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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

ANDY RIVERA, as an individual and on
behalf of all similarly situated employees,

Plaintiff,

v.

THNC INDUSTRIES, INC. dba SERVPRO
LAGUNA BEACH DANA POINT; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 30-2022-01295830-CU-OE-CXC

CLASS ACTION

**FIRST AMENDED JOINT STIPULATION
OF CLASS ACTION AND PRIVATE
ATTORNEYS GENERAL ACT
SETTLEMENT AND RELEASE**

Assigned for all purposes to:

Hon. William Claster, Dept. CX101

Complaint Filed: December 8, 2022

Trail Date: None Yet Set

1 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE**

2 IT IS HEREBY STIPULATED, by and among Plaintiff ANDY RIVERA, on behalf of
3 himself and the Settlement Class Members, on the one hand, and Defendant THNC
4 INDUSTRIES, INC. DBA SERVPRO LAGUNA BEACH DANA POINT, on the other hand,
5 and subject to the approval of the Court, that the above-captioned action is hereby being
6 compromised and settled pursuant to the terms and conditions set forth in this Joint Stipulation of
7 Class Action Settlement and Release (the “Settlement”).

8 **1. DEFINITIONS**

9 Capitalized terms used in this Settlement shall have the meanings set forth below:

10 1.1. “Action” means the consolidated putative class and PAGA action entitled *Rivera*
11 *v. THNC Industries, Inc. dba ServPro Laguna Beach Dana Point*, pending in the Superior Court
12 of the State of California, County of Orange, and designated as Case No. 30-2022-01295830-CU-
13 OE-CXC.

14 1.2. “Class Member” means all non-exempt and/or hourly paid employees currently
15 and formerly employed by Defendant in the state of California from December 8, 2018 through
16 January 3, 2024.

17 1.3. “PAGA Member” means all non-exempt and/or hourly paid employees currently
18 and formerly employed by Defendant in the state of California from October 4, 2021 through
19 January 3, 2024.

20 1.4. “Settlement Administrator” means Atticus Administration, LLC.

21 1.5. “Settlement Administration Costs” means the amount to be paid to the third-party
22 Settlement Administrator from the Gross Settlement Amount for the administration of the
23 Settlement. The Settlement Administration Costs amount is not to exceed Seven Thousand Five
24 Hundred Dollars (\$7,500.00). Any portion of the requested Settlement Administration Costs that
25 is not awarded to the Settlement Administrator shall be part of the Net Settlement Amount.

26 1.6. “Class Counsel” means Katherine Odenbreit and Kevin Mahoney of the Mahoney
27 Law Group, APC.

28 1.7. “Class Counsel Fees” means reasonable attorneys’ fees for Class Counsel’s

1 litigation and resolution of this Action, in the amount of Sixty-One Thousand Three Hundred
2 Thirty-Three Dollars and Thirty-Three Cents (\$61,333.33) (or 33.33% of the Gross Settlement
3 Amount). The Court shall determine the amount of the Class Counsel Fees, and it shall be paid
4 from the Gross Settlement Amount. Any portion of the requested Class Counsel Fees that is not
5 awarded to Class Counsel shall be part of the Net Settlement Amount.

6 1.8. “Class Counsel Costs” means actual expenses incurred by Class Counsel for Class
7 Counsel’s litigation and resolution of this Action, as supported by declaration, in an amount not
8 to exceed Fifteen Thousand Dollars (\$15,000.00). The Court shall determine the amount of the
9 Class Counsel Costs, and it shall be paid from the Gross Settlement Amount. Any portion of the
10 requested Class Counsel Costs that is not awarded to Class Counsel shall be part of the Net
11 Settlement Amount.

12 1.9. “Class Information” means information regarding Settlement Class Members that
13 Defendant will in good faith compile from its records and provide to the Settlement
14 Administrator. Class Information shall be provided as a Microsoft Excel spreadsheet and shall
15 include: each Settlement Class Member’s full name; last known address; last known home
16 telephone number; social security number; all start and end dates of employment during the Class
17 Period, and the total number of weeks each Settlement Class Member worked for Defendant
18 during the Class Period. Because social security numbers are included in the Class Information,
19 the Settlement Administrator shall maintain the Class Information in confidence; access shall be
20 limited to those with a need to use the Class Information as part of the administration of the
21 Settlement, and transmission shall be through use of a secure, password-protected file and will be
22 provided to Class Counsel to the extent needed to fulfill their obligations with mutual agreement
23 by the parties.

24 1.10. “Class Period” means the period from December 8, 2018 through January 3, 2024.

25 1.11. “PAGA Period” means the period from October 4, 2021 through January 3, 2024.

26 1.12. “PAGA Released Claims” shall mean all claims, demands, rights, liabilities and
27 causes of action for penalties under California Labor Code Private Attorneys General Act of 2004
28 against the Released Parties, based on the letter to the Labor & Workforce Development Agency

on June 28, 2022 and contained in the operative complaint, that arose during the PAGA Period, including claims for civil penalties for violations of Labor Code 201, 202, 203, 226, 226.7 510, 512, 1194, and 2802 and for attorneys' fees and costs pursuant to Labor Code section 2699.3(g)(1), and all related claims for attorneys' fees and costs.

1.13. "Class Representative Service Award" means the amount that the Court authorizes to be paid to Plaintiff, not to exceed Five Thousand Dollars (\$5,000.00), in addition to Plaintiff's Individual Settlement Payment. The Class Representative Service Award to Plaintiff is in exchange for the Released Claims, Plaintiff's General Released Claims, and for Plaintiff's efforts and risks in assisting with the prosecution of the Action. The Class Representative Service Award shall be paid from the Gross Settlement Amount. Any portion of the requested Class Representative Service Award that are not awarded to Plaintiff shall be part of the Net Settlement Amount.

1.14. "Court" means the Superior Court of the State of California for the County of Orange.

1.15. "Defendant" mean THNC Industries, Inc. dba ServPro Laguna/Beach Dana Point.

1.16. "Defendant's Counsel" means Chandra A. Beaton and Brier Setlur of LightGabler LLP.

1.17. "Effective Date" means the date that the Gross Settlement Amount is fully funded.

1.18. "Employee Taxes" means the employee's share of any and all applicable federal, state, and local payroll taxes on the portion of Settlement Class Members' Individual Settlement Payment that constitutes wages. The Employee Taxes shall be paid out of the Net Settlement Amount as deductions from Settlement Class Members' Individual Settlement Payment.

1.19. "Employer Taxes" means the employer's share of any and all applicable federal, state, and local payroll taxes on the portion of Settlement Class Members' Individual Settlement Payment that constitutes wages. The Employer Taxes shall be paid by Defendant separately and not out of the Gross Settlement Amount or Net Settlement Amount.

1.20. "Final Approval Hearing" means the hearing held on the motion for final approval of the Settlement.

1 1.21. “Final Approval Date” means the date which the Court grants final approval of the
2 Settlement.

3 1.22. “Final Judgment” means the Court’s entry of an order of judgment in this Action
4 following the Court’s final approval of the Settlement.

5 1.23. “Gross Settlement Amount” means the maximum amount Defendant shall have to
6 pay in connection with this Settlement, by way of a common fund, which shall be inclusive of all
7 Individual Settlement Amounts to Settlement Class Members, Class Counsel Fees, Class Counsel
8 Costs, Settlement Administrator Costs, Class Representative Service Award, and PAGA
9 Allocation except for Employer Taxes. Subject to Court approval and the terms of this
10 Settlement, the Gross Settlement Amount Defendant shall be required to pay is One Hundred
11 Eighty-Four Thousand Dollars and Zero Cents (\$184,000.00). No portion of the Gross Settlement
12 Amount will revert to Defendant, and the Settlement does not require Settlement Class Members
13 to submit claims as a prerequisite to receiving their Individual Settlement Payment. This
14 settlement sum is based on Defendant’s representation that the number of total Workweeks during
15 December 8, 2018 through October 4, 2023 was Seven Thousand Three Hundred Sixty (7,360).
16 Defendant shall not be required to pay more than the Gross Settlement Amount as long as the
17 actual number of Workweeks during December 8, 2018 through October 4, 2023 is no more than
18 ten percent (10%) greater than Defendant’s estimate. If the actual number of Workweeks during
19 the Class Period is more than ten percent (10%) greater than the estimate – or 8,096 or more
20 Workweeks – the Gross Settlement Amount shall increase proportionately to the increase in the
21 number of Workweeks over the ten percent (10%) grace amount— e.g., if the number of
22 Workweeks increases by eleven percent (11%), the Gross Settlement Amount shall increase by
23 eleven percent (11%); if the number of Workweeks increases by twelve percent (12%), the Gross
24 Settlement Amount shall increase by twelve percent (12%), and so forth. The Parties have agreed
25 any additional amount due under this escalator clause shall increase the Gross Settlement Amount,
26 which would increase any disbursements based on the Gross Settlement Amount (i.e. Net
27 Settlement Amount and Class Counsel Fees). Under no other circumstances shall Defendant be
28 required to pay more than the Gross Settlement Amount except as provided for in this section of

the Settlement Agreement.

1.24. “Individual Settlement Payment” means the amount payable to each Settlement Class Member, as calculated pursuant to Paragraph 3.12.1 of the Settlement, from the Net Settlement Amount. Checks for Individual Settlement Payments shall specifically indicate that they are void if not negotiated within one hundred eighty (180) days of their issuance.

1.25. “PAGA Allocation” means Ten Thousand Dollars (\$10,000.00), allocated from the Gross Settlement Amount for the compromise of claims brought under the Labor Code Private Attorney General Act of 2004 (“PAGA”). Per California Labor Code section 2699(i), Seven Thousand Five Hundred Dollars (\$7,500.00), representing 75% of the PAGA Allocation, shall be paid to California’s Labor Workforce Development Agency. The remaining Two Thousand Five Hundred Dollars (\$2,500.00), representing 25% of the PAGA Allocation, shall be part of the Net Settlement Amount and shall be distributed to PAGA Members.

1.26. “LWDA” shall mean the California Labor and Workforce Development Agency.

1.27. “LWDA PAGA Allocation” means Seven Thousand Five Hundred Dollars (\$7,500.00), representing 75% of the PAGA Allocation, and is the amount payable from the Gross Settlement Amount to California’s Labor Workforce Development Agency.

1.28. “PAGA Member Allocation” means Two Thousand Five Hundred Dollars (\$2,500.00), representing the PAGA Allocation, and is the amount payable to PAGA Members. The PAGA Member Allocation shall be distributed in its entirety to PAGA Class Members pursuant to paragraph 3.13.

1.29. “Net Settlement Amount” means the Gross Settlement Amount, less the Class Counsel Fees, the Class Counsel Costs, the Class Representative Service Award, the Settlement Administration Costs, the LWDA PAGA Allocation, and the PAGA Class Member Allocation. The Net Settlement Amount shall be distributed in its entirety to Settlement Class Members, as provided for in this Settlement.

1.30. “Notice of Objection” means a written statement of objection, made and signed by a Settlement Class Member and includes the following: (1) the full name of the Settlement Class Member; (2) the dates of employment of the Settlement Class Member; (3) the last four digits of

1 the Settlement Class Member’s Social Security number and/or the entire Employee ID number;
2 (4) the basis for the objection; and, (5) whether the Settlement Class Member intends to appear at
3 the Final Approval Hearing. Settlement Class Members, regardless of whether or not they submit
4 a timely Notice of Objection, will have a right to appear at the Final Approval Hearing, with or
5 without an attorney, and have their objection(s) heard by the Court.

6 1.31. “Notice of Settlement” means the Notice of Proposed Class Action and Notice of
7 Private Attorney General Act Settlement (attached hereto as **Exhibit A**).

8 1.32. “Notice Packet” means the Notice of Proposed Class Action, Class Workweek
9 Dispute Form, and the Request To Be Excluded From Settlement form to be provided in English
10 and Spanish.

11 1.33. “Settlement Class Members” means all Class Members who do not submit a valid
12 and timely Request for Exclusion. “Parties” means Plaintiff and Defendant collectively; and
13 “Party” shall mean any Defendant or Plaintiff, individually.

14 1.34. “Plaintiff” means Andy Rivera.

15 1.35. “Plaintiff’s General Released Claims” means, in addition to the Released Claims,
16 Plaintiff, on behalf of himself, his respective agents, spouses, executors, representatives, heirs,
17 successors, assigns, and estates, in exchange for the terms and conditions of this Settlement,
18 including the Class Representative Service Award requested or as otherwise authorized by the
19 Court, shall also, as of the Effective Date, fully and forever release the Released Parties, to the
20 full extent permitted by law, of and from any and all claims arising from Plaintiff’s employment
21 or separation of employment with Defendant, known and unknown, asserted and unasserted,
22 which Plaintiff had or may have had against the Released Parties, whether sounding in tort, in
23 contract, in law, in equity or otherwise, and including but not limited to all claims for violation of
24 any local, state, or federal statute, rule, or regulation. Plaintiff expressly waives and relinquishes
25 all rights and benefits afforded by section 1542 of the Civil Code of the State of California and
26 do so understanding and acknowledging the significance of such specific waiver of section 1542.
27 Section 1542 of the Civil Code of the State of California states as follows:

28 **A general release does not extend to claims that the creditor or releasing party does**

1 **not know or suspect to exist in his or her favor at the time of executing the release**
2 **and that, if known by him or her, would have materially affected his or her**
3 **settlement with the debtor or released party.**

4 Notwithstanding the above, Plaintiff's General Released Claims do not include any
5 workers' compensation claims, claims that cannot be waived as a matter of law by signing this
6 agreement, or enforce this agreement. No release in this Agreement is effective until the Gross
7 Settlement Amount is fully funded.

8 1.36. "Preliminary Approval Date" means the date the Court enters the Preliminary
9 Approval Order for the Settlement.

10 1.37. "Preliminary Approval Order" means the proposed order (filed concurrently with
11 this Settlement and Plaintiff's motion for preliminary approval of the Settlement), as may be
12 amended by the Court, for preliminary approval of the Settlement.

13 1.38. "Released Claims" means any and all claims during the Class Period which were
14 alleged in this Action or reasonably could have been raised based on the facts, conduct, and/or
15 omissions of the Released Parties based on the factual allegations in the Action , including all
16 wage and hour claims, demands, rights, liabilities, and causes of action for unpaid wages,
17 including minimum wage payments, regular wages, overtime wages; failure to pay wages during
18 employment; failure to pay all wages due upon separation of employment; failure to maintain and
19 provide accurate records; meal and rest break violations; meal and rest break premiums; wage
20 statement violations, failure to reimburse for necessary business expenditures, violation of the
21 Private Attorney General Act (California Labor Code section 2698, et seq.), civil and statutory
22 penalties, interest, liquidated damages, attorney's fees and costs, claims under California Labor
23 Code sections 201-203, 204, 206, 226, 226.3, 226.7, 510, 512, 1174, 1174.5 1194, 1194.2, 1197,
24 1197.1, 1182.12, and 2802, and applicable Industrial Welfare Commission Wage Order, and
25 claims under California Business & Professions Code sections 17200-17204. It is understood and
26 agreed that Released Claims do not include claims for workers' compensation, unemployment,
27 or disability benefits of any nature, nor any claims, actions, or causes of action which may be
28 possessed by Settlement Class Members under state or federal discrimination statutes, including,

without limitation, the California Fair Employment and Housing Act, California Government Code section 12940, *et seq.*; the Unruh Civil Rights Act, California Civil Code section 51, *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, *et seq.*; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, *et seq.*; the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.*; and all of their implementing regulations and interpretive guidelines. No release in this Agreement shall become effective until the Gross Settlement Amount is fully funded.

1.39. “Released Parties” means THNC Industries, Inc. dba ServPro Laguna Beach Dana Point, and each of its owners, parent companies, subsidiaries, related companies, affiliates, dbas, current and former management companies, staffing agencies, shareholders, members, agents (including any investment bankers, investors, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, assigns, or any other representatives of any kind or any related entity that was the “employer” of Class Members.

1.40. “Response Deadline” means the date sixty (60) days after the Settlement Administrator mails the Notice Packets to Settlement Class Members, and shall be the last date on which Settlement Class Members may: (a) postmark Requests for Exclusion from the Settlement, (b) postmark Workweek Dispute, or (c) postmark written Objections to the Settlement.

1.41. “Settlement” means this Joint Stipulation of Class Action Settlement and Release.

1.42. “Settlement Class Member(s)” or “Settlement Class” means all non-exempt employees, currently and formerly employed by Defendant in the State of California at any time during the Class Period.

1.43. “Workweeks” shall mean the number of weeks each Class Member worked at THNC Industries, Inc. dba ServPro Laguna Beach Dana Point as an hourly-paid and/or non-exempt employee in California during the Class Period. The Settlement Administrator will calculate the number of Workweeks by calculating the number of days each Class Member worked at THNC Industries, Inc. dba ServPro Laguna Beach Dana Point during the Class Period,

and dividing by seven (7).

2. RECITALS

2.1. Class Certification. The Parties stipulate and agree to the conditional certification of this Action for purposes of this Settlement only. Should, for whatever reason, the Settlement not become final and effective, conditional Class Certification shall immediately be set aside (subject to further proceedings on motion of any Party to certify or decertify thereafter). The Parties' willingness to stipulate to conditional Class Certification as part of the Settlement shall have no bearing on and shall not be admissible or considered in connection with the issue of whether a class should be certified in a non-settlement context in this Action, and shall have no bearing on and shall not be admissible or considered in connection with the issue of whether a class should be certified in any other lawsuit. Defendant expressly reserves its right to oppose class certification should this Settlement be modified or reversed on appeal or otherwise not become final and effective for any reason.

2.2. Procedural History. On June 28, 2022, Plaintiff submitted his PAGA letter to the LWDA alleging Defendant violated, among other provisions of the California Labor Code and applicable wage law, Labor Code sections 201, 202, 203, 226, 226.7 510, 512, 1194, and 2802, California Business & Professions Code section 17200, and applicable Wage Orders of the Industrial Welfare Commission. On December 8, 2022, Plaintiff filed a lawsuit in the Superior Court of California for the County of Orange as a proposed class action on behalf of all current and former non-exempt California employees of Defendant during the period of December 8, 2018 through the date of final judgment. In his initial complaint Plaintiff alleged that Defendant (1) failed to pay wages, including minimum wage and overtime; (2) failed to provide rest periods; (3) failed to provide meal periods; (4) failed to pay wages due at separation of employment; (5) failed to provide accurate itemized wage statements; (6) failure to reimburse for necessary business expenditures; (7) violations of Business and Professions Code Section 17200 et seq.; and (8) violations of PAGA. Plaintiff sought recovery under the California Labor Code, the applicable Industrial Welfare Commission Wage Order, and the California Business & Professions Code.

2.3. Settlement Negotiations. On October 4, 2023, the Parties participated in a full-

1 day private mediation session with mediator Hon. Lisa Cole (Ret.). Prior to the mediation,
2 Defendant provided Plaintiff's personnel file, Plaintiff's time and pay records, Defendant's
3 employee handbooks utilized during the Class Period, time records and corresponding time
4 records for a sample of putative class members, as well as other documents, allowing Class
5 Counsel to construct a damage analysis. Based on the information obtained through informal
6 discovery, the Parties reached an agreement in principle to the basic terms of a class-action
7 settlement agreement. The Settlement is the result of an informed and detailed evaluation of the
8 total exposure and potential liability, in relation to the costs and risks associated with continued
9 litigation of the Action. The Parties have engaged in sufficient discovery and investigation to
10 assess the relative merits of the claims, defenses, and contentions of the Parties.

11 2.4. Benefits of Settlement to Settlement Class Members. Plaintiff and Class Counsel
12 recognize the length of continued proceedings necessary to litigate the Parties' disputes through
13 certification, trial, and any possible appeal. Plaintiff and Class Counsel have also taken into
14 account the uncertainty and risk of the outcome of further litigation, the difficulties and delays
15 inherent in such litigation, including, but not limited to, the risks related to a contested motion for
16 class certification, potential motions for decertification, trial, and appeal. Plaintiff and Class
17 Counsel are also aware of the burdens of proof necessary to establish liability for the claims
18 asserted in the Action and the difficulties in establishing damages for the Class Members.
19 Plaintiff and Class Counsel have also taken into account Defendant's agreement to enter into a
20 settlement that confers substantial relief upon Class Members. Based on the foregoing, Plaintiff
21 and Class Counsel have determined that this Settlement is fair, adequate, and reasonable, and is
22 in the best interests of the Class Members.

23 2.5. Defendant's Denial of Wrongdoing and Liability and Reasons for Settlement.
24 Defendant has denied and continue to deny each and all of the claims and contentions alleged in
25 the Action. Defendant has repeatedly asserted, and continue to assert, defenses thereto, and have
26 expressly denied, and continue to deny, any wrongdoing or legal liability arising out of any of the
27 facts, conduct, and/or omissions alleged in the Action. Defendant has also denied, and continue
28 to deny, *inter alia*, the allegations that the Class Members have suffered damage. Without limiting

1 the foregoing, Defendant contends that the Class Members were properly and timely paid all
2 wages owed, including, but not limited to, all straight and overtime pay; were provided timely
3 and uninterrupted meal and rest periods as required under California law; were properly and
4 timely paid all wages upon separation of employment or otherwise when due; were properly and
5 timely provided accurate itemized wage statements as required under California law; were
6 properly reimbursed for any expenses required to incur; and that Defendant has not engaged in
7 any unlawful, unfair, or fraudulent business practices in violation of California law. However,
8 Defendant has concluded that any further defense of this litigation would be protracted and
9 expensive for all Parties. Substantial amounts of time, energy, and resources of Defendant has
10 been and, unless this Settlement is approved, will continue to be devoted to the defense of the
11 claims asserted by Plaintiff and Class Members. Defendant has also taken into account the
12 uncertainty and risks inherent in any litigation, especially in complex cases such as this Action.
13 Based on the foregoing, Defendant has concluded that it is desirable and beneficial that the Action
14 be fully and finally settled in the manner and upon the terms and conditions set forth in this
15 Settlement. This will allow Defendant to dispose of burdensome and protracted litigation, permit
16 the operation of Defendant's business without further expensive litigation, and put an end to the
17 distraction and diversion of its personnel regarding matters at issue in the Action.

18 2.6. No Admissions. The Parties understand and agree that this Settlement is the result
19 of a good faith compromise of disputed claims and allegations, and Defendant is entering into this
20 Settlement solely to resolve disputed matters. No part of this Settlement or any conduct or written
21 or oral statements made in connection with this Settlement, whether or not the Settlement is finally
22 approved and/or consummated, is or may be offered as or construed to be an admission or
23 concession of any kind by any of the Parties. In particular, but without limiting the generality of
24 the foregoing, nothing about this Settlement shall be offered or construed as an admission that
25 Defendant violated any of its obligations under the California Labor Code, applicable Industrial
26 Welfare Commission Wage Orders, Business and Professions Code or Private Attorney General
27 Act, or of liability in general, or any wrongdoing, impropriety, responsibility, or fault whatsoever
28 on the part of Defendant and/or the Released Parties. In addition, this Settlement shall not be

1 offered or be admissible in evidence against any of the Parties or any of the Released Parties,
2 except in any action or proceeding brought by or against Plaintiff, Class Members, or Defendant
3 to enforce the Settlement's terms, or by Defendant in defense of any claims brought by Plaintiff
4 or Class Members. The provisions of this paragraph shall become effective when this Settlement
5 is signed by all Parties, and shall be binding on the Parties and their counsel regardless of whether
6 the Settlement is preliminarily and/or finally approved or terminated for any reason, or rendered
7 null and void.

8 2.7. Class Members' Claims. Plaintiff claims that the Released Claims have merit and
9 give rise to liability on the part of Defendant. This Settlement is a compromise of disputed claims.
10 Nothing contained in this Settlement, and no documents referred to herein, nor any action taken
11 to carry out this Settlement, may be construed or used as an admission by or against the Plaintiff,
12 Class Members or Class Counsel as to the merits or lack thereof of the claims asserted in the
13 Action.

14 2.8. Defendant's Defenses. Defendant has denied and continue to deny each and all of
15 the allegations, claims, and contentions of wrongdoing alleged by Plaintiff in the Action.
16 Defendant has expressly denied and continue to deny all charges of wrongdoing or liability
17 against them arising out of any of the conduct, statements, acts, or omissions alleged in the Action.
18 Defendant contends that they complied in good faith with California and federal wage-and-hour
19 laws and have dealt legally and fairly with Plaintiff and Class Members. Defendant further denies
20 that, for any purpose other than settling this Action, these claims are appropriate for class or
21 representative treatment.

22 **3. TERMS OF SETTLEMENT**

23 The Parties agree as follows:

24 3.1. Binding Settlement. This Settlement shall bind the Parties and all Settlement Class
25 Members, subject to the terms and conditions set forth in the Settlement and the Court's approval.

26 3.2. Release As To All Settlement Class Members and Plaintiff.

27 3.2.1. Release As To All Settlement Class Members. As of the Effective Date, all
28 Settlement Class Members, including Plaintiff, will be deemed to have fully, finally and forever

1 released, settled, compromised, relinquished, and discharged the Released Parties from the
2 Released Claims during the Class Period. This release shall be binding on all Settlement Class
3 Members, including each of their respective attorneys, agents, executors, representatives,
4 guardians ad litem, heirs, successors, and assigns, and shall inure to the benefit of the Released
5 Parties, who shall have no further or other liability or obligation to any Class Member with respect
6 to the Released Claims, except as expressly provided herein. All PAGA Members, regardless of
7 whether they submit timely and valid Requests for Exclusion from the Settlement, will release all
8 PAGA Released Claims alleged in the Action and based on the letter to the Labor & Workforce
9 Development Agency on June 28, 2022 and operative complaint, during the PAGA Period.
10 Plaintiff on behalf of the State of California and the LWDA will also release all PAGA Released
11 Claims.

12
13 3.2.2. Release As To Plaintiff. As of the Effective Date, Plaintiff will be deemed
14 to have fully, finally and forever released, settled, compromised, relinquished, and discharged
15 any and all of Plaintiff's General Released Claims against the Released Parties. With respect to
16 the Plaintiff's General Released Claims only, Plaintiff shall be deemed to have, and by operation
17 of the Final Judgment shall have, in light of his respective Class Representative Service Awards,
18 expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights,
19 and benefits of section 1542 of the California Civil Code, which section provides:

20 A general release does not extend to claims which the creditor or releasing
21 party does not know or suspect to exist in his or her favor at the time of
22 executing the release and that, if known by him or her, would have
23 materially affected his or her settlement with the debtor or released party.
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1 Plaintiff may hereafter discover facts in addition to or different from those he now know
2 or believe to be true with respect to the subject matter of the Plaintiff's General Released Claims,
3 but upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment
4 shall have, fully, finally, and forever settled and released any and all of the Plaintiff's General
5 Released Claims, whether known or unknown, suspected or unsuspected, contingent or non-
6 contingent, which now exist, or heretofore have existed, upon any theory of law or equity now
7 existing or coming into existence in the future. Plaintiff agree not to sue or otherwise make a
8 claim against any of the Released Parties for Plaintiff's General Released Claims.

9 3.3. Tax Liability. The Parties understand and agree that the Parties are not providing
10 tax or legal advice. Defendant shall be responsible for any Employer Taxes due as a result of the
11 Settlement. These payments shall be separate and shall not be made from the Gross Settlement
12 Amount or the Net Settlement Amount. Settlement Class Members shall remain responsible for
13 any Employee Taxes due as a result of the Settlement. Settlement Class Members will assume
14 any employee tax obligations or consequences that may arise from this Settlement and should
15 consult with a tax expert if they have questions. However, Individual Settlement Payments will
16 be allocated as follows: one-half as wages (for which an IRS Form W-2 will be issued) and one-
17 half as interest and penalties (for which an IRS Form 1099 will be issued). Any required payroll
18 deductions will be based on this apportionment. The Parties agree that, in the event that any taxing
19 body determines that additional employee taxes are due from any Settlement Class Member, such
20 Settlement Class Member assumes all responsibility for the payment of such taxes.

21 3.4. Circular 230 Disclaimer. The Parties acknowledge and agree that (1) no provision
22 of this Settlement, and no written communication or disclosure between or among the Parties,
23 Class Counsel or Defendant's Counsel and other advisers, is or was intended to be, nor shall any
24 such communication or disclosure constitute or be construed, or be relied upon, as tax advice
25 within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as
26 amended); (2) the acknowledging Party (a) has relied exclusively upon his, her, or its own,
27 independent legal and tax counsel for advice (including tax advice) in connection with this
28 Settlement, (b) has not entered into this Settlement based upon the recommendation of any other

1 Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any
2 communication or disclosure by any attorney or advisor to any other Party to avoid any tax penalty
3 that may be imposed on the acknowledging Party; and (3) no attorney or advisor to any other
4 Party has imposed any limitation that protects the confidentiality of any such attorney's or
5 adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure
6 by the acknowledging Party of the tax treatment or tax structure of any transaction, including any
7 transaction contemplated by this Settlement.

8 3.5. Settlement Approval and Implementation Procedures. As part of this Settlement,
9 the Parties agree to the following procedures for obtaining the Court's preliminary approval of
10 the Settlement: conditionally certifying the Settlement Class, notifying Settlement Class Members
11 of the Settlement and distributing the PAGA Payment, obtaining the Court's final approval of the
12 Settlement, and processing the Individual Settlement Payments, as set forth below.

13 3.5.1. Preliminary Approval and Certification. As soon as practicable after
14 execution of this Settlement, pending the Court's availability, Plaintiff will submit this Settlement
15 to the Court for preliminary approval of the Settlement, in accordance with California Rules of
16 Court, Rule 3.769(c). Such submission will include this Settlement, the proposed Notice Packet,
17 the proposed Preliminary Approval Order, and any memoranda and evidence as may be necessary
18 for the Court to determine that this Settlement is fair, adequate, and reasonable. The Parties agree
19 to request the Court to enter an order conditionally certifying the Settlement Class after the
20 preliminary approval hearing, in accordance with California Rules of Court, Rule 3.769(d).

21 3.5.2. Class Information. No more than twenty-one (21) calendar days after the
22 entry of the Preliminary Approval Order by the Court, Defendant shall provide the Settlement
23 Administrator with the Class Information for purposes of mailing Notice Packets to Class
24 Members. Defendant shall also provide the Settlement Administrator a separate list of PAGA
25 Members and dates of PAGA Members' employment with Defendant.

26 3.5.3. Notice by First Class U.S. Mail. Upon receipt of the Class Information,
27 the Settlement Administrator will perform a search on the National Change of Address database
28 to update the Class Members' addresses. No more than ten (10) calendar days after receiving the

1 Class Information from Defendant, as provided herein, the Settlement Administrator shall mail
2 copies of the Notice Packet to all Settlement Class Members by regular First-Class U.S. Mail.
3 The Settlement Administrator shall exercise its best judgment to determine the current mailing
4 address for each Class Member. The address identified by the Settlement Administrator as the
5 current mailing address shall be presumed to be the best mailing address for each Class Member.
6 It will be conclusively presumed that if an envelope so mailed has not been returned within twenty
7 (20) days of the mailing that the Class Member received the Notice Packet. The Settlement
8 Administrator shall post the operative complaint in this Action, the PAGA Notice letter to the
9 LWDA, the Settlement Agreement preliminary approved by the Court and any amendments, the
10 Notice Packet, Preliminary Approval Order, and Final Judgement on the Settlement
11 Administrator's website for 180 days following the Final Approval Order.

12 3.5.4. Undeliverable Notices. Any Notice Packets returned to the Settlement
13 Administrator as undeliverable on or before the Response Deadline shall be re-mailed to the
14 forwarding address affixed thereto or as described in paragraph 3.5.5 of this Settlement.

15 3.5.5. For each Class Member whose Notice Packet is returned, and a forwarding
16 address is not affixed thereto, there will be one skip trace by the Settlement Administrator. If an
17 updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet
18 to the Class Member at the updated mailing address so identified. One supplemental Notice
19 Packet shall be mailed to each Class Member whose original Notice Packet is returned as
20 undeliverable to the Settlement Administrator, if a forwarding or updated address can be
21 identified. Such re-mailing shall be made within five (5) business days of the Settlement
22 Administrator receiving notice that the respective Notice Packet was undeliverable. Any requests
23 to Defendant's Counsel by the Settlement Administrator for documents or information from
24 Defendant must be responded to within a reasonable amount of time by Defendant's Counsel. It
25 is the intent of the Parties that reasonable means be used to locate the Class Members and apprise
26 them of their rights.

27 3.5.6. Class Members to whom Notice Packets are resent after having been
28 returned undeliverable to the Settlement Administrator shall have fourteen (14) calendar days

thereafter, or until the Response Deadline has expired, whichever is later, to mail the Request for Exclusion and Workweek Dispute Form, or a Notice of Objection. Notice Packets that are resent shall inform the recipient of this adjusted deadline. The date of the postmark on the return envelope shall be the exclusive means used to determine whether a Class Member has returned his or her Request for Exclusion, Workweek Dispute Form or Objection on or before the adjusted deadline. Workweek Dispute Forms must be submitted pursuant to Paragraph 3.6. It will be conclusively presumed that if an envelope so mailed has not been returned within thirty (30) days of the mailing, that the Class Member received the Notice Packet. If a Class Member's Notice Packet is returned to the Settlement Administrator more than once as undeliverable, then an additional Notice Packet shall not be re-mailed.

3.5.7. Compliance with the procedures specified in paragraphs 3.5.3 through 3.5.6 of this Settlement shall constitute due and sufficient notice to Class Members of this Settlement and shall satisfy the requirement of due process. Nothing else shall be required of, or done by, the Parties, Class Counsel, and Defendant's Counsel to provide notice of the proposed Settlement.

3.6. Disputes. Class Members will have the opportunity during the 60-day response period, should they disagree with Defendant's records regarding their weeks worked during the Class Period, to provide a completed Class Workweek Dispute Form (attached hereto as **Exhibit B**), documentation and/or an explanation to show contrary weeks worked. Additional time may be permitted if the Notice Packet is re-mailed. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Settlement. The Settlement Administrator shall make the initial determination of the eligibility for and amount of any Individual Settlement Payment. The Court shall have the right to review any decision made by the Settlement Administrator regarding any dispute. The Parties are required to file with the Court all disputes submitted by Class Members, all evidence submitted, and the resolution of the dispute(s).

3.7. Exclusions (Opt-Outs). The Notice Packet shall state that Class Members who

wish to exclude themselves from the Settlement must submit a Request for Exclusion Form (attached hereto as **Exhibit C**) by the Response Deadline. A Class Member may submit a Request To Be Excluded From Settlement form or a writing that contains: (1) the name, address, and the last four digits of the Social Security number and/or the entire Employee ID number of the Class Member requesting exclusion; (2) a clear statement requesting to be excluded from the Class Settlement; (3) must be signed by the Class Member; and (4) must be postmarked by the Response Deadline and returned to the Settlement Administrator at the specified address. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed a valid Request for Exclusion from this Settlement. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Class Member who requests to be excluded from the Settlement in accordance with the provisions of this paragraph will not be entitled to any recovery under the Settlement and will not be bound by the terms of the Settlement. Class Members who receive a Notice Packet but fail to submit a valid and timely Request for Exclusion on or before the Response Deadline, which is sixty (60) days from the date of the mailing of the Notice Packet, shall be bound by all terms of the Settlement and any Final Judgment entered in this Action if the Settlement is approved by the Court. Any Class Member who does not request exclusion as set forth above is deemed to have released all claims, including Released Claims against Released Parties, as set forth herein and therefore by operation will be deemed a Settlement Class Member. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage members of the Class to submit Requests for Exclusion from the Settlement. Class Counsel shall not represent any Class Member with respect to any such Request for Exclusion. Class Members who submit a valid Request for Exclusion may not also submit a Notice of Objection. PAGA Members cannot opt out or submit a Request for Exclusion.

3.8. Objections. The Notice Packet shall state that Class Members who wish to object to the Settlement may submit a written statement of objection to the Settlement Administrator. The Notice of Objection must be signed by the Class Member and state: (1) the full name of the Class Member; (2) the dates of employment of the Class Member; (3) the last four digits of the

1 Class Member's Social Security number and/or the entire Employee ID number; (4) the basis for
2 the objection; and, (5) whether the Class Member intends to appear at the Final Approval Hearing.
3 The Notice of Objection may be postmarked by the Response Deadline and returned to the
4 Settlement Administrator at the specified address. Within five (5) days of receiving a Notice of
5 Objection from a Settlement Class Member, the Settlement Administrator shall forward the
6 Notice of Objection to Class Counsel and Defendant's Counsel. The Parties shall thereafter lodge
7 the Class Member's Notice of Objection with the Court. Class Members, regardless of whether
8 or not they submit a timely Notice of Objection, will have a right to appear at the Final Approval
9 Hearing, with or without an attorney, and have their objection(s) heard by the Court. At no time
10 shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to
11 file or serve written objections to the Settlement or to appeal from the Final Judgment. Class
12 Counsel shall not represent any Class Member with respect to any such objection. PAGA
13 Members cannot object to the Settlement unless they are also a Class Member and do not request
14 exclusion from the Settlement.

15 3.9. Plaintiff's Participation. By executing this Settlement, Plaintiff hereby stipulates
16 he will not object to or exclude themselves from the Settlement in any way.

17 3.10. No Solicitation of Settlement Objections or Exclusions. The Parties and their
18 counsel agree to use their best efforts to carry out the terms of this Settlement. At no time shall
19 any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit
20 Notices of Objection to the Settlement or Requests for Exclusion from the Settlement, or to appeal
21 from the Court's Final Judgment.

22 3.11. Funding of the Gross Settlement Amount. This is a non-reversionary Settlement
23 in which Defendant is required to pay the entire Gross Settlement Amount. No portion of the
24 Gross Settlement Amount will revert to Defendant. Defendant is separately and solely
25 responsible for any employer payroll taxes owed as a result of the Settlement. Defendant shall
26 fund the Gross Settlement Amount by no later than thirty (30) calendar days after the Final
27 Approval Date. No release in this Settlement shall be effective until the Gross Settlement Amount
28 is fully funded.

3.11.1. No more than five (5) business days after Defendant makes the Gross Settlement Amount payment, the Settlement Administrator shall provide the Parties with an accounting of all anticipated payments from the Gross Settlement Amount. The Net Settlement Amount shall be calculated by deducting from the Gross Settlement Amount the anticipated payments for (1) Class Representative Service Award, as specified in this Settlement and approved by the Court; (2) Class Counsel Fees, as specified in this Settlement and approved by the Court; (3) Class Counsel Costs, as specified in this Settlement and approved by the Court; (4) Settlement Administration Costs, as specified in this Settlement and approved by the Court; and (5) the LWDA PAGA Allocation, as specified in this Settlement and approved by the Court. The Net Settlement Amount shall be distributed in Individual Settlement Payments in accordance with Paragraphs 3.12, 3.12.1 and 3.13.

3.12. Individual Settlement Payments. Each Settlement Class Member shall be eligible to receive an Individual Settlement Payment, which is a share of the Net Settlement Amount, based on the number of weeks worked by the Settlement Class Member for Defendant during the Class Period, as a proportion of all weeks worked by all Class Members for Defendant during the Class Period. Individual Settlement Payments shall be paid by check pursuant to the formula set forth in Paragraph 3.12.1 and 3.13 below. Individual Settlement Payments shall be mailed by regular First-Class U.S. Mail to Settlement Class Members' last known mailing address no later than fifteen (15) calendar days after Defendant makes the payment of the Gross Settlement Amount. Individual Settlement Payments shall specifically indicate that they are void if not negotiated within one hundred eighty (180) days of their issuance. Individual Settlement Payments reflect settlement of a dispute regarding wages, interest, and penalties. Individual Settlement Payments will be allocated as follows: one-third (33.33%) as wages; and two-thirds (66.67%) as interest and penalties. The "wage" portion of each Individual Settlement Payment will be reduced by any Employee Taxes. The Settlement Administrator shall issue the appropriate tax documents associated with the Individual Settlement Payments, including an IRS Form W-2 for the amounts allocated as "wages" and an IRS Form 1099 for the amounts allocated as "interest" or "penalties."

1 3.12.1. Individual Settlement Payment Formula. After deducting the Class Counsel Fees
2 and Class Counsel Costs, the LWDA PAGA Allocation, Class Representative Service Awards,
3 and Settlement Administration Costs, the remaining funds (the “Net Settlement Amount”), shall
4 be distributed as follows: The Settlement Administrator shall divide the Net Settlement Amount
5 by the total number of workweeks Class Members worked for Defendant during the Class Period
6 in order to determine the amount each Settlement Class Member is entitled to for each workweek
7 he or she worked for Defendant (the “Weekly Amount”) during the Class Period. The Settlement
8 Administrator shall multiply the Weekly Amount by the estimated total number of workweeks
9 that each Settlement Class Member worked for Defendant during the Class Period. The product
10 of each calculation represents the gross Individual Settlement Payment for the respective
11 Settlement Class Member. The Settlement Administrator shall then deduct Employee Taxes
12 attributable to wages to arrive at the net Individual Settlement Payment for each respective Class
13 Member. Within twenty-one (21) calendar days after Preliminary Approval, Defendant shall
14 provide the Settlement Administrator with any information reasonably necessary to perform the
15 calculation of number of workweeks for each Class Member, and any other reasonably required
16 information the Settlement Administrator requests to perform the calculations required under
17 this Settlement. Defendant shall have no responsibility for deciding the validity of any
18 Individual Settlement Payment or any other payments made pursuant to this Settlement, shall
19 have no involvement in or responsibility for the determination or payment of Employee Taxes,
20 and shall have no liability for any errors made with respect to such Employee Taxes.

21 3.13. PAGA Allocation & Related Release. Out of the Gross Settlement Amount that
22 is ultimately preliminarily approved, Defendant shall pay a total of Ten Thousand Dollars
23 (\$10,000.00) to resolve the PAGA Claims (as defined below) of the Settlement Class (the “PAGA
24 Payment”). Of this amount, 75% (i.e. \$7,500) will be paid to the LWDA and 25% (i.e. \$2,500.00)
25 will be distributed on a pro rata per pay period basis to the PAGA Members who worked at any
26 time from October 4, 2021 through January 3, 2024. Each PAGA Member’s Individual PAGA
27 Payment will be calculated based on the total number of pay periods he or she worked during the
28 PAGA Period. To establish the pay period value, the Settlement Administrator will first

determine the total number of pay periods worked by PAGA Members during the PAGA Period. 25% of the PAGA Settlement Fund will then be divided by the total number of pay periods worked by PAGA Members during the Settlement Period to determine the pay period value. The PAGA Member Allocation represents the portion of civil penalties awarded directly under PAGA, and shall be allocated as 100% penalties. The Settlement Administrator will report the PAGA Payments on IRS 1099 Forms. PAGA Members will not be required to submit a claim form in order to be issued a check for their share of the PAGA Payment. The PAGA Members will not have the opportunity to opt out of, or object to, the PAGA Payment and release of the PAGA Claims. Upon receipt of the PAGA Payment, PAGA Members shall be deemed to have released the PAGA claims as to civil penalties.

3.13.1. Settlement Class Members are not eligible to receive any compensation other than the Individual Settlement Payment (and PAGA Payment for PAGA Members), and they may only receive an Individual Settlement Payment if they do not submit a valid and timely Request for Exclusion to opt out of the Settlement. PAGA Members will receive their portion of the PAGA Payment regardless of whether they submit a valid and timely Request for Exclusion to opt out of the Settlement. Plaintiff, however, are also eligible to receive a Class Representative Service Awards.

3.13.2. No benefit, including but not limited to pension benefits, shall increase or accrue as a result of any payment made pursuant to this Settlement.

3.13.3. If an Individual Settlement Payment is returned to the Settlement Administrator as undeliverable and does not have a forwarding address, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace search. If the returned Individual Settlement Payment has a forwarding address, or another address is identified, the Settlement Administrator shall mail the Individual Settlement Payment to the forwarding, or newly-identified, address. If an Individual Settlement Payment is returned to the Settlement Administrator a second time as undeliverable, the Settlement Administrator shall not attempt any further re-mailing of that Individual Settlement Payment, but shall hold such Individual Settlement Payment until it becomes void. Any settlement checks that remain

1 uncashed one hundred eighty (180) calendar days after issuance shall be void (“Voided
2 Checks”).

3 3.13.4. Any settlement checks that are not cashed within one hundred eighty (180)
4 days after mailing shall thereafter be paid to the California State Controller in the name of the
5 Class Member who did not cash his or her check.

6 3.14. Class Representative Service Award. Defendant agrees not to oppose or object to
7 any application or motion by Plaintiff for Class Representative Service Award, not to exceed Five
8 Thousand Dollars (\$5,000.00) for Plaintiff, as consideration for Plaintiff’s time and effort in
9 bringing and prosecuting this matter. The Class Representative Service Award shall be paid to
10 Plaintiff from the Gross Settlement Amount no later than fifteen (15) calendar days after
11 Defendant funds the Gross Settlement Amount. The Settlement Administrator shall issue an IRS
12 Form 1099 — MISC to Plaintiff for their Class Representative Service Award. Plaintiff shall be
13 solely and legally responsible for payment of all applicable taxes on their Class Representative
14 Service Awards and shall hold Defendant harmless from any claim or liability for taxes, penalties,
15 or interest arising as a result of their Class Representative Service Award. The Class
16 Representative Service Award shall be in addition to Plaintiff’s Individual Settlement Payment
17 as a Settlement Class Member. If the Court awards lesser amounts than the Class Representative
18 Service Award requested, then any portion of the requested amount not awarded to Plaintiff shall
19 be added to the Net Settlement Amount. Plaintiff shall not have the right to revoke this agreement
20 to the Settlement on the grounds the Court did not approve any or all of their request for a Class
21 Representative Service Award; it shall remain binding. Any adjustments made by the Court to
22 the requested Class Representative Service Award shall not be deemed a material modification
23 of this Agreement.

24 3.15. Class Counsel Fees and Costs. Defendant agrees not to oppose or object to any
25 application or motion by Class Counsel for Class Counsel Fees in the amount of one-third of the
26 Gross Settlement Amount or Sixty-One Thousand Three Hundred Thirty-Three Dollars and
27 Thirty-Three Cents (\$61,333.33) and Class Counsel Costs not to exceed Fifteen Thousand Dollars
28 (\$15,000.00) from the Gross Settlement Amount. The Class Counsel Fees and Class Counsel

Costs shall be paid no later than fifteen (15) calendar days after the Defendant funds the Gross Settlement Amount. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payments made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 — MISC to Class Counsel for the payments made pursuant to this paragraph. This Settlement is not contingent upon the Court awarding Class Counsel any particular amount in attorneys' fees and costs. Any amount requested by Class Counsel for the Class Counsel Fees and Class Counsel Costs and not granted by the Court shall become part of the Net Settlement Amount.

3.16. PAGA Allocation. Subject to Court approval, the Parties shall allocate a total of Ten Thousand Dollars (\$10,000.00) from the Gross Settlement Amount for the compromise of claims brought under the Labor Code Private Attorney's General Act of 2004 (the "PAGA Allocation").

3.17. LWDA PAGA Allocation. The LWDA PAGA Allocation shall be Seven Thousand Five Hundred Dollars (\$7,500.00), representing 75% of the PAGA Allocation, and shall be paid to California's Labor Workforce Development Agency ("LWDA") from the Gross Settlement Amount by the Settlement Administrator no later than fifteen (15) calendar days after Defendant funds the Gross Settlement Amount. The remaining Two Thousand Five Hundred Dollars (\$2,500.00), representing 25% of the PAGA Allocation, shall be distributed to PAGA Members.

3.18. Defendant's Option to Terminate Settlement. If, after the Response Deadline and before the Final Approval Hearing, ten percent (10%) or more of the number of Settlement Class Members submit timely and valid Requests for Exclusion from the Settlement, Defendant shall have, in its sole discretion, the option to terminate this Settlement. Defendant shall exercise its option to terminate, if they wish, prior to the Final Approval Hearing, provided the Settlement Administrator has provided Defendant the number and percentage of valid and timely Requests for Exclusion no later than fourteen (14) calendar days prior to the Final Approval Hearing. If Defendant decides to void the Settlement, then the Settlement and conditional class certification shall be considered void, and neither the Settlement, conditional class certification, nor any of the

related negotiations or proceedings, shall be of any force or effect, and the Parties shall stand in the same position, without prejudice, as if this Settlement had been neither entered into nor filed with the Court. Should Defendant void the Settlement under this paragraph, Defendant shall be responsible for all Settlement Administration Costs incurred by the Settlement Administrator through the date that Defendant notifies the Settlement Administrator that they are exercising the option to terminate the Settlement.

3.19. Settlement Administration Costs. The Settlement Administrator shall be paid for the costs of administration of the Settlement from the Gross Settlement Amount. Such costs of administration are not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00), unless the court approves a different amount. No fewer than twenty (20) days prior to the Final Approval Hearing, the Settlement Administrator shall provide the Parties with a statement detailing the costs of administration. 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 in this Settlement, to Settlement Class Members, calculated in accordance with the methodology set out in this Settlement and orders of the Court. The Parties agree to cooperate in the administration of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the Settlement. 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. The Settlement Administrator shall be responsible for: processing and mailing all payments described in the Settlement to the Plaintiff, Class Counsel, Settlement Class Members and Verified Settlement Class Members, the LWDA, tax authorities; printing and mailing the Notice Packets to the Settlement Class Members as called for in this Settlement and ordered by the Court; receiving and reporting Notice of Objections and Requests for Exclusion submitted by Class Members; providing declaration(s) as necessary in support of preliminary and/or final approval of this Settlement; and other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities. Any legally

1 mandated tax reports, tax forms, tax filings, or other tax documents required by administration of
2 this Settlement shall be prepared by the Settlement Administrator. Any expenses incurred in
3 connection with such preparation shall be Settlement Administration Costs. The Settlement
4 Administrator shall be paid the Settlement Administration Costs no later than fifteen (15) calendar
5 days after the Defendant funds the Gross Settlement Amount.

6 3.20. Final Approval Hearing. At a reasonable time following the Response Deadline,
7 the Court shall hold the Final Approval Hearing, where objections, if any, may be heard, and the
8 Court shall determine amounts properly payable for (i) the Class Counsel Fees, (ii) the Class
9 Counsel Costs, (iii) the Class Representative Service Award, (iv) the LWDA PAGA Allocation;
10 and (v) the Settlement Administration Costs.

11 3.21. Entry of Final Judgment. If the Court approves this Settlement at the Final
12 Approval Hearing, the Parties shall request that the Court enter the Final Judgment after the Gross
13 Settlement Amount has been fully funded, with the Court retaining jurisdiction over the Parties
14 to enforce the terms of the judgment. If the Court grants Final Approval to the Settlement, notice
15 of Final Approval shall be posted on the Settlement Administrator's website, at
16 www.phoenixclassaction.com.

17 3.22. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Settlement
18 Class Members pursuant to this Settlement will not count as earnings or compensation for
19 purposes of any benefits (e.g., pensions or retirement plans) sponsored by Defendant. It is
20 expressly understood and agreed that the receipt of Individual Settlement Payments and/or PAGA
21 Payments shall not entitle any Settlement Class Member to additional compensation or benefits
22 under any collective bargaining agreement or under any bonus, contest, or other compensation or
23 benefit plan or agreement in place during the period covered by the Settlement, nor shall it entitle
24 any Settlement Class Member to any increased pension and/or retirement, or other deferred
25 compensation benefits. It is the intent of the Parties that payments from Net Settlement Amount
26 provided for in this Settlement are the sole payments to be made by Defendant to Settlement Class
27 Members in connection with this Settlement, with the sole exception of Plaintiff's Class
28 Representative Service Award, and that the Settlement Class Members are not entitled to any new

1 or additional compensation or benefits as a result of having received funds from the Net
2 Settlement Amount. Furthermore, the receipt of Individual Settlement Payments by Settlement
3 Class Members shall not, and does not, by itself establish any general, special, or joint
4 employment relationship between and among the Settlement Class Member(s) and Defendant.

5 3.23. Nullification of Settlement. In the event: (i) the Court does not enter the
6 Preliminary Approval Order as specified herein; (ii) the Court does not grant final approval of the
7 Settlement as provided herein; (iii) the Court does not enter a Final Judgment as provided herein;
8 or (iv) the Settlement does not become final for any other reason, this Settlement shall be null and
9 void and any order or judgment entered by the Court in furtherance of this Settlement shall be
10 treated as void from the beginning. In such a case, the Parties and any funds to be awarded under
11 this Settlement shall be returned to their respective statuses as of the date and time immediately
12 prior to the execution of this Settlement, and the Parties shall proceed in all respects as if this
13 Settlement had not been executed. In the event an appeal is filed from the Court's Final Judgment,
14 or any other appellate review is sought, administration of the Settlement shall be stayed pending
15 final resolution of the appeal or other appellate review.

16 3.24. No Admission by the Parties. Defendant denies any and all claims alleged in this
17 Action and denies all wrongdoing whatsoever. This Settlement is not a concession or admission,
18 and shall not be used against Defendant as an admission or indication, with respect to any claim,
19 of any fault, concession, or omission by Defendant. Neither this Settlement, nor any of its terms
20 and conditions, nor any of the negotiations connected with it, is a concession or admission, and
21 none shall be used against Defendant as an admission or indication with respect to any claim of
22 any fault, concession, or omission by Defendant, or that class certification is proper under the
23 standard applied to contested certification motions. The Parties stipulate and agree to the
24 certification of the Settlement for settlement purposes only. The Parties further agree that this
25 Settlement will not be admissible in this or any other proceeding as evidence that either: (i) a class
26 action should be certified or (ii) Defendant is liable to Plaintiff or any Class Member, other than
27 according to the terms of this Settlement.

28 3.25. Dispute Resolution. Except as otherwise set forth herein, all disputes concerning

1 the interpretation, calculation or payment of settlement claims, or other disputes regarding
2 compliance with this Settlement shall be resolved as follows:

3 3.25.1. If Plaintiff or Class Counsel, on behalf of Plaintiff or any Settlement Class
4 Members, or Defendant at any time believe that the other Party or Parties have breached or acted
5 contrary to the Settlement, that Party shall notify the other Party or Parties in writing of the alleged
6 violation.

7 3.25.2. Upon receiving notice of the alleged violation or dispute, the responding
8 Party shall have ten (10) days to correct the alleged violation and/or respond to the initiating Party
9 with the reasons why the Party disputes all or part of the allegation.

10 3.25.3. If the response does not address the alleged violation to the initiating
11 Party's satisfaction, the Parties shall negotiate in good faith for up to ten (10) days to resolve their
12 differences.

13 3.25.4. Prior to the Court's involvement pursuant to paragraph 3.35, if the Parties
14 still cannot resolve a dispute, the Parties shall utilize the services of Hon. Lisa Hart Cole (ret.).
15 (Mediator) in a good-faith attempt to mediate and resolve the dispute.

16 3.25.5. If the Parties are unable to resolve their differences after twenty (20) days,
17 either Party may file an appropriate motion for enforcement with the Court.

18 3.26. Exhibits and Headings. The terms of this Settlement include the terms set forth in
19 Exhibits A, B, C and D, which are attached to this Settlement and incorporated by this reference
20 as though fully set forth in this paragraph. Any Exhibits to this Settlement are an integral part of
21 the Settlement. The descriptive headings of any paragraphs or sections of this Settlement are
22 inserted for convenience of reference only and do not constitute a part of this Settlement.

23 3.27. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the
24 Action and thereafter implement and complete the Settlement.

25 3.28. Amendment or Modification. This Settlement may be amended or modified only
26 by a written instrument signed by all the Parties and counsel for all Parties or their successors-in-
27 interest.

28 3.29. Entire Settlement. This Settlement and any attached Exhibits constitute the entire

1 agreement among these Parties, and no oral or written representations, warranties, or inducements
2 have been made to any Party concerning this Settlement or its exhibits, other than the
3 representations, warranties, and covenants contained and memorialized in the Settlement and its
4 exhibits. No other prior or contemporaneous written or oral agreements may be deemed binding
5 on the Parties.

6 3.30. Authorization to Enter into Settlement. Counsel for all Parties warrant and
7 represent they are expressly authorized by the Parties whom they represent to negotiate this
8 Settlement and to take all appropriate actions required or permitted to be taken by such Parties
9 pursuant to this Settlement to effectuate its terms, and to execute any other documents required
10 to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each
11 other and use their best efforts to affect the implementation of the Settlement. In the event the
12 Parties are unable to reach agreement on the form or content of any document needed to
13 implement the Settlement, or on any supplemental provisions that may become necessary to
14 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
15 such disagreement. The person signing this Settlement on behalf of Defendant represents and
16 warrants that he or she is authorized to sign this Settlement on behalf of Defendant. Plaintiff
17 represent and warrant they are authorized to sign this Settlement and that they have not assigned
18 any claim, or part of a claim, covered by this Settlement to a third-party.

19 3.31. No Prior Assignments. The Parties and their counsel represent, covenant, and
20 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
21 to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
22 action, cause of action or right herein released and discharged.

23 3.32. California Law Governs. All terms of this Settlement and the exhibits hereto shall
24 be governed by and interpreted according to the laws of the State of California.

25 3.33. This Settlement is Fair, Adequate and Reasonable. The Parties believe this
26 Settlement is a fair, adequate, and reasonable settlement of the Action and have arrived at this
27 Settlement after extensive arms-length negotiations, taking into account all relevant factors,
28 present and potential.

1 3.34. Jurisdiction of the Court. In accordance with California Rule of Court 3.769(h)
2 and Civil Code of Procedure section 664.6, the Parties agree that the Court shall retain jurisdiction
3 with respect to the interpretation, implementation, and enforcement of the terms of this Settlement
4 and all orders and judgments entered in connection therewith, and the Parties and their counsel
5 hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and
6 enforcing this Settlement and all orders and judgments entered in connection therewith.

7 3.35. Invalidity of Any Provision. Before declaring any provision of this Settlement
8 invalid, the Court shall first attempt to construe the provision to be valid to the fullest extent
9 possible, consistent with applicable precedents.

10 3.36. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
11 conditional class certification for purposes of this Settlement only.

12 3.37. Cooperation. The Parties agree to cooperate fully with one another to accomplish
13 and implement the terms of this Settlement. Such cooperation shall include, but not be limited
14 to, execution of such other documents and the taking of such other action as may be reasonably
15 necessary to fulfill the terms of this Settlement. The Parties to this Settlement shall use their best
16 efforts, including all efforts contemplated by this Settlement and any other efforts that may
17 become necessary by Court order, or otherwise, to effectuate this Settlement and its terms.

18 3.38. Publicity. Plaintiff agrees not to disclose or publicize the Settlement Agreement
19 contemplated herein, the facts of the Settlement Agreement, its terms or contents, or the
20 negotiations underlying the Settlement Agreement, in any manner or form, directly or indirectly,
21 to any person or entity, except to Settlement Class members and as shall be contractually required
22 to effectuate the terms of the Settlement Agreement as set forth herein. However, for the limited
23 purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class
24 Counsel may disclose the names of the Parties in this Action, the venue/case number of this
25 Action, and a general description of the Action, to a court in a declaration by Class Counsel. Class
26 Counsel may also include a general description of the Settlement on their respective websites, but
27 may not include the name(s) of any of the Parties, including the Defendant, or any of the Released
28 Parties, or the case name or case number of the Action.

1 3.39. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
2 and conditions of this Settlement. Accordingly, this Settlement will not be construed more strictly
3 against one party than another merely by virtue of the fact that it may have been prepared by
4 counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations
5 between the Parties, all Parties have contributed to the preparation of this Settlement.

6 3.40. Representation by Counsel. The Parties acknowledge that they have been
7 represented by counsel throughout all negotiations that preceded the execution of this Settlement,
8 and that this Settlement has been executed with the consent and advice of counsel, and reviewed
9 in full. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the
10 Settlement.

11 3.41. All Terms Subject to Final Court Approval. All amounts and procedures described
12 in this Stipulation are subject to final Court approval.

13 3.42. Notices. Unless otherwise specifically provided, all notices, demands or other
14 communications in connection with this Settlement shall be: (1) in writing; (2) deemed given on
15 the third business day after mailing; and (3) sent via United States registered or certified mail,
16 return receipt requested, addressed as follows:

17 **To Plaintiff:**

18 Katherine Odenbreit, Esq.
19 Kevin Mahoney, Esq.
20 MAHONEY LAW GROUP
21 249 East Ocean Boulevard, Suite 814
22 Long Beach, CA 90802
23 Telephone: (562) 590-5550
24 Facsimile: (562) 590-8400

17 **To Defendant:**

18 Chandra Beaton
19 Brier Setlur
20 LightGabler LLP
21 Telephone: (805) 248-7208
22 760 Paseo Camarillo, Suite 300
23 Camarillo, CA 93010

24 3.43. Execution by Settlement Class Members. It is agreed that it is impossible or
25 impractical to have each Settlement Class Member execute this Settlement. The Notice of
26 Settlement will advise all Settlement Class Members of the binding nature of the release and such
27 shall have the same force and effect as if each Settlement Class Member executed this Settlement.

28 3.44. Execution by Plaintiff and Defendant. Plaintiff and Defendant, by signing this

Settlement, are bound by the terms herein.

3.45. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

3.46. Counterparts. This Settlement shall become effective upon its execution by all of the undersigned. Plaintiff and Defendant may execute this Settlement in counterparts, and execution of counterparts shall have the same force and effect as if each had signed the same instrument. Copies of the executed Settlement shall be effective for all purposes as though the signatures contained therein were original signatures.

3.47. The Parties, Class Counsel and Defendant's Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

Dated: _____

On behalf of THNC Industries, Inc. dba ServPro
Laguna Beach Dana Point

Printed: _____

Title: _____

Dated: _____

Andy Rivera
