of the Notice Packet to submit  
17 an objection and/or request for exclusion from the Settlement, or challenge the Total Workweeks  
18 indicated on their Notice.

19       d. Procedure For Undeliverable Notices. Any Notices returned to the Settlement  
20 Administrator as non-delivered on or before the Objection/Exclusion Deadline Date shall be sent  
21 to the forwarding address affixed thereto within five (5) business days. If no forwarding address is  
22 provided, then the Settlement Administrator shall promptly attempt to determine a correct address  
23 using a single skip-trace, computer or other search using the name and address of the individual  
24 involved, and shall then perform a single re-mailing within five (5) business days. In the event the  
25 procedures in this paragraph are followed and the intended recipient of a Notice still does not  
26 receive the Notice, the Class Member shall be bound by all terms of the Settlement and any Final  
27 Judgment entered by the Court if the Settlement is approved by the Court.

28       e. No later than sixteen (16) court days prior to the Final Approval Hearing, the

1 Settlement Administrator shall provide Defendant's Counsel and Class Counsel: (i) the names and  
2 contact information of the Class Members objecting to or requesting exclusion from the  
3 Settlement; and (ii) the amount owed to each Participating Class Member.

4       14. Procedure For Objecting To or Requesting Exclusion From The Class Action  
5 Settlement, or Challenging Total Workweeks. The Class Members shall submit objections to the  
6 Settlement and/or request exclusion from the Settlement and/or submit a challenge to their Total  
7 Workweeks using the following procedures:

8       a. Procedure For Objecting. The Notice shall provide that those Class Members who  
9 wish to object to the Settlement shall mail a written statement of objection ("Notice of Objection")  
10 to the Settlement Administrator, no later than the Objection/Exclusion Deadline Date. The postmark  
11 date of the mailing shall be deemed the exclusive means for determining if a Notice of Objection is  
12 timely. The Notice of Objection must contain the Class Member's name, the last four digits of  
13 his/her social security number, dates of employment, current contact information, a statement  
14 providing the basis for the Class Member's objections, a statement advising if the objecting Class  
15 Member plans to address the Court at the Final Approval Hearing, and any legal briefs, papers or  
16 memoranda the objecting Class Member proposes to submit to the Court. Class Members regardless  
17 of whether or not they submit a written objection to the Claims Administrator will have the right to  
18 appear at the Final Approval Hearing in order to have their objections heard by the Court. No later  
19 than sixteen (16) court days before the Final Approval Hearing, the Claims Administrator shall  
20 provide counsel for the Parties with complete copies of all objections received, including the  
21 postmark dates for each objection. Class Counsel and Counsel for Defendant shall file any  
22 responses to any written objections submitted to the Court in accordance with this Settlement  
23 Agreement at least five (5) days before the Final Approval Hearing.

24       b. Procedure For Requesting Exclusion. The Notice shall provide that Class Members  
25 who wish to exclude themselves from the Class must submit a written request to be excluded  
26 ("Request for Exclusion") from the Class on or before the Objection/Exclusion Deadline Date. Such  
27 Request for Exclusion: (1) must contain the name, address, telephone number and the last four  
28 digits of the Social Security number of the person requesting exclusion; (2) must be signed by the  
person requesting exclusion; (3) must be returned by mail to the Settlement Administrator at the

1 specified address; (4) and must be postmarked on or before the Objection/Exclusion Deadline  
 2 Date. The date of the postmark on the return mailing envelope shall be the exclusive means used to  
 3 determine whether a request for exclusion has been timely submitted. Any Class Member who  
 4 requests an exclusion from the Class will not be entitled to any recovery under the Settlement and  
 5 will not be bound by the Settlement or have any right to object, appeal or comment  
 6 thereon. However, any request for exclusion shall not be effective as to the release of any claims  
 7 arising under California Labor Code sections 2698, et. seq. and all Class Members will be deemed  
 8 to have fully, finally and forever released, settled, compromised and discharged any and all Released  
 9 Claims arising under California Labor Code sections 2698, et seq. with respect to all of the Released  
 10 Parties, irrespective of whether they request to opt out/exclude themselves from the Settlement.  
 11 Class Members who fail to submit valid and timely a Request for Exclusion on or before the  
 12 Objection/Exclusion Deadline Date shall be Participating Class Members and shall be bound by all  
 13 terms of the Settlement and any Final Judgment entered in this Class Action if the Settlement is  
 14 approved by the Superior Court. No later than sixteen (16) court days before the Final Approval  
 15 Hearing, the Settlement Administrator shall provide counsel for the Parties with a complete list of  
 16 all members of the Settlement Class who have timely requested exclusion from the Settlement. At  
 17 no time shall any of the Parties or their counsel seek to solicit or otherwise encourage members of  
 18 the Settlement Class to submit a Request for Exclusion from the Settlement.

18 c. Procedure for Contesting Individual Settlement Payment: Each Class Members will  
 19 Have the opportunity, should he/she disagrees with Defendant's records regarding his/her Total  
 20 Workweeks as provided in his/her Notice, to provide documentation to show contrary employment  
 21 dates. To do so, Class Members must contact the Settlement Administrator, along with all applicable  
 22 documentary evidence to support his/her dispute regarding his/her Total Workweeks prior to the  
 23 Objection/Exclusion Deadline. Moreover, an individual can only dispute his/her number of Total  
 24 Workweeks if he/she does not exclude himself/herself from the Settlement. If there is a dispute, the  
 25 Settlement Administrator will consult with the Parties to determine whether a workweek adjustment  
 26 is warranted. Class Counsel and Defendant's Counsel shall meet and confer in an attempt to reach  
 27 an agreement regarding whether a workweek adjustment is warranted based on the documentary  
 28 evidence submitted by the Class Member to challenge his/her Total Workweeks. If they cannot



1 agree, the Settlement Administrator shall make the final determination of whether or not a workweek  
2 adjustment is warranted based on the documentary evidence submitted by the Class Member to  
3 challenge his/her Total Workweeks, and that determination shall be conclusive, final and binding  
4 on all Parties, including all Class Members. In the event that a workweek adjustment is warranted,  
5 the additional amount owed to said Class Member, if any, shall be paid as part of that Participating  
6 Class Member's Individual Settlement Payment, but Defendant shall not be required to tender or  
7 deposit any additional settlement sums due to any such adjustment.

8 d. No Solicitation Of Settlement Objections. The Parties agree to use their best efforts  
9 to carry out the terms of this Settlement. At no time shall any of the Parties or their counsel seek to  
10 solicit or otherwise encourage Class Members to submit written objections to the Settlement or  
11 appeal from the Order and Final Judgment.

12 15. Procedure For Payment Of Individual Settlement Payments:

- 13 a. Except for Excluded Class Members, all Participating Class Members will receive an  
14 Individual Settlement Payment.
- 15 b. Individual Settlement Payments for Class Members shall be paid exclusively from  
16 the Qualified Settlement Fund, pursuant to the settlement formula set forth herein,  
17 and shall be mailed within ten (10) business days after Defendant delivers the  
18 required funds to the Settlement Administrator for deposit into the Qualified  
19 Settlement Fund.
- 20 c. Should any question arise regarding the determination of eligibility for, or the amounts  
21 of, any Individual Settlement Payment under the terms of this Agreement, Class  
22 Counsel and Defendant's Counsel shall meet and confer in an attempt to reach  
23 agreement. If they cannot agree, the Settlement Administrator shall make the final  
24 determination, and that determination shall be conclusive, final and binding on all  
25 Parties, including all Class Members.
- 26 d. Any checks issued by the Settlement Administrator to Participating Class Members  
27 shall be negotiable for one hundred and eighty (180) calendar days. Those funds  
28 represented by Settlement checks returned as undeliverable and those Settlement  
checks remaining uncashed for more than 180 days after issuance (collectively,

1 “Uncashed Settlement Checks”) shall be distributed to the Controller of the State of  
2 California to be held pursuant to the Unclaimed Property Law, California Code of  
3 Civil Procedure Section 1500 et seq. for the benefits of those Settlement Class  
4 Members who did not cash their checks until such time they claim their property.  
5 The parties agree that this disposition results in no “unpaid residue” under California  
6 Civil Procedure Code Section 384, as the entire Net Fund Value (NFV) will be paid  
7 out to Settlement Class Members, whether or not they all cash their settlement  
8 checks.

9 e. Although Participating Class Members who do not timely cash their Individual  
10 Settlement Payments shall not immediately receive the monies from those checks,  
11 such persons shall nonetheless be Participating Class Members and will be bound by  
12 all terms of the Settlement and any Final Judgment entered in this Class Action if the  
13 Settlement is approved by the Superior Court, including the release of the Released  
14 Claims, unless they timely file a valid request for exclusion as set forth herein.

15 16. Claims Deemed Waived. Any Class Member who does not request exclusion as set  
16 forth above is deemed to be a Participating Class Member and thereby is deemed to have released  
17 the Released Claims against Released Parties as set forth herein, regardless of whether or not they  
18 timely cash their Individual Settlement Payment.

19 17. Option To Terminate Settlement. Notwithstanding any other provision of this  
20 Settlement Agreement, Defendant shall retain the right, in the exercise of its sole discretion, to  
21 nullify the settlement if five percent (5%) or more of the Class Members make a valid Request  
22 Exclusion from the class. Defendant must exercise this right of rescission, in writing, to the Court  
23 and Class Counsel, within 7 calendar days after the Claims Administrator notifies the Parties of the  
24 total number of Requests for Exclusion received by the Response Deadline. If Defendant exercises  
25 its option to rescind, Defendant shall be solely responsible for the initial payment to the Claims  
26 Administrator of all costs of the Claims Administration, including any re-notice to the Class as  
27 ordered by the Court, but such initial payment shall be treated as a taxable cost in the event that this  
28 case is ultimately litigated and Defendant prevails in a manner permitting an award of costs per  
applicable statute(s) and/or procedural rule(s). If Defendant exercises its option to rescind the

1 Settlement under this paragraph all actions taken in furtherance of the Settlement will be null and  
2 void.

3 18. Certification By Settlement Administrator. Upon completion of administration of the  
4 distributions, the Settlement Administrator shall provide written certification of such completion to  
5 the Court and counsel for all Parties.

6 19. Final Approval Hearing And Entry Of Final Judgment. Upon expiration of the  
7 Objection/Exclusion Deadline Date, with the Court's permission, a Final Fairness Hearing shall be  
8 conducted to determine final approval of the Settlement along with the amount properly payable for  
9 (i) the Attorneys' Fees and Cost Award, (ii) any Service Awards, and (iii) Settlement Administration  
10 Costs. The Final Fairness Hearing shall not be held earlier than twenty five (25) calendar days from  
11 Objection/Exclusion Deadline Date. Upon final approval of the Settlement by the Court, Class  
12 Counsel shall prepare and the Parties shall present the Final Approval Order and Judgment, in a  
13 form agreed to in advance by the Parties, for the Court's approval. After entry of the Final Approval  
14 Order and Judgment, the Court shall have continuing jurisdiction solely for purposes of addressing:  
15 (i) the interpretation and enforcement of the terms of the Settlement; (ii) Settlement administration  
16 matters; and (iii) such post-Final Judgment matters as may be appropriate under court rules or as set  
17 forth in this Agreement.

18 20. Defendant shall discharge its obligations to the Class Members through the  
19 remittance of the Settlement Award to the Class Members by the Settlement Administrator as set  
20 forth hereinabove, regardless of whether checks representing individual settlement sums are actually  
21 received and/or negotiated by Participating Class Members. Once Defendant has complied with the  
22 obligations set forth in this Joint Stipulation and Settlement of Class Action Claims, it will be  
23 deemed to have satisfied all terms and conditions under this Settlement Agreement, and shall have  
24 no further obligations under the terms of the Settlement Agreement regardless of what occurs with  
25 respect to those sums.

26 21. Nullification Of Settlement Agreement. In the event: (i) the Court does not finally  
27 approve the Settlement as provided herein; or (ii) the Court does not enter a Final Approval Order  
28 as provided herein, which becomes final as a result of the occurrence of the Effective Date, this  
Settlement Agreement shall be null and void and any order or judgment entered by the Court in

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

11       22. No Effect On Employee Benefits. Neither the Individual Settlement Payments nor  
12 the Service Award to Named Plaintiff shall be deemed to be pensionable earning and shall not have  
13 any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations,  
14 holiday pay, retirement plans, etc.) of the respective Named Plaintiff or Participating Class  
15 Members. The Parties agree that any Individual Settlement Payments to Participating Class  
16 Members under the terms of this Agreement do not represent any modification of the Participating  
17 Class Members' previously credited hours of service or other eligibility criteria under any employee  
18 pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any  
19 Individual Settlement Payment, or Service Award hereunder shall not be considered  
20 "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an  
21 employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Neither  
22 Defendant nor Named Plaintiff are opining on the terms of any such Plan, each of which speaks for  
23 itself.

24       23. Dispute Resolution. Except as otherwise set forth herein, all disputes concerning the  
25 interpretation, calculation or payment of settlement claims, or other disputes regarding compliance  
26 with this Agreement shall be resolved as follows:

- 27       a. If the Named Plaintiff or Class Counsel, on behalf of the Named Plaintiff or any  
28       Class Member, or the Defendant at any time believes that the other Party has  
breached or acted contrary to the Agreement, that Party shall notify the other Party

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in writing of the alleged violation.

- b. Upon receiving notice of the alleged violation or dispute, the responding Party shall have ten (10) calendar days to correct the alleged violation and/or respond to the initiating Party with the reasons why the Party disputes all or part of the allegation.
- c. If the response does not address the alleged violation to the initiating Party's satisfaction, the Parties shall negotiate in good faith for up to ten (10) calendar days to resolve their differences.
- d. If Class Counsel and Defense counsel are unable to resolve their respective parties' differences after twenty (20) calendar days referenced in Section III, Paragraph 23(a)-(c), supra, either Party may elect to file (1) an appropriate Code of Civil Procedure section 664.6 motion for enforcement with the Court, or (2) take any other legal action to enforce this Settlement Agreement.
- e. In the event that the Court does not agree to adopt the above dispute resolution procedure as part of its Order granting final approval to the Settlement, then the above provisions for Dispute Resolution (Section III, paragraph 23(a)-(d)) are null and void, the remainder of the settlement is unaffected, and the parties shall remain free to submit disputes and/or motions for enforcement of the settlement via appropriate noticed motion or ex parte application as though Section III, paragraph 23 was not included herein.

24. No Retaliation. Defendant shall not take any adverse action against any Class Member because of the existence of, and/or participation in, the Settlement, or because they choose to benefit from the Settlement or to object to the Settlement. Defendant shall not take action to discourage Class Members from participating in the Settlement.

25. Exhibits And Headings. The terms of this Agreement include the terms set forth in any attached Exhibit 1 which is incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

26. Interim Stay Of Proceedings. The Parties agree to hold all proceedings in the Action,

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

3 27. 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 28. Entire Agreement. This Agreement and any attached exhibits constitute the entire  
6 agreement among these Parties, and no oral or written representations, warranties or inducements  
7 have been made to any Party concerning this Agreement or its exhibits other than the  
8 representations, warranties and covenants contained and memorialized in such documents.  
9 Defendant shall not be required as part of the Settlement to modify or eliminate any of its personnel,  
10 compensation or payroll practices, or adopt any new personnel, compensation or payroll practices.

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

22 30. Binding On Successors And Assigns. This Agreement shall be binding upon, and  
23 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

24 31. California Law Governs. All terms of this Agreement and the exhibits hereto shall  
25 be governed by and interpreted according to the laws of the State of California.

26 32. No Public Disclosure prior to Preliminary Approval: Named Plaintiff, Defendant, and  
27 Class Counsel will not make any public disclosure of the Settlement until after the filing of the  
28 Application for Preliminary Approval of the Settlement. Named Plaintiff, Defendant, and Class  
Counsel represent that they have not made any such disclosure. The foregoing shall not preclude

1 Named Plaintiff or Class Counsel from advising Class Members regarding this Settlement. This  
2 section does not preclude Class Counsel or Named Plaintiff from performing their duties as Class  
3 Counsel and/or Class Representative. This section does not preclude the posting of the Order and  
4 Judgment of Final Approval on the Settlement Administrator's website. Notwithstanding the  
5 foregoing, the Parties agree that Defendant may make such disclosures that in Defendant's judgment  
6 are required in the ordinary course of business, except that Defendant and its counsel shall not  
7 encourage Class Members to opt out. Thereafter, Class Counsel and Named Plaintiff agree  
8 not to publicize the terms of this Settlement with the media or others, including but not limited to,  
9 any newspaper, journal, magazine, website, and/or on-line reporter of settlements. Class Counsel  
10 may also include references to this Settlement in their curriculum vitae, for purposes of presentations  
11 in court filings only.

12 33. Counterparts. This Agreement may be executed in one or more counterparts. All  
13 executed counterparts and each of them shall be deemed to be one and the same instrument provided  
14 that counsel for the Parties to this Agreement shall exchange among themselves original signed  
15 counterparts.

16 34. This Settlement Is Fair, Adequate And Reasonable. The Parties believe this  
17 Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this  
18 Settlement after extensive arms-length negotiations, taking into account all relevant factors, present  
19 and potential.


20 35. Jurisdiction Of The Court. The Court shall retain jurisdiction, pursuant to Code of  
21 Civil Procedure Section 664.6 or otherwise, with respect to the interpretation, implementation and  
22 enforcement of the terms of this Agreement and all orders and judgments entered in connection  
23 therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes  
24 of interpreting, implementing and enforcing the settlement embodied in this Agreement and all  
25 orders and judgments entered in connection therewith.

26 36. Cooperation And Drafting. Each of the Parties has cooperated in the drafting and  
27 preparation of this Agreement. Hence, in any construction made to this Agreement, the same shall  
28 not be construed against any of the Parties.

37. Invalidity Of Any Provision. Before declaring any provision of this Agreement

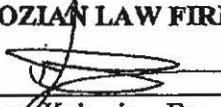
1 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible  
2 consistent with applicable precedents so as to define all provisions of this Agreement valid and  
3 enforceable.

4 5/11/2021  
5 Dated: \_\_\_\_\_

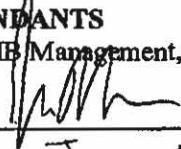
PLAINTIFF   
\_\_\_\_\_

Victor Lopez  
Represented By:

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9 Dated: 5/11/21

KOKOZIAN LAW FIRM, APC  
By:   
\_\_\_\_\_  
Bruce Kokozyan, Esq.  
Attorney for Plaintiffs

10  
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13 Dated: 5/17/21

DEFENDANTS  
West MB Management, LLC  
By:   
\_\_\_\_\_  
Its: James Wroblewski  
General Manager

Represented By:

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17 5/12/2021  
18 Dated: \_\_\_\_\_

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

Rachel J. Lee, Esq.  
Lewis Brisbois Bisgaard & Smith LLP  
Attorneys for Defendant West MB Management, LLC

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