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DAYTON SUPERIOR CORPORATION

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF RIVERSIDE

10 DANNY MALDONADO, an individual, on
his own behalf and on behalf of all others
11 similarly situated,

12 Plaintiffs,

13 v.

14 DAYTON SUPERIOR CORPORATION, a
Delaware Corporation; and DOES 1-100,
15 inclusive,

16 Defendants.
17
18
19

Case No. RIC 1615240

**THIRD REVISED JOINT STIPULATION
OF SETTLEMENT AND RELEASE OF
CLAIMS**

Complaint Filed: November 17, 2016
FAC Filed: August 23, 2017
Jury Trial Date: None Set

1 This Third Revised Joint Stipulation of Settlement and Release of Claims, which includes
2 the Recitals and all Exhibits attached hereto (collectively, the “Agreement”), is entered into by and
3 between Plaintiff (as hereinafter defined), the Settlement Class Members that Plaintiff seeks to
4 represent (as hereinafter defined), and Plaintiff’s Counsel (as hereinafter defined), on the one hand,
5 and Defendant (as hereinafter defined), on the other hand.

6 **RECITALS**

7 **WHEREAS**, on November 17, 2016, Danny Maldonado, on behalf of himself and all other
8 non-exempt employees of Defendant Dayton Superior Corporation who worked in California at
9 any time between November 17, 2012 and the present, filed this action against Defendant in the
10 Superior Court of the State of California, for the County of Riverside, Case Number RIC1615240
11 alleging causes of action for (1) violation of Labor Code Section 226; (2) violation of Labor Code
12 Section 226.7 and 512; (3) violation of Labor Code Section 1194 and 510; (4) violation of Labor
13 Code Section 227.3; (5) violation of Labor Code Section 203; (6) violation of Labor Code Section
14 204, 223 and 1197; and (7) unfair business practices based on the foregoing, in violation of
15 Business & Professions Code Section 17200.

16 **WHEREAS**, on August 25, 2017, Danny Maldonado filed a First Amended Complaint
17 adding a cause of action under the California Labor Code Private Attorneys General Act
18 (“PAGA”).

19 **WHEREAS**, Defendant denied and continues to deny all of the allegations made by
20 Plaintiff in the Action (as hereinafter defined) and has denied and continues to deny that it is liable
21 or owes damages or other compensation or remedies to anyone with respect to the alleged facts or
22 causes of action asserted in the Action. Defendant denies any liability or wrongdoing of any kind
23 in connection with Plaintiff’s claims, and contends that, during all relevant times, it provided
24 employees with meal and rest breaks as required by California law, has paid its employees all
25 wages, overtime wages earned and vacation pay, maintained all required records, provided
26 accurate wage statements, and complied in all other respects with California and federal law.
27 Nonetheless, without admitting or conceding any liability or damages whatsoever, and without
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1 admitting that class certification is appropriate except for settlement purposes alone, Defendant
2 has agreed to settle the Action on the terms and conditions set forth in this Agreement, to avoid
3 the burden, expense, and uncertainty of continuing with litigation of the Action.

4 **WHEREAS**, Plaintiff’s Counsel investigated the claims against Defendant in the Action,
5 which investigation included an analysis of any and all applicable defenses. The investigation also
6 included, *inter alia*, the exchange of information pursuant to informal discovery methods and a
7 full-day mediation with mediator Mark Rudy. Based on the foregoing investigation and
8 evaluation, Plaintiff’s Counsel is of the opinion that the terms set forth in this Agreement are fair,
9 reasonable, adequate, and in the best interests of the Settlement Class Members. This Agreement
10 was reached after extensive arm’s-length negotiations, and it was negotiated in light of all known
11 facts and circumstances, including the risks of significant delay and uncertainty associated with
12 litigation, various defenses asserted by Defendant, and numerous potential appellate issues.

13 **WHEREAS**, on February 1, 2018, the Parties participated in a day-long mediation of the
14 Action before well-known and respected mediator, Mark Rudy.

15 **WHEREAS**, Plaintiff represents that he will file, prior to submission of this Agreement to
16 the Court, a Second Amended Complaint that, in addition to the claims outlined above, includes
17 claims under the Fair Labor Standards Act (“FLSA”) for failure to pay minimum wage and
18 overtime and for a claim of expense reimbursement under Labor Code Section 2802. Defendant
19 will stipulate to the filing of the Second Amended Complaint.

20 **NOW THEREFORE**, in consideration of the mutual covenants and promises set forth in
21 this Agreement, as well as the good and valuable consideration provided for herein, the adequacy
22 of which is hereby acknowledged, the Parties hereto agree to a full and complete settlement of the
23 Action on the following terms and conditions.

24 **1. DEFINITIONS**

25 The defined terms set forth herein shall have the meanings ascribed to them below.

26 **1.1.** **“Action”** means all operative Complaints filed in the case titled *Danny Maldonado*
27 *v. Dayton Superior Corporation*, Superior Court of the State of California, for the County of
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1 Riverside, Case No. RIC1615240.

2 **1.2. “Attorneys’ Fees and Costs Award”** means the attorneys’ fees and costs payment
3 from the Gross Settlement Value and approved by the Court for Plaintiff’s fees and costs associated
4 with the litigation and resolution of the Action, including, but not limited to, fees and costs
5 associated with documenting the settlement, preparing any notices required as part of the
6 settlement or by Court order (excluding the third-party Settlement Administration Costs which are
7 separately identified and paid as described in Paragraph 1.22 below), securing the Court’s approval
8 of the settlement, assisting with administering the settlement, and obtaining entry of the Final
9 Judgment terminating the Action. It is agreed by the Parties that Plaintiff’s Counsel shall request
10 attorneys’ fees not to exceed 33% of the Gross Settlement Value and shall seek costs not to exceed
11 \$20,000. Defendant has agreed not to oppose Plaintiff’s Counsel’s request for fees and costs if
12 made as set forth above.

13 **1.3. “Class Representative Service Award”** means the amount to be paid to Plaintiff
14 Danny Maldonado as set forth in this Agreement from the Gross Settlement Value in addition to
15 any Individual Settlement Payment, subject to Court approval, in recognition of Plaintiff’s efforts
16 and work in prosecuting the Action on behalf of Settlement Class Members. It is agreed by the
17 Parties that Plaintiff’s Counsel may request a Service Award for Plaintiff Danny Maldonado not
18 to exceed \$7,500 (provided that Maldonado executes a general release of all known and unknown
19 claims and agrees not to Opt Out of or object to the settlement). Defendant has agreed not to
20 oppose Plaintiff’s Counsel’s request for the Class Representative Service Award as set forth above.
21 Any portion of the Class Representative Service Award not approved by the Court shall remain
22 part of the Class Settlement Fund for distribution to the Settlement Class Members.

23 **1.4. “Class Settlement Fund”** means an account created by the Settlement
24 Administrator and funded by Defendant with a deposit of the Gross Settlement Value.

25 **1.5. “Court”** means the Superior Court of the State of California, for the County of
26 Riverside, or any other court taking jurisdiction of the Action.

27 **1.6. “Defendant”** means Dayton Superior Corporation.
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1 **1.7. “Defendant’s Counsel”** refers to Seyfarth Shaw LLP. For purposes of providing
2 any notices required under this Agreement, Defendant’s Counsel shall refer to David D. Jacobson,
3 Seyfarth Shaw LLP, 2029 Century Park East, Suite 3500, Los Angeles, California 90067.

4 **1.8. “Effective Date of Agreement.** The Effective Date of the Settlement Agreement
5 shall be the later of (a) the Court’s final approval of the Settlement Agreement, if no objections
6 have been filed, (b) the time of appeal has expired if an objection has been filed and no appeal was
7 filed, (c) or the final resolution of any appeal that has been filed.

8 **1.9. “Fairness Hearing”** or “Final Approval” means the hearing on Plaintiff’s motion
9 for final approval of the settlement.

10 **1.10. “Final Judgment”** means the Final Judgment entered by the Court consistent with
11 this Agreement.

12 **1.11. “Gross Settlement Value”** means the entire settlement amount of Four Hundred
13 Fifty Thousand Dollars (\$450,000) to be paid by Defendant pursuant to this Agreement. The
14 \$450,000 Gross Settlement Value is fully inclusive of all Individual Settlement Payments to
15 Participating Settlement Class Members, the Class Representative Service Award, Settlement
16 Administration Costs to be paid to the Settlement Administrator, the Attorneys’ Fees and Costs
17 Award, and the PAGA payment to the LWDA. The Gross Settlement Value has been agreed to
18 by Plaintiff and Defendant based upon the aggregation of the agreed-upon settlement value of all
19 Settlement Class Member claims. In addition to the Gross Settlement Value, Defendant will
20 separately pay to the Settlement Administrator all necessary and required employer-side taxes on
21 the portion of the Gross Settlement Value that is allocated to wages.

22 **1.12. “Individual Settlement Payment”** means each Settlement Class Member’s share
23 of the Net Settlement Value, which share shall be determined pursuant to the following method:
24 The Net Settlement Value (as defined below) shall be apportioned to employees based on the
25 weeks of employment of each Participating Settlement Class Member during the Settlement Class
26 Period in proportion to the total number of weeks of employment of all Participating Settlement
27 Class Members during the Settlement Class Period.

1 **1.13. “Net Settlement Value”** means the portion of the Gross Settlement Value
2 remaining after deductions for approved Class Representative Service Award, Settlement
3 Administration Costs, the Attorneys’ Fees and Costs Awards and the PAGA payment to the
4 LWDA.

5 **1.14. “Non-Participating Class Members” or “Opt-Outs”** means all Settlement Class
6 Members who execute and timely deliver valid requests to be excluded from the Settlement. The
7 Settlement Shares of all Non-Participating Class Members shall be paid, after Final Approval, to
8 the Participating Settlement Class Members, as defined in this Settlement and according to the
9 formula set forth in this Settlement. Settlement Class Members who choose to be excluded from
10 the Settlement will not receive any payment under the settlement. They also will not be bound by
11 the terms of this Settlement Agreement, including the release of claims.

12 **1.15. “Notice Packet”** means the Notice of Proposed Class Action Settlement,
13 substantially in the form attached as Exhibit 1, which shall be transmitted to Settlement Class
14 Members in English and Spanish.

15 **1.16. “Order Granting Preliminary Approval”** means the Order entered by the Court
16 preliminarily approving, *inter alia*, the terms and conditions of this Agreement, the manner and
17 timing of providing notice to the Settlement Class Members, and the time period for opt-outs and
18 objections.

19 **1.17. “Participating Settlement Class Members”** refers to and includes all Settlement
20 Class Members who have not timely submitted a valid request to be excluded from the Settlement.

21 **1.18. “Parties”** means Plaintiff, the Settlement Class Members and Defendant,
22 collectively.

23 **1.19. “Plaintiff”** refers to the named Plaintiff in the Complaint, the First Amended
24 Complaint and the Second Amended Complaint, Danny Maldonado.

25 **1.20. “Plaintiff’s Counsel”** is Marcus J. Bradley and Kiley L. Grombacher of
26 Bradley/Grombacher, LLP.

1 **1.21. “Settlement,” “Settlement Agreement” or “Agreement”** means this stipulation
2 and agreement to settle all of the claims asserted in the Action.

3 **1.22. “Settlement Administration Costs”** means the costs payable from the Gross
4 Settlement Value to the Settlement Administrator for administering this settlement, including, but
5 not limited to, printing, distributing, and tracking Notice Packets, tax reporting, making tax
6 payments, providing required 1099 and W-2 forms, distributing the Individual Settlement
7 Payments, Class Representative Service Award, Attorneys’ Fees and Costs Award, and the PAGA
8 payment to the LWDA, and providing necessary reports and declarations, as requested by the
9 Parties, including weekly reports on the number of Settlement Class Members who have timely
10 submitted Opt Out requests, and on whether any Settlement Class Member submitted a challenge
11 to the information in their Notice Packet. The Settlement Administration Costs shall be paid from
12 the Gross Settlement Value, including, if necessary, any such costs in excess of the amount
13 estimated by the Settlement Administrator.

14 **1.23. “Settlement Administrator”** means any third-party class action settlement
15 administrator chosen by the Parties and subsequently approved by the Court for the purposes of
16 administering this settlement. The Parties have chosen Atticus Administration to act as the
17 Settlement Administrator. The Parties each represent that they do not have any financial interest
18 in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator
19 that could create a conflict of interest.

20 **1.24. “Settlement Checks”** means the checks sent by the Settlement Administrator to
21 Participating Settlement Class Members. Two checks will be sent. One check will be for
22 settlement of the California state law claims. The other check shall be for settlement of the FLSA
23 claims and will contain a release of the FLSA claims on the back of the check with an
24 acknowledgement that the Participating Settlement Class Member is opting into the FLSA
25 settlement.

26 **1.25. “Settlement Class Members”** refers to all non-exempt employees who were
27 employed by Defendant in California at any time between November 17, 2012 and preliminary
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1 approval of the Settlement Agreement. A member of the Settlement Class is referred to in this
2 Agreement and in the Notice of Proposed Class Action Settlement as a “Settlement Class Member”
3 or “Class Member.”

4 **1.26. “Settlement Class List”** means a list of Settlement Class Members that Defendant
5 will compile and provide to the Settlement Administrator within 20 days after preliminary approval
6 of this settlement. The Settlement Class List shall be formatted in Microsoft Office Excel and
7 include each Settlement Class Member’s full name; most recent known mailing address and
8 telephone number; Social Security Number; dates of employment; and any other information
9 needed to calculate the Individual Settlement Payments for each Participating Settlement Class
10 Member.

11 **1.27. “Settlement Class Period”** means and refers to the period from November 17,
12 2012, through preliminary approval of the Settlement Agreement.

13 **1.28. “Workweeks”** means the weeks of employment recorded in Defendant’s records
14 for each Settlement Class Member during the period from November 17, 2012 through preliminary
15 approval of the Settlement Agreement.

16 **2. APPROVAL AND CLASS NOTICE**

17 **2.1. Preliminary Approval Hearing.** Within 45 days of full execution of this
18 Agreement, Plaintiff shall submit to the Court a Motion for an Order Granting Preliminary
19 Approval of Class Action Settlement (“Plaintiff’s Motion”). Plaintiff’s Motion shall request the
20 entry of an Order Granting Preliminary Approval, which will, among other things: (i)
21 provisionally certify the Settlement Class for settlement purposes only; (ii) preliminarily approve
22 the proposed settlement; (iii) set a date for the Fairness Hearing; and (iv) provide for the Notice
23 Packet to be sent to all Settlement Class Members as specified herein. To the extent that Plaintiff’s
24 Motion is consistent with the terms of this Agreement, and does not seek relief inconsistent with
25 this Agreement, Plaintiff’s Motion shall be unopposed by Defendant. Defendant reserves the right
26 to address any factual assertions that are not contained in this Agreement.

1 If a mutually-agreed class settlement is not approved, the Action will proceed as if no
2 settlement has been attempted, unless the Parties jointly agree to seek reconsideration of the ruling
3 or seek Court approval of a renegotiated settlement, and Defendant retains the right to contest
4 whether any aspect of the Action should be maintained as a class action and to contest the merits
5 of the claims being asserted by Plaintiff in the Action.

6 **2.2. Notice Procedures.**

7 **(A) Settlement Class List.** Within 20 calendar days after entry of the Order
8 Granting Preliminary Approval, Defendant shall provide the Settlement Class List to the Settlement
9 Administrator.

10 **(B) Notice by First-Class U.S. Mail.** Within thirty (30) calendar days after
11 entry of the Order Granting Preliminary Approval, or a later date approved by the Court upon good
12 cause shown, the Settlement Administrator shall send a Notice Packet to all Settlement Class
13 Members via First-Class U.S. Mail, using the most current, known mailing addresses for each
14 Settlement Class Member.

15 **(C) Confirmation of Addresses in the Settlement Class List.** Prior to mailing
16 the Notice Packets, the Settlement Administrator will search the National Change of Address
17 Database and update the Settlement Class List to reflect any identifiable address changes. Any
18 Notice Packets returned to the Settlement Administrator as undeliverable on or before the deadline
19 for postmarking Opt Outs shall be sent promptly via First-Class U.S. Mail to the forwarding address
20 affixed thereto, and the Settlement Administrator shall indicate the date of such re-mailing on the
21 Notice Packet. If no forwarding address is provided, the Settlement Administrator shall promptly
22 attempt to determine the correct address using a single skip-trace or other search using the name,
23 address and/or Social Security Number of the Settlement Class Member involved, and it shall then
24 perform a single re-mailing. If after performing a skip-trace search, the Notice Packet is still
25 returned to the Settlement Administrator as undeliverable, that Settlement Class Member will be
26 deemed a Participating Settlement Class Member. Those Settlement Class Members who receive
27 a re-mailed Notice Packet shall have their deadline for postmarking an Opt Out or objecting to the
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1 settlement extended by fifteen (15) calendar days from the date of re-mailing or until the original
2 deadline for postmarking an Opt Out, whichever is later. There is no obligation to attempt to locate
3 Settlement Class Members after the Opt Out deadline set forth in the Notice Packet.

4 **2.3. No Claims-Made Process.** Class Members shall not be required to submit a claim
5 form in order to receive an Individual Settlement Payment. Each Settlement Class Member shall
6 automatically receive an Individual Settlement Payment unless they Opt Out.

7 **(A) Notice Packets.** All Settlement Class Members will be mailed a Notice
8 Packet. Each Notice Packet will be in both English and Spanish and provide, among other things:
9 (1) information regarding the nature of the Action; (2) a summary of the substance of the settlement;
10 (3) the class definition; (4) the formula for calculating Individual Settlement Payments; (5) the dates
11 the Settlement Class Member was employed by Defendant as a non-exempt employee during the
12 Settlement Class Period; (6) instructions on how Settlement Class Members may Opt Out of the
13 Settlement; (7) the procedure for objecting to the settlement; (8) the deadline by which Settlement
14 Class Members must postmark an objection to the settlement; (9) notice that the Settlement Class
15 Members will permanently forego their right to pursue any and all of their released claims against
16 Defendant unless they Opt Out of the settlement; and (10) notice that Class Members will
17 automatically receive an Individual Settlement Payment unless they timely Opt Out.

18 **(B) Disputed Information in Notice Packets.** If a Settlement Class Member
19 disputes any information in his or her Notice Packet, the Settlement Class Member may produce
20 evidence to the Settlement Administrator substantiating his or her assertion. Defendant's records
21 will be presumed determinative absent evidence which rebuts those records, but the Settlement
22 Administrator shall evaluate the evidence submitted by the Settlement Class Member and
23 Defendant's records and make the final decisions as to which data should be applied. Any evidence
24 supporting the Settlement Class Member's dispute of any of the information in his/her Notice
25 Packet must be submitted no later than 30 calendar days after the Notice Packet is first mailed.

26 **2.4. Opt Out Procedures.** Any Settlement Class Member who wants to opt out of the
27 settlement must sign and mail a written Opt Out request postmarked no later than 30 calendar days
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1 after the Notice Packet is first mailed, or pursuant to Section 2.2 (C) above, whichever is later.
2 The written Opt Out request must (a) contain the name, address, telephone number, and last four
3 digits of the Social Security Number of the Settlement Class Member opting out; (b) state that “I
4 understand that I am requesting to be excluded from the class monetary settlement and that I will
5 receive no money from the Gross Settlement Value. I understand that if I am excluded from the
6 Settlement Class, I may bring a separate action, but I might lose my separate action, or win and
7 recover less than what I would have recovered under the class monetary provisions in this case”;
8 (c) be addressed to the Settlement Administrator at the address indicated in the Notice Packet; (d)
9 be postmarked on or before the deadline set forth above; and (e) be signed by the Settlement Class
10 Member opting out. The Notice Packet shall provide these instructions to all Settlement Class
11 Members who want to Opt Out of the Settlement. The share of the Settlement apportioned to any
12 Settlement Class Member who opts out shall be paid to the Participating Settlement Class
13 Members as defined and according to the formula in this Agreement.

14 (A) The date of the postmark on the return-mailing envelope shall be the
15 exclusive means to determine whether an Opt Out request has been timely submitted.

16 (B) A Settlement Class Member who does not submit a timely and valid Opt
17 Out shall be deemed a Participating Class Member and shall be bound by all terms of this Settlement
18 and any Final Judgment entered by the Court if the Court grants final approval of the Settlement.

19 (C) All Opt Out requests will be submitted to the Settlement Administrator, who
20 shall, within 10 days after the deadline for submitting an Opt Out request, including any extensions
21 for re-mailed Notice Packets, certify jointly to Plaintiff’s Counsel and Defendant’s Counsel the
22 total number of Settlement Class Members who have Opted Out (excluded themselves) from the
23 Settlement.

24 **2.5. Effectuating FLSA Opt-In Release.** To effectuate an FLSA release, one of the
25 two settlement checks sent to Participating Settlement Class Members will contain language
26 expressing a consent to opt into an FLSA collective action. The Settlement Administrator will file
27 a copy of the written consents with the Court in connection with the motion for final approval.
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1 **2.6. Revocation of Agreement by Defendant.** If five (5) or more of the Settlement
2 Class Members Opt Out, Defendant may, at its sole discretion, void this Agreement, and all actions
3 taken in furtherance of it will be thereby null and void.

4 **(A)** Defendant must exercise this right to void this Agreement by filing with the
5 Court a Notice of Withdrawal from Settlement within 15 business days after expiration of the opt-
6 out period.

7 **(B)** If Defendant files a timely Notice of Withdrawal, the Action will proceed
8 as if no settlement had been attempted. In that event, the Court will enter an order voiding the
9 Order Granting Preliminary Approval and Defendant will retain the right to contest whether any
10 aspect of the Action should be maintained as a class action and to contest the merits of the claims
11 being asserted by Plaintiff in the Action.

12 **2.7. Objection Procedures.** Settlement Class Members who want to present objections
13 to the proposed settlement at the Fairness Hearing must first do so in writing. The objection must
14 set forth the factual and legal bases for the objection. To be considered, any objections pertaining
15 solely to Plaintiff's Counsel's fees and cost application must be filed with the Court and served on
16 the Parties no later than 15 days after Plaintiff's Counsel files the fee application. Objections to
17 any other aspect of the settlement must be served and filed by the date specified in the Notice
18 Packet. Objections must be mailed to the Settlement Administrator via First-Class U.S. Mail,
19 postage prepaid, and be postmarked by the date specified in the Notice Packet, which shall be 30
20 calendar days after the initial mailing of the Notice Packet. The Settlement Administrator will
21 notify the Parties of all objections. Plaintiff's counsel shall be responsible for informing the Court
22 of all objections by filing copies of all objections with the Court within 15 calendar days after the
23 end of the Opt Out period set forth above, including any extension set forth in Paragraph 2.2 (C).
24 Settlement Class Members who opt out are not entitled to file objections. An objector has the right
25 to appear at the Fairness Hearing either in person or through counsel. An objector may withdraw
26 his or her objections at any time. No Settlement Class Member may appear at the Fairness Hearing
27 to object to the terms of the Settlement unless he or she has filed a timely objection that complies
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1 with the procedures provided above. A Settlement Class Member who submits an objection
2 remains bound by this Agreement.

3 **2.8. Motion for Final Approval.** Not later than 21 calendar days before the Fairness
4 Hearing, or such other time as the Court may require, Plaintiff will submit a motion for final
5 approval of the Settlement.

6 At the Fairness Hearing, the Parties will request that the Court, among other things, (a)
7 grant final certification of the Settlement Class for purposes of settlement; (b) enter Final Judgment
8 in accordance with this Agreement and without further fees or costs to any party except as
9 expressly set forth in this Agreement; (c) approve the Settlement as fair, reasonable, adequate, and
10 binding on all Participating Settlement Class Members who have not timely submitted a valid Opt
11 Out request; (d) enter an order as to Plaintiff's Counsel's request for attorneys' fees and costs; (e)
12 enter an order approving the Class Representative Service Award; and (f) enter an order
13 permanently enjoining all Participating Settlement Class Members from pursuing and/or seeking
14 to reopen claims that have been released by this Agreement. After entry of the Final Judgment,
15 the Court shall have continuing jurisdiction solely for purposes of addressing: (i) the interpretation
16 and enforcement of the terms of the Agreement, (ii) settlement administration matters, and (iii)
17 such post-Final Judgment matters as may be appropriate under court rules or as set forth in this
18 Agreement.

19 **2.9. Effect of Failure to Grant Final Approval.** In the event the Court fails to enter
20 Final Judgment in accordance with this Agreement, or such Final Judgment does not become Final
21 as defined herein, the Parties shall proceed as follows: The Action will resume unless the Parties
22 jointly agree to (1) seek reconsideration or appellate review of the decision denying entry of Final
23 Judgment, or (2) attempt to renegotiate the settlement and seek Court approval of the renegotiated
24 settlement. In the event any reconsideration and/or appellate review is denied, or a mutually agreed
25 settlement is not approved, the Action will proceed as if no settlement has been attempted. In that
26 event, the Court will enter an order voiding the Order Granting Preliminary Approval and
27 Defendant will retain the right to contest whether any aspect of the Action should be maintained
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1 as a class action and to contest the merits of the claims being asserted by Plaintiff in the Action.

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3 **3. SETTLEMENT PROCEEDS**

4 **3.1. Gross Settlement Value.**

5 (A) Defendant agrees to pay the Gross Settlement Value, plus the employer's
6 share of payroll taxes, to the Settlement Administrator no later than 15 calendar days after the
7 Effective Date. The Administrator will disburse the funds within 30 calendar days of the Effective
8 date in accord with the terms of this Settlement.

9 (B) Plaintiff, the Participating Settlement Class Members, and Plaintiff's
10 Counsel shall not seek any further compensation or consideration from Defendant and/or any other
11 Releasee in connection with the Action or any claims encompassed and released by this Settlement.

12 **3.2. Settlement Amounts Payable as Attorneys' Fees and Costs.**

13 Plaintiff's Counsel shall request an award from the Court of up to 33% of the Gross
14 Settlement Value for attorneys' fees, and costs not to exceed \$20,000. Defendant will not oppose
15 such a fee and cost application. Defendant shall have no additional liability for attorneys' fees and
16 costs in connection with the Action. The fees and costs to be paid pursuant to this Agreement are
17 included in, and shall be paid by Defendant from, the Gross Settlement Value, and they will be
18 paid to Plaintiff's Counsel by the Settlement Administrator no later than 30 calendar days after the
19 Effective Date. Within 10 calendar days after the Effective Date, Plaintiff's Counsel shall transmit
20 instructions to the Settlement Administrator as to how the Attorneys' Fees and Costs Award shall
21 be paid. Plaintiff's Counsel agrees that they are responsible for allocating this portion of the Gross
22 Settlement Value among themselves and any other counsel for Plaintiff or Settlement Class
23 Members. In the event an attorneys' lien is asserted relating to this Agreement or any portion of
24 the Gross Settlement Value, Defendant shall tender the Gross Settlement Value to the Court and
25 shall thereafter be released from any attorneys' lien claim.

26 (A) Plaintiff's Counsel shall be solely and legally responsible for paying all
27 applicable taxes on their respective Attorneys' Fees and Costs Award payment and shall indemnify
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1 and hold harmless Defendant from any claim or liability for taxes, penalties, or interest arising as a
2 result of the payment. The Settlement Administrator shall issue an Internal Revenue Service
3 (“IRS”) Form 1099 to Plaintiff’s Counsel for their respective Attorneys’ Fees and Costs Award
4 payment.

5 (B) The substance of Plaintiff’s Counsel’s application for attorneys’ fees and
6 costs is not part of this Agreement and is to be considered separately from the Court’s consideration
7 of the fairness, reasonableness, adequacy, and good faith of the settlement. The outcome of any
8 proceeding related to Plaintiff’s Counsel’s application for attorneys’ fees and costs shall not
9 terminate this Agreement or otherwise affect the Court’s ruling on the motion for final approval.

10 (C) If Plaintiff’s Counsel’s application for attorneys’ fees and costs is denied,
11 in whole or in part, Plaintiff’s Counsel has the right to appeal such denial. In case of such an appeal,
12 the amount requested by Plaintiff’s Counsel for attorney’s fees (up to 33% of the Gross Settlement
13 Value), plus the amount sought by Plaintiff’s Counsel for costs, shall be held aside pending such
14 appeal. The balance of the Gross Settlement Value will be distributed to the Participating
15 Settlement Class Members, the Settlement Administrator, the LWDA and for the Class
16 Representative Service Award in accordance with the provisions of this Agreement. If Plaintiff’s
17 Counsel’s application for attorneys’ fees and costs is denied on appeal, in whole or in part, the
18 portion of the requested attorneys’ fees and costs denied to Plaintiff’s Counsel shall be paid to the
19 Participating Settlement Class Members.

20 **3.3. Class Representative Service Award.**

21 (A) Defendant agrees not to oppose Plaintiff’s application to the Court for Class
22 Representative Service Award of \$7,500 for Danny Maldonado.

23 (B) The Class Representative Service Award shall be in addition to Danny
24 Maldonado’s Individual Settlement Payment.

25 (C) No later than 30 days after the Effective Date, the Settlement Administrator
26 will release to Plaintiff the Class Representative Service Award approved by the Court. The
27 Settlement Administrator shall issue an IRS Form 1099 to the Plaintiff for his Class Representative
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1 Service Award. Plaintiff shall be solely and legally responsible for paying any and all applicable
2 taxes on his Class Representative Service Award, and shall indemnify and hold harmless Defendant
3 from any claim or liability for taxes, penalties, or interest arising as a result of the payments.

4 (D) A condition precedent to Plaintiff receiving the Class Representative
5 Service Award will be his execution of a general release of all known and unknown claims, along
6 with his agreement not to Opt Out of, or object, to the Settlement.

7 **3.4. Payment to LWDA.** The Parties agree that \$10,000 of the Gross Settlement Value
8 is allocated to settle PAGA claims. 75% of the \$10,000 shall be paid to the California Labor &
9 Workforce Development Agency (“LWDA”) and the remaining 25% shall be part of the Net
10 Settlement Value distributed to Settlement Class Members. Plaintiff’s counsel shall be responsible
11 for notifying the LWDA of this settlement within 5 business days after filing the motion for
12 preliminary approval.

13 **3.5. Settlement Administration Costs.** The Settlement Administrator shall be paid the
14 Settlement Administration Costs from the Gross Settlement Value. The Settlement Administration
15 Costs are estimated to be not greater than \$7,434. An IRS Form 1099 shall be issued to the
16 Settlement Administrator.

17 (A) **Certification of Completion.** Upon completion of administration of the
18 settlement, the Settlement Administrator shall provide written certification of such completion to
19 the Court and counsel for all Parties.

20 (B) **Minimization of Administrative Costs.** The Parties agree to cooperate in
21 the settlement administration process and to make all reasonable efforts to control and minimize
22 the costs and expenses incurred in administration of the Settlement.

23 **3.6. Distribution to Participating Settlement Class Members.**

24 (A) Payments made to Plaintiff and/or Participating Settlement Class Members
25 under the Settlement shall not be considered as a payment of overtime, salary, wages and/or
26 compensation to any Participating Settlement Class Member under the terms of any applicable
27 benefit plan or for any purpose except for tax purposes, as provided in this Agreement. The receipt
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1 of payments under the terms of this Settlement shall not affect any Settlement Class Member's
2 participation in, eligibility for, or vesting in, the amount of any past or future contribution to, or
3 level of benefits under any applicable benefit plan. Any amounts paid will not impact or modify
4 any previously credited hours of service or compensation taken into account under any employee
5 benefit plan sponsored or contributed to by Defendant.

6 For purposes of this Settlement, "benefit plan" means each and every "employee benefit
7 plan" as defined in 29 U.S.C. § 1002(3), and, even if not thereby included, any bonus, pension,
8 stock option, stock purchase, stock appreciation, welfare, profit sharing, retirement, disability,
9 vacation, severance, hospitalization, insurance, incentive, deferred compensation, or any other
10 similar benefit plan, practice, program, or policy.

11 **(B)** Payments to Settlement Class Members shall be calculated as follows:

12 **(1) Net Settlement Value.** The Net Settlement Value is what remains
13 after deducting from the Gross Settlement Value the Attorneys' Fees and Costs Award, Class
14 Representative Service Award, Settlement Administration Costs and the PAGA payment to the
15 LWDA. The Net Settlement Value shall be calculated and distributed to Participating Settlement
16 Class Members pursuant to the method described in the next paragraph.

17 **(2) Calculation of Individual Settlement Payments.** The Net
18 Settlement Value shall be apportioned among Settlement Class Members based on the Settlement
19 Class Member's number of Workweeks (as defined in paragraph 1.28). The Settlement
20 Administrator will calculate the Workweeks to calculate the Individual Settlement Payments.

21 **(3) Two Checks.** Participating Settlement Class Members shall
22 receive two checks. One check will be for payment of the California state law claims asserted in
23 the Action. The second check shall be for payment of the FLSA claims asserted in the Action,
24 and shall include the following language on the back:

25 My signature on, cashing of, or otherwise negotiating this check
26 constitutes my consent to join the lawsuit entitled, Maldonado v.
27 Dayton Superior Corporation, Riverside County Superior Court,
28 Case No. RIC1615240, pursuant to the provisions of the Fair Labor
Standards Act ("FLSA"), 29 U.S.C. Section 216(b), for purposes of
participating in a settlement. I further understand that my signature,

1 cashing or negotiating of this check constitutes a full and complete
2 release of Dayton Superior Corporation and all of its current or
3 former officers, directors, employees and agents for any and all
4 claims, known or unknown, under the Fair Labor Standards Act as
5 alleged in the lawsuit and occurring during my employment at
6 Dayton Superior Corporation any time during the period between
7 November 17, 2012 through [Date of preliminary approval of the
8 Settlement Agreement]. I accept this check as payment in full for
9 all FLSA claims alleged in the lawsuit.

6 **(C) Resolution of Disputes Concerning Individual Settlement Payments.**

7 Should any questions arise regarding the determination of eligibility for, or the amounts of, any
8 Individual Settlement Payments under the terms of this Agreement that are not otherwise resolved
9 by the Settlement Administrator, Plaintiff's Counsel and Defendant's Counsel shall meet and confer
10 in an attempt to reach an agreement. If Plaintiff's Counsel and Defendant's Counsel cannot agree,
11 the Settlement Administrator shall make the final determination, and that determination shall be
12 conclusive, final and binding.

13 **(D)** The distribution of payments under this Agreement shall be made to
14 Participating Settlement Class Members no later than 30 calendar days after the Effective Date; no
15 payment of any portion of the Gross Settlement Value shall be made prior to the Effective Date.
16 Checks will be sent to Participating Settlement Class Members by First-Class U.S. Mail.

17 **(E)** In no case will any part of the Gross Settlement Value revert to Defendant.

18 **3.7. Provisions Governing Share of Settlement Class Members Who Opt Out, Un-**
19 **Cashed Checks and Requests for Replacement Checks.**

20 **(A) Share of Those Who Opt Out.** The Settlement Share of Settlement Class
21 Members who timely Opt Out shall be paid to the Participating Settlement Class Members pursuant
22 to the formula set forth in this Agreement.

23 **(B) Un-cashed Checks.** Per the distribution Schedule the Settlement
24 Administrator shall issue Claim Amounts to Settlement Class Members in the form of a check in
25 the name of the Settlement Class Member, which shall become null and void if not deposited within
26 one-hundred and eighty (180) days of issuance. After one-hundred and eighty (180) days of
27 issuance, funds from undeposited checks will be held by the Settlement Administrator; if the Class
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1 Member to whom the undeposited check is issued does not contact the Settlement Administrator
2 concerning his or her settlement payment within one-hundred and eighty (180) days of the final
3 distribution per the Distribution Schedule, including if a Settlement Payment is returned
4 undeliverable and a valid mailing address cannot be ascertained, the Settlement Class Member's
5 Claim Amount that has remained undeposited as of that time, including any accrued interests
6 thereon, shall be distributed to the California State Controller's Office Unclaimed Property Fund,
7 to be held pursuant to California's Unclaimed Property Law for the benefit of those Class members
8 who did not cash their checks until such time that they claim their property. The Settling Parties
9 agree that this disposition results in no "unpaid residue" under California Civil Procedure Code §
10 384, as the entire Net Settlement Amount will be paid out to the Settlement Class Members, whether
11 or not they all cash their Claim Amounts. Therefore, Defendants will not be required to pay any
12 interest on said amount. The failure by a Class Member to claim or deposit any check issued by the
13 Settlement Administrator shall have no effect on that Class Member's release of all Released
14 Claims as set forth herein.

15 **(C) Replacement Checks.** If any Settlement Class Member requests issuance
16 of a replacement check, the request must be received within 120 days of issuance of the initial
17 check. Any request for a replacement check must be made by written declaration, under penalty of
18 perjury, that the initially-issued check was lost, stolen or destroyed. However, any replacement
19 checks that are issued will only be issued after the 180-day negotiability period on initially-issued
20 checks has passed and after an additional 60-day hold period has passed to ensure that negotiation
21 of an initial check is not in process at a financial institution. A replacement check will be issued
22 only one time for any particular Settlement Class Member. To avoid the risk of any such double
23 payment, the Settlement Administrator will put a stop payment on any checks to be reissued before
24 reissuing the checks.

25 **3.8. Tax Considerations.**
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1 **(A)** All Individual Settlement Payments shall be allocated as follows: 75%
2 percent of the payments to Settlement Class Members are for settlement of non-FLSA claims, and
3 25% of the payments to Settlement Class Members are for settlement of FLSA claims.

4 Regarding the payments for non-FLSA claims: 25 percent is apportioned for settlement of
5 unpaid wage claims, and 75 percent is apportioned to interest and penalties.

6 Regarding the payment for FLSA claims: 25 percent is apportioned for settlement of wage
7 claims, and 75 percent is apportioned to interest and liquidated damages.

8 Payments treated as wages shall be made net of all applicable required withholding taxes,
9 including, without limitation, federal, state and local income tax withholding and the employee
10 share of the FICA, SUTA and FUTA taxes, and shall be reported to the IRS and the payee under
11 the payee's name and Social Security Number on an IRS Form W-2. Payments treated as interest,
12 penalties and/or liquidated damages shall be made without withholding and shall be reported to
13 the IRS and the payee, to the extent required by law, under the payee's name and Social Security
14 Number on an IRS Form 1099.

15 **(B)** The employer's portion of all payroll and unemployment taxes imposed by
16 applicable law shall be paid by Defendant to the Settlement Administrator in addition to the Gross
17 Settlement Value.

18 **(C)** The Attorneys' Fees and Costs Award payment shall be made without
19 withholding and reported to the IRS and the payees under the payees' name and taxpayer
20 identification number, which the payees shall provide for this purpose, on an IRS Form 1099.

21 **(D)** To the extent that a recipient of a payment pursuant this Agreement
22 (including Plaintiff, any individual Settlement Class Member or any of Plaintiff's Counsel) incurs
23 any liability as a result of failing to pay all taxes, interest, fees, penalties, or assessments due on
24 that recipient's respective share of the payments issued pursuant to this Agreement, the recipient so
25 failing to pay such obligations will indemnify, defend, and hold Defendant harmless from and
26 against any and all liability for such failure to pay such obligations, including liability in the form
27 of taxes, interest, fees, assessments, or penalties, attorneys' fees, and other costs imposed upon
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1 Defendant for the recipient’s failure to pay such obligations. Plaintiff, on behalf of each individual
2 Settlement Class Member, acknowledges and agrees that Defendant is not giving any tax advice in
3 connection with this Agreement or the payments to be made pursuant to this Agreement and he has
4 not relied upon any advice from Defendant or Plaintiff’s Counsel as to the taxability of the payments
5 received pursuant to this Agreement.

6 **4. RELEASES**

7 **4.1. Release of Claims by Participating Class Members.**

8 (A) **Release and Cal. Civil Code Section 1542 Waiver.** Settlement Class
9 Members who do not opt out will be bound by the following release for all claims except the
10 FLSA claim:

11 By operation of the entry of the Final Approval Order and
12 judgment, and except as to such rights or claims as may be created
13 by this Agreement, each Class Member, and each of their
14 respective executors, administrators, representatives, agents, heirs,
15 successors, assigns, trustees, spouses, or guardians, will release
16 Dayton Superior Corporation—and its current or former officers,
17 directors, employees and agents—(“Released Parties”) of and from
18 any and all claims, rights, demands, charges, complaints, causes of
19 action, obligations, or liability of any and every kind, known or
20 unknown, that were alleged or that could have been asserted based
21 on the facts alleged in the Second Amended Complaint filed in this
22 Action or are based on or arise out of the facts alleged in the
23 Second Amended Complaint, including, those for (1) violation of
24 Labor Code Section 226; (2) violation of Labor Code Section
25 226.7 and 512; (3) violation of Labor Code Section 1194 and 510;
26 (4) violation of Labor Code Section 227.3; (5) violation of Labor
27 Code Section 203; (6) violation of Labor Code Section 204, 223
28 and 1197; (7) violation of Labor Code Section 2802; and (8) unfair
competition or unfair business practices under the California
Unfair Competition Law and California Business and Professions
Code, Sections 17200 *et seq.* arising at any time between
November 17, 2012 and preliminary approval of the Settlement
Agreement. This release also includes a release of all claims that
were or could have been brought based on the facts asserted in the
Second Amended Complaint, of any part of California Industrial
Welfare Commission Wage Orders as well as a release of all
claims under the California Private Attorney General Act of 2004
(“PAGA”), California Labor Code Section 2698 *et seq.*, arising
from any of the underlying claims that were alleged or that could
have been asserted based on the facts alleged in the Second
Amended Complaint arising at any time between November 17,
2012 and preliminary approval of the Settlement Agreement. This
release includes claims for restitution and other equitable relief,
liquidated damages, punitive damages, waiting time penalties, and

1 any other penalties of any nature whatsoever. The released claims
2 described in this paragraph are collectively referred to as the
"Class Released Claims".

3 The Parties' intent in entering into this settlement is to release
4 Defendant and the Released Parties from any and all claims that
5 arise from the claims alleged in the Action, and preclude
6 Defendant from owing any further monies (beyond the payments
7 set forth in this Settlement) to Settlement Class Members based
8 upon the claims made, or that could have been, made based upon
9 the allegations contained in the Second Amended Complaint filed
10 in this Action arising at any time between November 17, 2012 and
11 preliminary approval of the Settlement Agreement. This release
12 excludes the release of any claims not permitted to be released by
13 law.

14 **(B) FLSA Release.** Settlement Class Members who sign, cash or otherwise
15 negotiate the FLSA Check, will be bound by the following release:

16 By operation of the entry of the Final Approval Order and judgment,
17 and except as to such rights or claims as may be created by this
18 Agreement, each Class Member, and each of their respective
19 executors, administrators, representatives, agents, heirs, successors,
20 assigns, trustees, spouses, or guardians, will release Dayton Superior
21 Corporation and the Released Parties of and from any and all claims,
22 rights, demands, charges, complaints, causes of action, obligations,
23 or liability of any and every kind, known or unknown, that were
24 alleged or that could have been asserted based on the facts alleged
25 in the Second Amended Complaint filed in this Action, including
26 those for failure to pay all wages, including overtime wages, under
27 the Fair Labor Standards Act, 29 U.S.C. Sections 206, 207, and 216
28 arising at any time between November 17, 2012 and preliminary
approval of the Settlement Agreement.

19 **4.2. Additional Release by Plaintiff.** In addition to the above releases applicable to
20 the Participating Class Members, Plaintiff also generally releases any and all claims against each
21 of the Released Parties. This general release includes any and all claims arising from his
22 employment relationship with Defendant, including, without limitation, claims for discrimination
23 or harassment pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000 et seq.
24 or the California Fair Employment and Housing Act, Cal. Gov't Code Section 12900 et seq. This
25 general release by Plaintiff also includes a waiver of California Civil Code Section 1542. Plaintiff
26 expressly waive all rights provided by California Civil Code Section 1542, or other similar statutes,
27 that Plaintiff may have against each of the Released Parties. California Civil Code Section 1542
28 states:

1 A.GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
2 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
3 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
4 THE TIME OF EXECUTING THE RELEASE, AND THAT, IF
5 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
6 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
7 OR RELEASED PARTY.

8 **4.3. Release of Claims for Fees and Costs Relating to Settled Matters.** Plaintiff's
9 Counsel and Plaintiff, on behalf of themselves and each individual Class Member, hereby
10 irrevocably and unconditionally release, acquit, and forever discharge Defendant and the other
11 Released Parties from any claim that they, or any of them, may have for attorneys' fees or costs
12 associated with the representation of Plaintiff and the Class Members, except for the attorneys'
13 fees and costs sought pursuant to this Agreement. It is the Parties' understanding and agreement
14 that any fee and cost payments approved by the Court in accordance with this Agreement will be
15 the full, final, and complete payment of all attorneys' fees and costs associated with all claims
16 settled in this Agreement.

17 **4.4. Non-Admission of Liability.** By entering into this Agreement, Defendant in no
18 way admits any violation of law or any liability whatsoever to Plaintiff and/or the Settlement
19 Class Members, individually or collectively, all such liability being expressly denied. Likewise,
20 by entering into this Agreement, Defendant in no way admits to the suitability of this case for
21 class action litigation other than for purposes of settlement. Rather, Defendant enters into this
22 Agreement to avoid further protracted litigation and to resolve and settle all disputes with
23 Plaintiff and the Settlement Class Members. The settlement of the Action, the negotiation and
24 execution of this Agreement, and all acts performed or documents executed pursuant to or in
25 furtherance of this Agreement: (a) are not, shall not be deemed to be, and may not be used as an
26 admission or evidence of any wrongdoing or liability on the part of Defendant or of the truth of
27 any of the factual allegations in any and all complaints filed in the Action; (b) are not, shall not
28 be deemed to be, and may not be used as an admission or evidence of fault or omission on the
part of Defendant in any civil, criminal, administrative, or arbitral proceeding; and (c) are not,
shall not be deemed to be, and may not be used as an admission or evidence of the

1 appropriateness of these or similar claims for class certification or administration other than for
2 purposes of administering this Agreement. The Parties understand and agree that this Agreement
3 and all exhibits thereto are settlement documents and shall be inadmissible for any purpose in
4 any proceeding between the Parties, except an action or proceeding to approve, interpret, or
5 enforce the terms of this Agreement. The Parties agree, however, that to the extent permitted by
6 law, this Agreement may be pleaded as a full and complete defense to, and may be used as the
7 basis for an injunction against any action, suit or other proceeding that may be instituted,
8 prosecuted or attempted in breach of this Agreement.

9 **5. NO PRIOR ASSIGNMENTS OR UNDISCLOSED LIENS**

10 Plaintiff and Plaintiff's Counsel represent and warrant that they have not assigned,
11 transferred, conveyed, or otherwise disposed of, or purported to assign, transfer, convey, or
12 otherwise dispose of any released claims or the Attorneys' Fees and Costs Award to be paid
13 pursuant to this Agreement. Plaintiff and Plaintiff's Counsel further represent and warrant that
14 there are not any liens or claims against any of the amounts being paid by Defendant as provided
15 in this Agreement. Plaintiff and Plaintiff's Counsel agree to defend, indemnify, and hold
16 Defendant harmless from any liability, losses, claims, damages, costs, or expenses, including
17 reasonable attorneys' fees, resulting from a breach of these representations and/or from any lien
18 or assignment.

19 **6. MISCELLANEOUS**

20 **6.1. Cooperation Between the Parties; Further Acts.** The Parties shall cooperate
21 fully with each other and shall use their best efforts to obtain the Court's approval of this
22 Agreement and all of its terms. Each of the Parties, upon the request of any other Party, agrees to
23 perform such further acts and to execute and deliver such other documents as are reasonably
24 necessary to carry out the provisions of this Agreement.

25 **6.2. Papers to Be Filed With the Court.** All papers to be filed with the Court by
26 Defendant or Plaintiff's Counsel in connection with this Agreement shall be submitted to the other
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1 Party within a reasonable time prior to filing. The other Party shall have no right to object to the
2 papers unless they do not conform to the terms and conditions of this Agreement.

3 **6.3. Entire Agreement.** This Agreement constitutes the entire agreement between the
4 Parties with regard to the subject matter contained herein, and all prior and contemporaneous
5 negotiations and understandings between the Parties shall be deemed merged into this Agreement.

6 **6.4. Binding Effect.** This Agreement shall be binding upon the Parties and, with respect
7 to Plaintiff and the Settlement Class Members, their spouses, children, representatives, heirs,
8 administrators, executors, beneficiaries, conservators, attorneys and assigns.

9 **6.5. Arms'-Length Transaction; Materiality of Terms.** The Parties have negotiated
10 all the terms and conditions of this Agreement at arms' length. All terms and conditions of this
11 Agreement in the exact form set forth in this Agreement are material to this Agreement and have
12 been relied upon by the Parties in entering into this Agreement.

13 **6.6. Captions.** The captions or headings of the sections and paragraphs of this
14 Agreement have been inserted for convenience of reference only and shall have no effect upon the
15 construction or interpretation of any part of this Agreement.

16 **6.7. Construction.** The determination of the terms and conditions of this Agreement
17 has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this
18 Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and
19 shall not be, construed against any party by virtue of draftsmanship.

20 **6.8. Continuing Jurisdiction.** The Court shall retain jurisdiction over the
21 implementation of this Agreement as well as any and all matters arising out of, or related to, the
22 implementation of this Agreement and of the settlement contemplated thereby. The Court shall
23 not have jurisdiction to modify the terms of the Agreement.

24 **6.9. Changes to Be in Writing.** No waiver, modification or amendment of the terms
25 of this Agreement, whether purportedly made before or after the Court's approval of this
26 Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and
27 then only to the extent set forth in such written waiver, modification or amendment, subject to any
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1 required Court approval. Any failure by any Party to insist upon the strict performance by the
2 other Party of any of the provisions of this Agreement shall not be deemed a waiver of future
3 performance of the same provisions or of any of the other provisions of this Agreement, and such
4 Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific
5 performance of any and all of the provisions of this Agreement.

6 **6.10. When Agreement Becomes Effective; Counterparts.** This Agreement shall
7 become effective upon its execution. The Parties may execute this Agreement in counterparts, and
8 execution in counterparts shall have the same force and effect as if Plaintiff and Defendant had
9 signed the same instrument.

10 **6.11. Facsimile or Scanned Signatures.** Any Party may execute this Agreement by
11 signing on the designated signature block below and transmitting that signature page via facsimile
12 or as an attachment to an e-mail to counsel for the other Party. Any signature made and transmitted
13 by facsimile or as an attachment to an e-mail for the purpose of executing this Agreement shall be
14 deemed an original signature for purposes of this Agreement and shall be binding upon the Party
15 whose counsel so transmits the signature page.

16 **6.12. Exhibits Incorporated by Reference.** The terms of this Agreement include the
17 terms set forth in any attached Exhibit, which are incorporated by this reference as though fully
18 set forth herein. Any Exhibit to this Agreement is an integral part of the Settlement.

19 **6.13. Interim Stay of Proceedings.** The Parties agree to refrain from further litigation
20 of this matter, except such proceedings necessary to implement and obtain an order granting final
21 approval of the terms of the Agreement. The Parties further agree that the mutual, voluntary
22 cessation of litigation shall terminate if the motion for final approval of the Agreement is denied
23 by the Court.

24 **6.14. Governing Law.** All terms of this Agreement and Exhibits hereto shall be
25 governed by and interpreted according to the laws of the State of California.

26 **6.15. Invalidity of Any Provision.** Before declaring any provision of this Agreement
27 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible
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1 consistent with applicable precedents so as to render all provisions of this Agreement valid and
2 enforceable.

3 **6.16. Waiver of Right to Be Excluded and Object.** By signing this Agreement,
4 Plaintiff agrees to be bound by the terms herein. For good and valuable consideration, Plaintiff
5 further agrees that he shall not submit an Opt Out request and shall not object to any of the terms
6 of this Agreement. Any such Opt Out request or objection by Plaintiff shall be void and of no
7 force or effect. Efforts by Plaintiff to circumvent the terms of this paragraph shall be void and of
8 no force or effect. Plaintiff shall be issued an Individual Settlement Payment at the time the
9 Settlement Administrator issues Individual Settlement Payments for other Participating Settlement
10 Class Members. Plaintiff and Plaintiff's Counsel further represent and warrant that they have not
11 and will not (a) attempt to void this Agreement in any way; or (b) solicit, encourage or assist in
12 any fashion any effort by any entity or person to object to the settlement set forth in this Agreement
13 or to Opt Out of the Settlement. When Plaintiff's Counsel fulfills their obligation to respond
14 factually to Settlement Class Member questions about the settlement and what they must do to
15 follow available options (including objecting or opting out), Plaintiff's Counsel will not be in
16 violation of the prohibition on assistance.

17 **6.17. No Solicitation of Opt-Outs.** Defendant and Defendant's Counsel further
18 represent and warrant that they have not and will not solicit, encourage or assist in any fashion any
19 effort by any entity or person to object to the settlement set forth in this Agreement or to opt out
20 of the Settlement Class.

21 **6.18. No Undue Publicity.** Neither Plaintiff nor Class Counsel shall cause to be
22 publicized, directly or indirectly, any discussion resulting in or the existence of this Agreement or
23 its terms in any type of mass media, including, but not limited to, speeches, press conferences,
24 press releases, interviews, television or radio broadcasts, newspapers, website postings, messages
25 on the Internet, Facebook, Twitter or any other social media. Breach of this provision shall entitle
26 Defendant, in the exercise of its sole discretion, to nullify this Agreement and the Settlement
27 Agreement at any time before the Effective Date. Should Plaintiff or Class Counsel at any time
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1 breach this provision, Plaintiff shall forfeit to Defendant the full amount of his Service Award.
2 Without limitation by the foregoing, Defendant also may enforce this provision through an action
3 for injunctive relief. Plaintiff waives any obligation by Defendant to file a bond in connection with
4 any such action. After the Effective Date, Class Counsel may state on their website that the case
5 has been settled and provide a short and plain description of the claims that were settled, subject
6 to Defendant's approval. This provision does not apply to any publications ordered by the Court.
7 Class Counsel may also refer to this Settlement in court filings where prior experience is discussed.

8 **6.19. Integration Clause.** This Settlement Agreement contains the entire agreement
9 between the Parties relating to the settlement, and all prior or contemporaneous agreements,
10 understandings, representations, and statements, whether oral or written and whether by a party or
11 such party's legal counsel, are merged herein. No rights hereunder may be waived except in
12 writing.

13 **6.20. Disputes.** Any dispute between the Parties as to the remaining terms of the
14 settlement agreement shall be decided by Mediator Mark Rudy, whose decision shall be final and
15 binding on the Parties. The Plaintiff, on one side, and Defendant, on the other, will split equally
16 any additional costs of the mediator associated with any dispute and all Parties will bear their own
17 attorneys' fees and other costs incurred.

18 **6.21. Time Periods.** The time periods and dates provided in this Agreement with respect
19 to giving of notices and hearings are subject to Court approval and modification by the Court or
20 by written stipulation of Plaintiff's Counsel and Defendant's Counsel without further notice to the
21 Settlement Class Members.

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23 **[signatures on following page and remainder of page intentionally left blank]**

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Dated: March ___, 2019

DAYTON SUPERIOR CORPORATION

By: _____

Dated: March ___, 2019

SEYFARTH SHAW LLP

By: _____

Lorraine H. O'Hara
David D. Jacobson

Attorneys for Defendant
Dayton Superior Corporation

Dated: March ___, 2019

PLAINTIFF DANNY MALDONADO

Danny Maldonado

Dated: March ___, 2019

BRADLEY/GROMBACHER, LLP
LAW OFFICES OF SAHAG MAJARIAN, II

By: _____

Marcus J. Bradley, Esq.
Kiley Grombacher, Esq.
Taylor L. Emerson, Esq.
Sahag Majarian, II, Esq.

Attorneys for Plaintiff Danny Maldonado