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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

17 BIANCA HERNANDEZ ORELLANA,
18 individually, and on behalf of all others similarly
19 situated,

19 *Plaintiff,*

20 v.

21 NICKER MANAGEMENT I, INC. DBA
22 MCDONALD’S, a California limited liability
23 company, NICKER-18TH, INC., a California
24 corporation, NICKER-ALAMEDA, INC., a
25 California corporation, NICKER-AVALON,
26 INC., a California corporation, NICKER-
27 CARSON, INC., a California corporation,
28 NICKER-CENTRAL, INC., a California
corporation, NICKER-COMPTON, INC., a
California corporation, NICKER-CRENSHAW,
INC., a California corporation, NICKER-
FIGUEROA, INC., a California corporation,
NICKER-FLORENCE, INC., a California
corporation, NICKER-IMPERIAL, INC., a

Case No.: 19STCV42850

*[Assigned for all purposes to the Honorable
Yvette M. Palazuelos, Dept. 9]*

STIPULATION OF SETTLEMENT

Complaint filed: December 2, 2019
Trial date: Not set

1 California corporation, NICKER-LONG
2 BEACH, INC., a California corporation,
3 NICKER-MANCHESTER, INC., a California
4 corporation, NICKER-MLK, INC., a California
5 corporation, NICKER-PENDLETON, INC., a
6 California corporation, NICKER-ROSECRANS,
7 INC., a California corporation, NICKER-
8 SLAUSON, INC., a California corporation,
9 NICKER-WESTERN, INC., a California
10 corporation, NICWIL-ALONDRA, INC., a
11 California corporation, and DOES 1 through 10,
12 inclusive,

Defendants.

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1 This Stipulation of Settlement is made by and between the Named Plaintiff, BIANCA
 2 HERNANDEZ ORELLANA (“PLAINTIFF”), on her own behalf and on behalf of all members
 3 of the Settlement Class, as defined below, on the one hand, and Defendants NICKER
 4 MANAGEMENT I, INC., NICKER-18TH, INC., NICKER-ALAMEDA, INC., NICKER-
 5 AVALON, INC., NICKER-CARSON, INC., NICKER-CENTRAL, INC., NICKER-
 6 COMPTON, INC., NICKER-CRENSHAW, INC., NICKER-FIGUEROA, INC., NICKER-
 7 FLORENCE, INC., NICKER-IMPERIAL, INC., NICKER-LONG BEACH, INC., NICKER-
 8 MANCHESTER, INC., NICKER-MLK, INC., NICKER-PENDLETON, INC., NICKER-
 9 ROSECRANS, INC., NICKER-SLAUSON, INC., NICKER-WESTERN, INC., NICWIL-
 10 ALONDRA, INC., AND DOES 1 THROUGH 10 (NICKER MANAGEMENT I, INC.,
 11 NICKER-18TH, INC., NICKER-ALAMEDA, INC., NICKER-AVALON, INC., NICKER-
 12 CARSON, INC., NICKER-CENTRAL, INC., NICKER-COMPTON, INC., NICKER-
 13 CRENSHAW, INC., NICKER-FIGUEROA, INC., NICKER-FLORENCE, INC., NICKER-
 14 IMPERIAL, INC., NICKER-LONG BEACH, INC., NICKER-MANCHESTER, INC.,
 15 NICKER-MLK, INC., NICKER-PENDLETON, INC., NICKER-ROSECRANS, INC.,
 16 NICKER-SLAUSON, INC., NICKER-WESTERN, INC., NICWIL-ALONDRA, INC., (all
 17 Defendants are referred to as “NICKER” or “DEFENDANTS”) on the other hand (collectively
 18 the “Parties”), in the lawsuit entitled *Bianca Hernandez Orellana v. Nicker Management I, Inc.,*
 19 *et al.*, filed in the Los Angeles County Superior Court, Case No. 19STCV42850. This
 20 Stipulation of Settlement resolves all claims that were asserted or could have been asserted
 21 against Defendants pertaining to the claims in the Litigation.

22 **I. DEFINITIONS**

23 **A. Administrative Costs.** All administrative costs of settlement, including cost of
 24 notice to the Settlement Class, claims administration, and any fees and costs incurred or charged by
 25 the Settlement Administrator in connection with the execution of its duties under this Stipulation of
 26 Settlement.

27 **B. Agreement.** The terms “Agreement” or “Settlement Agreement” are used
 28 synonymously herein to mean this Stipulation of Settlement.

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1 **C. Class Counsel.** The term “Class Counsel” as used herein means: WILSHIRE LAW
2 FIRM, PLC and all the lawyers of the firm acting on behalf of Named Plaintiff and the Settlement
3 Class. The term Class Counsel shall be used synonymously with the term Plaintiff’s Counsel.

4 **D. Class Notice or Notice.** The terms “Class Notice” and “Notice” mean the Notice of
5 Proposed Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**,
6 subject to Court approval.

7 **E. Counsel for Defendants or Defendants’ Counsel.** The terms “Counsel for
8 Defendant” and “Defendants’ Counsel” mean Fisher & Phillips LLP.

9 **F. Court.** The term “Court” as used herein means the Superior Court of the State of
10 California for the County of Los Angeles.

11 **G. Cy Pres Beneficiary.** The term “Cy Pres Beneficiary” means Legal Aid at Work,
12 which is a non-profit organization that provides pro bono legal assistance to the public. The Parties
13 agree that designating The Legal Aid at Work as the Cy Pres Beneficiary will “further the purposes
14 of the underlying class proceedings in this action and will promote justice for all Californians” in
15 conformity with California Code of Civil Procedure section 384. By executing this Settlement
16 Agreement, the Parties represent that they do not have a personal or financial interest in the
17 designated Cy Pres Beneficiary.

18 **H. Date of Final Approval.** The terms “Date of Final Approval” or “Final Approval
19 Order” as used herein mean the final formal judgment entered by the Court at the Final Fairness and
20 Approval Hearing in accordance with the terms herein, approving this Agreement.

21 **I. Defendants.** The term “Defendants” as used herein means NICKER
22 MANAGEMENT I, INC., NICKER-18TH, INC., NICKER-ALAMEDA, INC., NICKER-
23 AVALON, INC., NICKER-CARSON, INC., NICKER-CENTRAL, INC., NICKER-COMPTON,
24 INC., NICKER-CRENSHAW, INC., NICKER-FIGUEROA, INC., NICKER-FLORENCE, INC.,
25 NICKER-IMPERIAL, INC., NICKER-LONG BEACH, INC., NICKER-MANCHESTER, INC.,
26 NICKER-MLK, INC., NICKER-PENDLETON, INC., NICKER-ROSECRANS, INC., NICKER-
27 SLAUSON, INC., NICKER-WESTERN, INC., NICWIL-ALONDRA, INC., AND DOES 1
28 THROUGH 10 (NICKER MANAGEMENT I, INC., NICKER-18TH, INC., NICKER-ALAMEDA,

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1 INC., NICKER-AVALON, INC., NICKER-CARSON, INC., NICKER-CENTRAL, INC.,
2 NICKER-COMPTON, INC., NICKER-CRENSHAW, INC., NICKER-FIGUEROA, INC.,
3 NICKER-FLORENCE, INC., NICKER-IMPERIAL, INC., NICKER-LONG BEACH, INC.,
4 NICKER-MANCHESTER, INC., NICKER-MLK, INC., NICKER-PENDLETON, INC., NICKER-
5 ROSECRANS, INC., NICKER-SLAUSON, INC., NICKER-WESTERN, INC., and NICWIL-
6 ALONDRA, INC.

7 **J. Effective Final Settlement Date.** The term “Effective Final Settlement Date” means
8 the latter of: (1) the date of final affirmation of the Final Approval Order from any appeal, the
9 expiration of the time for, or the denial of, a petition to review the Final Approval Order, or if review
10 is granted, the date of final affirmation of the Final Approval Order following review pursuant to
11 that grant; or (2) the date of final dismissal of any appeal from the Final Approval Order or the final
12 dismissal of any proceeding to review the Final Approval Order, provided that the Final Approval
13 Order is affirmed and/or not reversed in any part; or (3) if no appeal is filed, the expiration date of
14 the time for the filing or noticing of any appeal from the Court’s Final Approval Order, as determined
15 under Rule 8.104(a)(3) of the California Rules of Court.

16 **K. Employer Taxes.** Employer-funded taxes and contributions imposed on the wage
17 portions of the Settlement Payment under the Federal Insurance Contributions Act, the Federal
18 Unemployment Tax Act, and any similar state taxes and contributions required of employers, such
19 as for unemployment insurance.

20 **L. Individual Settlement Share.** The term “Individual Settlement Share” means the
21 amount payable to each Participating Class Member under the terms of this Settlement Agreement.
22 Class Members are not required to submit a claim form to receive their Individual Settlement Shares
23 pursuant to this Agreement. Rather, Participating Class Members will receive an Individual
24 Settlement Share automatically, without the return of a claim form.

25 **M. Litigation.** The term “Litigation” as used herein means the action entitled *Orellana*
26 *v. Nicker Management I, Inc., et al.*, filed in Los Angeles County Superior Court, Case No.
27 19STCV42850.

28 **N. Named Plaintiff.** The term “Named Plaintiff” as used herein means BIANCA

1 HERNANDEZ ORELLANA.

2 **O. Net Settlement Fund.** The term “Net Settlement Amount” or “Net Settlement Fund”
3 as used herein means the Settlement Amount minus any award of attorneys’ fees and Litigation costs,
4 Administrative Costs, enhancement to the Named Plaintiff, and penalties recoverable pursuant to
5 California’s Private Attorney General Act (“PAGA”) (the “PAGA Settlement”), and as provided in
6 Sections IX, XIV, XVI, and XVII, respectively.

7 **P. Net Settlement Payments.** The term “Net Settlement Payment(s)” shall include
8 payments made to the Settlement Class as part of the Settlement, including wages, penalties and
9 interest.

10 **Q. Participating Class Members.** The term “Participating Class Members” means all
11 Class Members who do not submit a valid and timely request to exclude themselves from this
12 Settlement.

13 **R. Preliminary Approval or Preliminary Approval Order:** The terms “Preliminary
14 Approval” or “Preliminary Approval Order” means the Court’s order preliminarily approving the
15 proposed Settlement.

16 **S. Released Claims.** The term “Released Claims” means all known and unknown
17 claims, rights, demands, liabilities, and causes of action that were alleged or that could have been
18 alleged based on the facts of the complaints filed in the matter, including but not limited to wage and
19 hour claims for any and all violations of California’s Labor Code, Unfair Competition Law,
20 applicable IWC Wage Orders, or any other statute, rule, or regulation governing hours and wages,
21 based on claims that include but is not limited to unpaid minimum wages, straight time wages,
22 overtime wages, double-time wages, failure to provide meal periods, failure to authorize and permit
23 rest periods, failure to timely pay all wages due during and at the end of employment, failure to
24 furnish accurate, itemized wage statements, failure to maintain accurate payroll records, failure to
25 reimburse business expenses, unfair or unlawful business practices, civil penalties under California’s
26 Private Attorneys General Act of 2004, interest, attorney’s fees, and any other alleged wage/hour
27 violations or other claims that were or could have been asserted based on the facts alleged in the
28 Litigation.

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1 **T. Released Parties.** The term “Released Parties” means Defendants and its past,
2 present and/or future, direct and/or indirect, owners, officers, directors, employees, representatives,
3 administrators, attorneys, agents, parent companies, subsidiaries and affiliated corporations and
4 entities, consultants, shareholders, joint ventures, predecessors, successors, assigns, divisions,
5 affiliates, , trustees, fiduciaries, subrogees, executors, partners, joint employers, insurers, and related
6 corporations.

7 **U. Response Deadline.** Forty-five (45) calendar days from the initial mailing of the
8 Notice.

9 **V. Settlement.** The term “Settlement” as used herein means this Agreement to resolve
10 the Litigation.

11 **W. Settlement Administrator.** The term “Settlement Administrator” as used herein
12 means ILYM Group, Inc., which will be responsible for the administration of the Settlement Amount,
13 as defined below, and all related matters.

14 **X. Settlement Agreement.** The terms “Settlement Agreement” or “Agreement” are
15 used synonymously herein to mean this Stipulation of Settlement.

16 **Y. Settlement Amount.** The terms “Settlement Amount” as used herein means the sum
17 of One Million Dollars and Zero Cents (\$1,000,000.00). This is the gross amount Defendants can be
18 required to pay under this Settlement Agreement. The Settlement Amount includes: (1) the Net
19 Settlement Payments to be paid to Participating Class Members; (2) Court-approved attorneys’ fees
20 and Litigation costs pursuant to Section XIV; (3) the enhancement to Named Plaintiff, as approved
21 by the Court; (4) the Administrative Costs, as approved by the Court; (5) the PAGA Settlement to
22 the LWDA and to Participating Class Members, as approved by the Court; (6) any statutory penalties;
23 and (7) interest.

24 **Z. Settlement Class or Class Member(s).** Defendants The terms “Settlement Class” or
25 “Class Member(s)” mean all persons who worked for any Defendants in California as an hourly paid
26 or non-exempt employee during the Settlement Period.

27 **AA. Settlement Period.** The term “Settlement Period” as used herein means the period
28 from December 2, 2015 through the date the Court grants preliminary approval of the settlement.

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1 **II. BACKGROUND**

2 **A.** In the Litigation, the Named Plaintiff alleges, *inter alia*, on behalf of herself and all
3 others similarly situated, that Defendants violated California state wage and hour laws, the California
4 *Business and Professions Code* Section 17200 *et seq.*, and PAGA, as a result of Defendants’
5 California wage and hour policies and practices. Specifically, Plaintiff alleges that Defendants failed
6 to pay its employees at or above the applicable minimum wage rates, failed to provide regular,
7 overtime, and double time pay, failed to provide meal breaks (including first and second meal
8 breaks), and failed to authorize and permit legally compliant rest breaks each day based on the hours
9 worked by each employee. Plaintiff further alleged that the aforementioned resulted in the
10 employees receiving inaccurate wage statements, and the underpayment of wages to employees upon
11 termination and/or resignation.

12 Class Counsel conducted informal discovery concerning the claims set forth in the Litigation,
13 such as a sample of class member timekeeping and payroll records, Defendants’ policies and
14 procedures concerning the payment of wages, the provision of meal and rest breaks, issuance of
15 wage statements, and providing all wages at separation, as well as information regarding the number
16 of putative class members and the mix of current versus former employees, the wage rates in effect,
17 and the amount of meal and rest period premium wages paid to class members.

18 **B.** Named Plaintiff and Class Counsel have engaged in good faith, arms-length
19 negotiations with Defendants concerning possible settlement of the claims asserted in the Litigation.
20 The Parties participated in a full day of mediation before Todd Smith, Esq., a well-respected wage
21 and hour class action mediator, that resulted in a tentative settlement of the Litigation, subject to the
22 approval of the Court, and finalization of a formal Stipulation of Settlement. The Parties have
23 engaged in extensive negotiations about the terms and conditions of the Settlement at the mediation
24 and subsequent thereto. The Parties have now formalized the Settlement Agreement for submission
25 to the Court for Preliminary Approval and Final Approval.

26 **C.** Class Counsel has conducted an investigation of the law and facts relating to the
27 claims asserted in the Litigation and has concluded, taking into account the sharply contested issues
28 involved, the defenses asserted by Defendants, the expense and time necessary to pursue the

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1 Litigation through trial and any appeals, the risks and costs of further prosecution of the Litigation,
2 the risk of an adverse outcome, the uncertainties of complex litigation, and the substantial benefits
3 to be received by the Named Plaintiff and the members of the Settlement Class pursuant to this
4 Agreement, that a settlement with Defendants on the terms and conditions set forth herein is fair,
5 reasonable, adequate, and in the best interests of the Settlement Class. Named Plaintiff, on her own
6 behalf and on behalf of the Settlement Class, has agreed to settle the Litigation with Defendants on
7 the terms set forth herein.

8 **D.** Defendants have concluded that, because of the substantial expense of defending
9 against the Litigation, the length of time necessary to resolve the issues presented herein, the
10 inconvenience involved, and the concomitant disruption to their business operations, it is in
11 Defendants’ best interests to accept the terms of this Agreement. Defendants deny each of the
12 allegations and claims asserted against them in the Litigation. However, Defendants nevertheless
13 desire to settle the Litigation for the purpose of avoiding the burden, expense and uncertainty of
14 continuing litigation and for the purpose of putting to rest the controversies engendered by the
15 Litigation.

16 **E.** This Agreement is intended to and does effectuate the full, final and complete
17 settlement of all allegations and claims that were asserted, or could have been asserted, in the
18 Litigation by Named Plaintiff and members of the Settlement Class as set forth in Section II.A.

19 **III. SETTLEMENT TERMS AND CONDITIONS**

20 **A. Gross Settlement Amount.**

21 Subject to the terms and conditions of this Agreement, the maximum Settlement Amount,
22 excluding Employer Taxes, that Defendants are obligated to pay under this Settlement Agreement is
23 One Million Dollars and Zero Cents (\$1,000,000.00).

24 **B. Conditional Nature of Stipulation for Certification.**

25 The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiffs
26 and Class Members for purposes of this Settlement only. If the Settlement does not become effective,
27 the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be
28 admissible or used in any way in connection with, the question of whether the Court should certify

1 any claims in a non-settlement context in this Action or in any other lawsuit. If the Settlement does
2 not become effective, Defendants reserve the right to contest any issues relating to class certification
3 and liability.

4 **C. Appointment of Class Representative.**

5 Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff shall be
6 appointed as representatives for the Class.

7 **D. Appointment of Class Counsel.**

8 Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint
9 Class Counsel to represent the Class.

10 **IV. JURISDICTION**

11 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The
12 Litigation includes claims that, while Defendants deny them in their entirety, would, if proven,
13 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted
14 Final Approval of the Settlement and after the Court has ordered the entry of Judgment, pursuant to
15 California *Code of Civil Procedure* Section 664.6 the Court shall retain jurisdiction of this action
16 solely for the purpose of interpreting, implementing, and enforcing this Settlement consistent with
17 the terms set forth herein.

18 **V. STIPULATION OF CLASS CERTIFICATION**

19 The Parties stipulate to the certification of this Settlement Class for purposes of Settlement
20 only. This Stipulation is contingent upon the Preliminary and Final approval and certification of the
21 Settlement Class only for purposes of Settlement. Should the Settlement not become final, for
22 whatever reason, the fact that the Parties were willing to stipulate provisionally to class certification
23 as part of the Settlement shall have no bearing on, and shall not be admissible in connection with,
24 the issue of whether a class should be certified in a non-settlement context in the Litigation.
25 Defendants expressly reserve the right to oppose class certification and/or proactively move to deny
26 certification should this Settlement be modified or reversed on appeal or otherwise not become final.

27 **VI. MOTION FOR PRELIMINARY APPROVAL**

28 Named Plaintiff will bring a motion before the Court for an order preliminarily approving the

1 Settlement including the Notice of Proposed Class Action Settlement, and Workweek Dispute Form,
2 which are attached hereto as **Exhibits “A” and “B,”** respectively, and including certification of the
3 Settlement Class for settlement purposes only.

4 The date that the Court grants Preliminary Approval of this Agreement will be the
5 “Preliminary Approval Date.” Class Counsel will prepare the Motion for Preliminary Approval and
6 will provide Defendants’ counsel the opportunity to review it and provide input before it is filed. On
7 the same date on which it is filed with the Court, Class Counsel shall concurrently submit the Motion
8 for Preliminary Approval to the Labor & Workforce Development Agency in compliance with Labor
9 Code § 2698 *et seq.*, the Private Attorneys General Act.

10 **VII. STATEMENT OF NO ADMISSION**

11 **A.** Defendants deny liability to Named Plaintiff and to the Settlement Class upon any
12 claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an
13 admission by Defendants as to the merits, validity, or accuracy of any of the allegations or claims
14 made against them in the Litigation.

15 **B.** Nothing in this Agreement, nor any action taken in implementation thereof, nor any
16 statements, discussions or communications, nor any materials prepared, exchanged, issued or used
17 during the course of the negotiations leading to this Agreement or the Settlement, is intended by the
18 Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible
19 in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or
20 proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,
21 regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties
22 themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or
23 any other judicial, arbitral, administrative, investigative, or other forum or proceeding, as purported
24 evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or
25 executive order, or any obligation or duty at law or in equity, or for any other purpose.
26 Notwithstanding the foregoing, this Agreement may be used and filed in any proceeding before the
27 Court that has as its purpose the interpretation, implementation, or enforcement of this Agreement
28 or any orders or judgments of the Court entered in connection with implementation of the Settlement.

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1 C. None of the documents produced or created by Named Plaintiff or the Settlement
2 Class in connection with the claims procedures or claims settlement procedures constitute, and they
3 are not intended to constitute, an admission by Defendants of any violation of any federal, state, or
4 local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or
5 in equity.

6 D. The Parties agree that class certification pursuant to California *Code of Civil*
7 *Procedure* Section 382 under the terms of this Agreement is for settlement purposes only. Nothing
8 in this Agreement will be construed as an admission or acknowledgement of any kind that any class
9 should be certified or given collective treatment in the Litigation or in any other action or proceeding.
10 Further, neither this Agreement nor the Court’s actions with regard to this Agreement will be
11 admissible in any court or other tribunal regarding the propriety of class certification or collective
12 treatment. In the event that this Agreement is not approved by the Court or any appellate court, is
13 terminated, or otherwise fails to be enforceable, Named Plaintiff will not be deemed to have waived,
14 limited, or affected in any way any claims, rights, or remedies in the Litigation, and Defendants will
15 not be deemed to have waived, limited, or affected in any way any of their objections or defenses in
16 the Litigation.

17 **VIII. WAIVER, RELEASE AND CONFIDENTIALITY**

18 **A. Release as to All Settlement Class Members.**

19 As of the Effective Final Settlement Date, all members of the Settlement Class, except those
20 that make a valid and timely request to be excluded from the Settlement Class and Settlement, waive,
21 release, discharge, and promise never to assert in any forum or otherwise make a claim against any
22 of the Released Parties for any of the Released Claims arising during the Settlement Period, including
23 the following claims: 1) all claims, under any legal theory of liability, for the failure to pay overtime
24 or double time wages owed pursuant to California Labor Code §§ 204, 510, 1194, and 1198, the IWC
25 Wage Orders or any comparable federal statute under any theory of liability; 2) all claims, under any
26 legal theory of liability, for the failure to pay all wages of any kind, including any minimum wage or
27 straight time wages, owed pursuant to California Labor Code §§ 204, 510, 1194, 1194.2, and 1198,
28 the IWC Wage Orders, or any comparable federal statute under any theory of liability; 3) all claims,

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1 under any legal theory of liability, for failure to provide meal periods pursuant to California Labor
2 Code §§ 226.7 and 512, and the IWC Wage Orders; 4) all claims, under any legal theory of liability,
3 for the failure to provide rest periods pursuant to California Labor Code § 226.7 and the IWC Wage
4 Orders; 5) all claims, under any legal theory of liability, for the failure to properly calculate any
5 premiums owed and/or paid pursuant to California Labor Code § 226.7(b); 6) all claims, under any
6 legal theory of liability, for violation of Business & Professions Code §§ 17200, *et seq.*; 7) all claims,
7 under any legal theory of liability, for penalties pursuant to PAGA (Labor Code §§ 2698 *et seq.*); 8)
8 all claims, under any legal theory of liability, for any penalties of any kind arising from an alleged
9 failure to pay final wages or other amounts allegedly owed to Class Members pursuant to California
10 Labor Code §§ 201-203; 9) all claims, under any legal theory of liability, for any penalties of any
11 kind arising from an alleged wage statement violations pursuant to California Labor Code §§ 226
12 and 1174.5; and 10) all claims, under any legal theory of liability, for any penalties or any another
13 amounts that could be potentially owed to Class Members arising out of and/or related to the
14 allegations in the Lawsuit arising during the Settlement Period, including penalties owed pursuant
15 to California Labor Code §§ 210, 226.3, 558, and 1197.1.

16 **B. General Release by Named Plaintiff Only.**

17 In addition to the release made in Section VIII(A), Named Plaintiff makes the additional
18 following general release of all claims, known or unknown. Named Plaintiff shall give the following
19 general release of claims for herself and her respective spouse, heirs, successors and assigns, forever
20 release the Released Parties from any and all charges, complaints, claims, liabilities, obligations,
21 promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands,
22 costs, losses, debts, penalties and expenses of any nature whatsoever, from the beginning of time
23 through the date of their signatures on this Agreement, known or unknown, suspected or unsuspected,
24 whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule,
25 ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating
26 to her employment with Defendants or the remuneration for, or termination of, such employment
27 with Defendants as well as any and all acts or omissions by or on the part of Released Parties. (The
28 release set forth in this Paragraph B shall be referred to hereinafter as the “General Release.”)

1 With respect to the General Release, Named Plaintiff stipulates and agrees that, upon the
2 Date of Final Approval, Named Plaintiff shall be deemed to have expressly waived and relinquished,
3 to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the
4 California Civil Code, or any other similar provision under federal or state law, which provides:

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

10 Accordingly, if the facts relating in any manner to this Settlement are found hereafter to be other
11 than or different from the facts now believed to be true, the release of claims contained herein shall
12 be effective as to all unknown claims.

13 **IX. SETTLEMENT ADMINISTRATOR**

14 Named Plaintiff and Defendants, through their respective counsel, have selected ILYM
15 Group, Inc. as the Settlement Administrator to administer the Settlement, which includes but is not
16 limited to distributing and responding to inquiries about the Notice of Proposed Class Action
17 Settlement and Workweek Dispute Form, determining the validity of any disputes and opt-outs, and
18 calculating all amounts to be paid from the Net Settlement Amount. Charges and expenses of the
19 Settlement Administrator, estimated to be no more \$35,000.00, will be paid from the Settlement
20 Amount. Any charges and expenses of the Settlement Administrator greater than the allocated
21 \$35,000.00 will come from the Settlement Amount. If the actual Settlement Administrator fees are
22 less than the Parties' estimation, the difference between the actual and estimated Settlement
23 Administrator fees will revert to the participating Settlement Class members. The Parties agree that
24 this Agreement may be provided to the Settlement Administrator to effectuate its implementation of
25 the settlement procedures herein.

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1 **X. NOTICE, OBJECTIONS AND EXCLUSION RIGHTS**

2 **A. Notice.**

3 Named Plaintiff and Defendants, through their respective attorneys, have jointly prepared a
4 Notice of Class Action and Proposed Settlement (the “Notice”) and a Workweek Dispute Form,
5 which in substance will be provided to the members of the Settlement Class as follows:

6 **B. Class Data.** As soon as practicable following Preliminary Approval of the
7 Settlement, but no later than thirty (30) calendar days after the Court’s Preliminary Approval order,
8 Defendants will provide to the Settlement Administrator the following information about each
9 Settlement Class member (“Class List”): (1) name; (2) last known home address; (3) number of
10 workweeks as a class member during the Settlement Period or the dates of employment for each
11 Settlement Class member; and (4) Social Security number (“Database”). Defendants further agree
12 to consult with the Settlement Administrator prior to the production date to ensure that the format
13 will be acceptable to the Settlement Administrator. The Database shall be based on Defendants’
14 payroll, personnel, and other business records. The Settlement Administrator shall maintain the
15 Database and all data contained within the Database as private and confidential.

16 **C. Notice Mailing.** The Settlement Administrator shall run all the addresses provided
17 through the United States Postal Service NCOA database (which provides updated addresses for any
18 individual who has moved in the previous four years who has notified the U.S. Postal Service of a
19 forwarding address) to obtain current address information, and shall mail the Notice and Workweek
20 Dispute Form to the members of the Settlement Class via first-class regular U.S. Mail using the most
21 current mailing address information available, within ten (10) calendar days of the receipt of the
22 Class List from Defendants. The Notice shall provide the members of the Settlement Class forty-
23 five (45) days’ notice of all applicable dates and deadlines.

24 **D. Returned Notices.** If a Notice is returned from the initial notice mailing, the
25 Settlement Administrator will perform a skip trace in an attempt to locate a more current address. If
26 the Settlement Administrator is successful in locating a new address, it will re-mail the Notice to the
27 Settlement Class member. Further, any Notices returned with a forwarding address to the Settlement
28 Administrator, as non-deliverable before the deadline date, shall be sent to the forwarding address

1 affixed thereto. The Settlement Administrator will be responsible for taking reasonable steps to trace
2 the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service
3 as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered
4 mail; performing address searches for all mail returned without a forwarding address; and promptly
5 re-mailing to Class Members for whom new addresses are found. If the Settlement Administrator is
6 unable to locate a better address, the Class Notice shall be re-mailed to the original address. If the
7 Class Notice is re-mailed, the Settlement Administrator will note for its own records the date and
8 address of each re-mailing.

9 **E. Weekly Status Reports.** The Settlement Administrator shall provide a weekly status
10 report to Class Counsel and Defendants' Counsel. As part of its weekly status report, the Settlement
11 Administrator will inform Class Counsel and Defendants' Counsel of the number of Notices mailed
12 and emailed (if applicable), the number of Notices returned as undeliverable, the number of Notices
13 re-mailed, and the number of requests for exclusion or objections received.

14 **F. Deficiency Notice.** Should any member of the Settlement Class timely submit a
15 Workweek Dispute Form with a deficiency, the Settlement Administrator shall, within five (5)
16 calendar days of receipt by the Settlement Administrator of each timely submitted Workweek
17 Dispute Form, send a deficiency notice. The deficiency notice will provide the member of the
18 Settlement Class no more than fourteen (14) days from the mailing of the deficiency notice to
19 postmark a written response to cure all deficiencies. The failure of a member of Settlement Class to
20 timely submit a Workweek Dispute or timely respond to a notice of deficiency shall invalidate the
21 dispute unless all Parties' counsel agree to allow the dispute.

22 **G. Settlement Administrator's Declaration.** No later than twenty-five (25) days
23 before the Final Approval Hearing, the Settlement Administrator shall provide counsel for
24 Defendants and Class Counsel with a declaration attesting to the completion of the Notice process,
25 including the number of attempts to obtain valid mailing addresses for and re-sending of any returned
26 Notices, as well as the number of valid Workweek Dispute Forms, opt-outs and deficiencies that the
27 Settlement Administrator received.

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1 **H. Objections.**

2 **1. Timing.** The objection must be submitted to the Settlement Administrator by mail,
3 postmarked by the Response Deadline.

4 **2. Format.** Any Objections must state: (a) the case name (e.g., *Orellana v. Nicker*
5 *Management I, Inc., et al.*) and case number (19STCV42850); (b) the objecting person’s or his/her
6 attorney’s full name, address, and telephone number; (c) the words “Notice of Objection” or “Formal
7 Objection;” (d) describe, in clear and concise terms, the legal and factual arguments supporting the
8 objection; (e) list identifying witness(es) the objector may call to testify at the Final Approval
9 Hearing; (f) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final
10 Approval Hearing; and (g) state whether the objection applies only to the objector, to a specific subset
11 of the Settlement Class, or to the entire Settlement Class. Any member of the Settlement Class
12 Members who submit any objection must make themselves available for deposition.

13 **3. Notice of Intent to Appear.** Settlement Class Members who timely submit valid
14 objections to the Settlement may (though are not required to) appear at the Final Approval Hearing,
15 either in person or through the objector’s own counsel.

16 **4. Effect of Objection.** If a Settlement Class member objects to the Settlement, the
17 Settlement Class member will remain a member of the Settlement Class and if the Court approves
18 this Agreement, the Settlement Class member will be bound by the terms of the Settlement and Final
19 Approval Order in the same way and to the same extent as a Settlement Class member who does not
20 object. The date of mailing of the Notice to the objecting Settlement Class member shall be
21 conclusively determined according to the records of the Settlement Administrator. The Court retains
22 final authority with respect to the consideration and admissibility of any Settlement Class member
23 objections. Any Settlement Class member who submits an objection may also participate in the
24 settlement.

25 **C. Opportunity to be Excluded and Defendants’ Opt-Out Threshold.**

26 In order for any Settlement Class member to validly exclude himself or herself from the
27 Settlement Class and the Settlement (i.e., to validly opt out), a written request for exclusion (“Request
28 to be Excluded”) must be signed by the Settlement Class member or his or her authorized

1 representative and must be sent to the Settlement Administrator, postmarked by no later than forty
2 five (45) days after the date the Settlement Administrator initially mails the Notice to the Settlement
3 Class members. The Notice shall contain instructions on how to opt out.

4 **1. Effect of Opt-Out.** The date of the initial mailing of the Notice, and the date the
5 signed Request to be Excluded was postmarked, shall be conclusively determined according to the
6 records of the Settlement Administrator. Any Settlement Class member who timely and validly
7 submits a Request to be Excluded from the Settlement Class and the Settlement will not be entitled
8 to any portion of the Net Settlement Payments, will not be bound by the terms and conditions of the
9 Settlement, and will not have any right to object, appeal, or comment thereon.

10 **2. Failure to Opt-Out.** Any member of the Settlement Class who does not timely
11 file and mail a Request to be Excluded from the Settlement Class will automatically be included in
12 the Settlement, will receive an Individual Settlement Share, and be bound by all terms and conditions
13 of the Settlement, if the Settlement is approved by the Court, and by the subsequent judgment,
14 regardless of whether he or she has objected to the Settlement.

15 **3. Confirmation of Authenticity.** If there is a question about the authenticity of a
16 signed request for exclusion, the Settlement Administrator may demand additional proof of the Class
17 Member's identity.

18 **4. Tolerance of Opt-Outs.** In the event that five percent (5%) or more of the Class
19 Members exercise their right to exclude themselves and opt out of the Settlement and Settlement
20 Agreement, Defendants retain the exclusive right, but not the obligation, to withdraw from and
21 terminate the Settlement and the Settlement Agreement and return all parties back to their same
22 position before the Settlement was reached and the Settlement Agreement was entered into. In the
23 event that Defendants exercise such rights under this paragraph, the Plaintiff and Defendants shall
24 resume the Litigation through and until there is a final settlement of the Litigation. Defendants must
25 notify Class Counsel and the Court of such a decision to withdraw and terminate the Settlement no
26 later than five (5) days prior to the date of the Final Approval Hearing. In the event of Defendants'
27 withdrawal, no party may use the fact that the Parties agreed to the Settlement for any reason, and
28 Defendants shall pay all administration expenses incurred through the date of its termination of the

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1 Settlement.

2 **D. Cooperation**

3 The Parties and their respective counsel agree not to encourage members of the Settlement
4 Class to refrain from participating in the Settlement, to opt out of the Settlement, or to object to the
5 Settlement, directly or indirectly, through any means. However, if a Settlement Class member
6 contacts Class Counsel, Class Counsel may discuss the terms of the Settlement and the Settlement
7 Class member’s options.

8 **E. No Solicitation of Objections or Requests for Exclusion.**

9 Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or
10 indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or
11 appeal from the Judgment.

12 **XI. DISPUTES PROCEDURE**

13 If the member of the Settlement Class disputes the number of Eligible Workweeks set forth
14 in the Workweek Dispute Form, such person must follow the directions in the Workweek Dispute
15 Form and in the Notice, including preparing a statement setting forth the number of Eligible
16 Workweeks that such person believes in good faith is correct, and stating that the member of the
17 Settlement Class authorizes the Settlement Administrator to review the Settlement Class member’s
18 personnel file and leave management records to determine such information, and attaching any
19 relevant documentation in support thereof. In the absence of such evidence, the Database will be
20 controlling. The member of the Settlement Class must mail the signed and completed statement no
21 later than forty-five (45) days after the date of the mailing of the Workweek Dispute Form, or the
22 number of Eligible Workweeks set forth in the Notice and Workweek Dispute Form will govern the
23 Net Settlement Payment to the member of the Settlement Class.

24 Upon timely receipt of any such challenge, the Settlement Administrator, in consultation with
25 Class Counsel and counsel for Defendants, will review the pertinent payroll records showing the
26 dates the Settlement Class member was employed and the pertinent leave(s) taken, which records
27 Defendants agree to make available to the Settlement Administrator and Class Counsel.

28 After consulting with Class Counsel and counsel for Defendants, the Settlement

1 Administrator shall compute the number of Eligible Workweeks to be used in computing the
2 Settlement Class member's pro rata share of the Net Settlement Amount. In the event there is a
3 disparity between the dates a Settlement Class member claims he or she worked during the
4 Settlement Period and the dates indicated by Defendants' records, Defendants' records will control
5 unless inconsistent with paycheck stub(s) (or bona fide copies thereof) provided by the Settlement
6 Class member, in which case the paycheck stub(s) will control. The Settlement Administrator's
7 decision as to the total number of Eligible Workweeks shall be final and non-appealable. The
8 Settlement Administrator shall send written notice of the decision on any such claim to the Settlement
9 Class member, to Class Counsel, and counsel for Defendants within ten (10) calendar days of receipt
10 of the dispute.

11 **XII. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

12 **A. Distribution Formula.**

13 Subject to the Court finally approving the Settlement, the Settlement Administrator shall
14 distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order and
15 Judgment. The maximum amount Defendants can be required to pay under this Settlement for any
16 purpose is the Settlement Amount. The Settlement Administrator shall keep Defendants' Counsel
17 and Class Counsel apprised of all distributions from the Settlement Amount. The Settlement
18 Administrator shall respond to questions from Defendants' Counsel and Class Counsel. No person
19 shall have any claim against Defendants, Defendants' Counsel, Plaintiff, Class Counsel, or the
20 Settlement Administrator based on the distributions and payments made in accordance with this
21 Agreement.

22 The Settlement Administrator will calculate the total number of workweeks for all Class
23 Members who were employed by any Defendants during the Settlement Class Period ("Total
24 Workweeks"). The value of each Workweek shall be determined by the Settlement Administrator by
25 dividing the Net Settlement Fund by the total number of Workweeks available to the Class Members
26 who do not opt out in accordance with Section X(C) above during the Settlement Class Period
27 ("Workweek Point Value").

28 An "Individual Settlement Payment" for each Class Member will then be determined by

1 multiplying a Class Member's workweeks worked during the Class Period (“Eligible Workweeks”)
2 by the Workweek Point Value. The Individual Settlement Payment will be reduced by any required
3 legal deductions, for each participating Class Member.

4 Members of the Settlement Class not opting out will receive a lump sum payment as good
5 and valuable consideration for the waiver and release of claims set forth in Section VIII(A), above,
6 in an amount determined by the Settlement Administrator in accordance with the provisions of this
7 Agreement.

8 **B. Funding of Settlement.**

9 No earlier than February 7, 2022, and only after the Court grants Final Approval of the
10 Settlement and a determination of the Individual Settlement Share to which each member of the
11 Settlement Class is entitled, Defendants shall wire to the Settlement Administrator the Settlement
12 Amount and the Employer Taxes.

13 **C. Time for Distribution.**

14 **1. Disbursement.** The Settlement Administrator shall cause the Settlement
15 Amount (inclusive of the Net Settlement Amount, the Court approved attorney’s fees and Litigation
16 costs, Court approved enhancement to Named Plaintiff, and PAGA Settlement) and the Employer
17 Taxes to be mailed within twenty-one (21) calendar days following the date of funding. At no time
18 will Defendants be required to escrow any portion of the Settlement Amount.

19 **2. Uncashed Checks.** If a check is returned to the Settlement Administrator as
20 undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address
21 by performing a skip trace search and, if another address is identified, shall mail the check to the
22 newly identified address. Any settlement checks remaining uncashed after one hundred and eighty
23 (180) days shall be deemed unpaid residue pursuant Code of Civil Procedure Section 384(a). In
24 accordance with Code of Civil Procedure Section 384, the parties shall follow the procedure set for
25 in (1) – (5) below in regard to unpaid residue:

26 (1) Unpaid residue (uncashed or returned checks) will be paid to the Cy Pres Beneficiary at
27 180 Montgomery Street, Suite 600, San Francisco, CA 94104;

28 (2) The attorneys for the parties shall file, with the Motion for Final Approval, a stand-alone

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- 1 Stipulation to Amend Judgment and Proposed Stipulated Amended Judgment (Section
- 2 384) memorializing the parties’ agreement to amend the judgment to adopt the
- 3 administrator’s determination of amount of unpaid residue to be paid to the Cy Pres
- 4 Beneficiary;
- 5 (3) The parties shall attach to the Stipulation a [Proposed] Stipulated Amended Judgment
- 6 form with a signature line for the court and blanks for the amount of residue to be added
- 7 to the judgment and the total amount of the amended judgment;
- 8 (4) Along with the Final Report, the administrator shall file, with the court, a photocopy of
- 9 the attorneys’ Stipulation to Amend Judgment along with a [Proposed] Stipulated
- 10 Amended Judgment form with the amount of residue plus interest to be added to the
- 11 judgment and the total amount of the judgment filled in;
- 12 (5) The court signs and enters the Stipulated Amended Judgment.

XIII. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN

14 The amounts paid under this Agreement do not represent a modification of any previously

15 credited hours of service under any employee benefit plan, policy, or bonus program sponsored by

16 Defendants. Such amounts will not form the basis for additional contributions to, benefits under, or

17 any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendants,

18 policies or bonus programs. Any payments made under the terms of this Settlement shall not be

19 applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any other

20 form of compensation for the purposes of Defendants’ benefit plan, policy or bonus program.

21 Defendants retain the right to modify the language of their benefit plans, policies and bonus programs

22 to effect this intent and to make clear that any amounts paid pursuant to this Settlement are not for

23 “hours worked,” “hours paid,” “hours of service,” or any similar measuring term as defined by

24 applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual, or

25 any other purpose, and that additional contributions or benefits are not required by this Settlement.

26 The Parties agree that any Named Plaintiff’s class representative enhancement and/or Individual

27 Settlement Share paid to Plaintiff or the Participating Class Members under the terms of this

28 Agreement do not represent any modification of Plaintiff’s or Participating Class Members’

1 previously credited hours of service or other eligibility criteria under any employee pension benefit
2 plan or employee welfare benefit plan sponsored by Defendant. Further, any Named Plaintiff’s class
3 representative enhancement payment shall not be considered “compensation” in any year for
4 purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan
5 or employee welfare benefit plan sponsored by Defendants.

6 **XIV. CLASS COUNSEL ATTORNEYS’ FEES AND LITIGATION COSTS**

7 Defendants shall not oppose an application by Class Counsel for, and Class Counsel shall not
8 seek or receive an amount in excess of \$333,333.33, which represents 33 1/3% of the Settlement
9 Amount for all past and future attorneys’ fees necessary to prosecute, settle and administer the
10 Litigation and this Settlement. Additionally, Defendants shall not oppose an application by Class
11 Counsel for, and Class Counsel shall not seek or receive an amount in excess of \$20,000.00, which
12 represents all past and future Litigation costs and expenses necessary to prosecute, settle and
13 administer the Litigation and this Settlement. Any attorneys’ fees or Litigation costs awarded to
14 Class Counsel by the Court as part of the Settlement Amount shall be deducted from the Settlement
15 Amount for the purpose of determining the Net Settlement Amount. The “future” aspect of these
16 amounts include, without limitation, all time and expenses expended by Class Counsel in defending
17 the Settlement and securing preliminary and Final Approval (including any appeals therein). There
18 will be no additional charge of any kind to either the members of the Settlement Class or request for
19 additional consideration from Defendants for such work. This amount shall include all attorneys’
20 fees, Litigation costs, and expenses for which Named Plaintiff and Class Counsel could claim under
21 any legal theory whatsoever. Within twenty-one (21) calendar days following the date the settlement
22 is funded pursuant to Section XII(B), the Settlement Administrator shall disburse payment from the
23 Settlement Amount for the amount of attorneys’ fees and Litigation costs approved by the Court to
24 Class Counsel. Should the Court approve a lesser percentage or amount of fees and/or Litigation
25 costs than the amount that Class Counsel ultimately seeks, then any such unapproved portion or
26 portions shall revert into the Net Settlement Amount to be distributed between the participating
27 Settlement Class Members on a pro-rata basis.

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1 **XV. ENHANCEMENT TO NAMED PLAINTIFF**

2 Defendants shall not oppose an application by Named Plaintiff, and Named Plaintiff shall not
3 seek or receive an amount in excess of \$5,000.00 for her participation in and assistance with the
4 Litigation (*i.e.*, Named Plaintiff’s class representative enhancement / service award). Any
5 enhancement awarded to Named Plaintiff by the Court as part of the Settlement Amount shall be
6 deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount,
7 and shall be reported on IRS Form 1099. If the Court approves an enhancement of less than
8 \$5,000.00 to Named Plaintiff, then the unapproved portion or portions shall revert into the Net
9 Settlement Amount to be distributed between the participating Settlement Class Members on a pro-
10 rata basis.

11 **XVI. TAXATION AND ALLOCATION**

12 The Parties agree that all employment taxes and other legally required withholdings will be
13 withheld from payments to the members of the Settlement Class and Named Plaintiff based on the
14 Parties stipulated allocation of the Net Settlement Amount as provided for in this Section.

15 In Defendants’ sole discretion, and to which Named Plaintiff and Class Counsel do not object,
16 the amount of federal income tax withholding will be based upon a flat withholding rate for
17 supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or
18 supplemented. Income tax withholding will also be made pursuant to applicable state and/or local
19 withholding codes or regulations.

20 For withholding tax characterization purposes and payment of taxes, the Net Settlement
21 Amount shall be deemed and is allocated by the Parties as follows (“Net Settlement Allocation”):

- 22 (1) 50% as wages; and
- 23 (2) 50% as penalties and interest.

24 Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the
25 Internal Revenue Code of 1986 (the “Code”) and consistent with this Agreement, by the Settlement
26 Administrator. If the Code, the regulations promulgated thereunder, or other applicable tax law, is
27 changed after the date of this Agreement, the processes set forth in this Section may be modified in
28 a manner to bring Defendants into compliance with any such changes. The Settlement Administrator

1 will also be responsible for forwarding all payroll taxes and penalties to the appropriate government
2 authorities.

3 Finally, any and all Employer Taxes which Defendants normally would be responsible for
4 paying based on the Net Settlement Payments made to the individual Class Members will be paid by
5 Defendants in addition to and not as a deduction from the Settlement Amount based on the stipulated
6 Net Settlement Allocation.

7 **XVII. PRIVATE ATTORNEY GENERAL ACT ALLOCATION**

8 In order to implement the terms of this Settlement and to settle claims alleged under the
9 Private Attorneys’ General Act, California *Labor Code* section 2698 *et seq.*, the Parties agree to
10 allocate \$10,000.00 from the Settlement Amount as penalties authorized by the California Labor
11 Code Private Attorneys General Act of 2004 (PAGA). Seventy-five percent (75%) of this amount
12 will be paid to the Labor and Workforce Development Agency and 25% of this amount will be
13 distributed to the participating Class Members, through the Settlement Administrator and at no
14 additional cost to Defendants. Within twenty one (21) calendar days following the date the
15 settlement is funded pursuant to Section XII(B), the Settlement Administrator shall disburse the
16 PAGA Settlement to the California Labor and Workforce Development Agency (“LWDA”) and will
17 provide notice to the LWDA of the fact that the settlement has been approved by the court along with
18 a copy of the settlement agreement and the court order confirming the approval of the settlement
19 through the appropriate LWDA/DIR website.

20 **XVIII. COURT APPROVAL**

21 This Agreement and the Settlement is contingent upon Final Approval by the Court and the
22 entry of judgment. Named Plaintiff and Defendants agree to take all steps as may be reasonably
23 necessary to secure both Preliminary Approval and Final Approval of the Settlement, to the extent
24 not inconsistent with the terms of this Agreement, and will not take any action adverse to each other
25 in obtaining court approval, and, if necessary, appellate approval, of the Settlement in all respects.
26 Named Plaintiff and Defendants expressly agree that they will not file any objection to the terms of
27 the Settlement or assist or encourage any person or entity to file any such objection.

28 In the event it becomes impossible to secure approval of the Settlement, the Parties shall be

1 restored to their respective positions in the Litigation, as of the date of the hearing on the Motion for
2 Preliminary Approval, except as otherwise provided in Section XIX, below.

3 **XIX. MISCELLANEOUS PROVISIONS**

4 **A. Stay of Litigation.**

5 Named Plaintiff and Defendants agree to the stay of all discovery in the Litigation, pending
6 Final Approval of the Settlement by the Court.

7 **B. Interpretation of the Agreement.**

8 This Agreement constitutes the entire agreement between Named Plaintiff and Defendants.
9 Except as expressly provided herein, this Agreement has not been executed in reliance upon any
10 other written or oral representations or terms, and no such extrinsic oral or written representations or
11 terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree
12 that this Agreement is to be construed according to its terms and may not be varied or contradicted
13 by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State
14 of California, both in its procedural and substantive aspects, without regard to its conflict of laws
15 provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will
16 be resolved solely and exclusively in the Superior Court of the State of California for the County of
17 Los Angeles, and Named Plaintiff and Defendants hereby consent to the personal jurisdiction of the
18 Court over them solely in connection therewith. Named Plaintiff, on her own behalf and on behalf
19 of the Settlement Class, and Defendants participated in the negotiation and drafting of this
20 Agreement and had available to them the advice and assistance of independent counsel. As such,
21 neither Named Plaintiff nor Defendants may claim that any ambiguity in this Agreement should be
22 construed against the other.

23 The terms and conditions of this Agreement constitute the exclusive and final understanding
24 and expression of all agreements between Named Plaintiff and Defendants with respect to the
25 Settlement of the Litigation. The Agreement may be modified only by a writing signed by the
26 original signatories and approved by the Court.

27 **C. Further Cooperation.**

28 Named Plaintiff and Defendants and their respective attorneys shall proceed diligently to

1 prepare and execute all documents, to seek the necessary approvals from the Court, and to do all
2 things reasonably necessary or convenient to consummate the Agreement as expeditiously as
3 possible.

4 **D. Confidentiality of Documents.**

5 After the expiration of any appeals period, Named Plaintiff, the Settlement Administrator,
6 and Class Counsel shall maintain the confidentiality of all documents, deposition transcripts,
7 declarations and other information obtained in the lawsuit, unless necessary for appeal or such
8 documents are ordered to be disclosed by the Court or by a subpoena.

9 **E. No Publicity.**

10 Plaintiff, Class Counsel and Counsel for Defendants agree that they have not and will not
11 discuss, disclose, or communicate the Settlement, other than pursuant to the terms of this Settlement
12 Agreement. Plaintiff, Class Counsel and Counsel for Defendants also agree that they have not and
13 will not publish the Settlement. Plaintiff, in response to inquiries, will state that “the Litigation was
14 resolved” or words of similar effect. Class Counsel shall not report the Settlement in any medium
15 or in any publication, shall not post or report anything regarding the Settlement on their websites,
16 and shall not contact the press, reporters or general media regarding the Settlement. As used herein,
17 “press, reporters, or general media” shall refer to and include newspapers, periodicals, magazines,
18 online publications, and television and radio stations and programs, and any representative of the
19 foregoing. Upon receipt of an inquiry from the press, reporters, or general media, Class Counsel and
20 Counsel for Defendants shall respond “we have no comment.” However, Class Counsel are
21 authorized to make all necessary disclosures to the Court and the California Labor Workforce
22 Development Agency (“LWDA”) for the purposes of obtaining the approval of the Settlement, with
23 a copy of the disclosure to Counsel for Defendants. Nothing herein shall prevent Class Counsel from
24 communicating with Plaintiff and Class Members, the LWDA, or the Settlement Administrator
25 regarding the terms of this Settlement Agreement and/or the Settlement. For the limited purpose of
26 allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may
27 disclose the name of the Parties in this action, the venue/case number of this action, and the fact this
28 action settled on a class-wide basis (but not any other settlement details) for such purposes.

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1 **F. Counterparts.**

2 The Agreement may be executed in one or more actual or non-original counterparts, all of
3 which will be considered one and the same instrument and all of which will be considered duplicate
4 originals.

5 **G. Authority.**

6 Each individual signing below warrants that he or she has the authority to execute this
7 Agreement on behalf of the party for whom or which that individual signs.

8 **H. No Third-Party Beneficiaries.**

9 Named Plaintiff, members of the Settlement Class, and Defendants are direct beneficiaries of
10 this Agreement, but there are no third-party beneficiaries.

11 **I. Modification.**

12 This Agreement may not be changed, altered, or modified, except in a writing signed by the
13 Parties, and approved by the Court. Notwithstanding the forgoing, the Parties agree that any dates
14 contained in this Agreement may be modified by agreement of the Parties in writing without Court
15 approval if the Parties agree and cause exists for such modification. This Agreement may not be
16 discharged except by performance in accordance with its terms or by a writing signed by the Parties.

17 In addition to the above, this Agreement may be modified based on the final size of the
18 Settlement Class. Defendants’ best estimate of the Settlement Class size is 3,200 persons as of the
19 date of the August 6, 2020 mediation. If, as of the end of the Settlement Period, the actual Settlement
20 Class size is more than 10% of this estimate (i.e., 3,520 or more Class Members), the Settlement
21 Amount shall be increased by the average gross payout to individual Class Members based on 3,200
22 Class Members. For example, if the average payout based on 3,200 Class Members is \$312.50 per
23 Class Members and there are 320 additional Class Members (3,520 total Class Members),
24 Defendants will increase the Settlement Amount by \$100,000.00.

25 **J. Deadlines Falling on Weekends or Holidays.**

26 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or
27 legal holiday, that deadline shall be continued until the following business day.

28 **K. Severability.**

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendants' Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

L. Fair, Adequate, and Reasonable Settlement.

The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

APPROVED AS TO FORM AND CONTENT:

Date: January 13, 2021

ON BEHALF OF PLAINTIFF:

By:  BLANCA HERNANDEZ ORELLANA,
Plaintiff

Date: January _____, 2021

ON BEHALF OF DEFENDANTS:

By: _____
Name:
Position:
For NICKER MANAGEMENT I, INC., NICKER-18TH, INC., NICKER-ALAMEDA, INC., NICKER-AVALON, INC., NICKER-CARSON, INC., NICKER-CENTRAL, INC., NICKER-COMPTON, INC., NICKER-CRENSHAW, INC., NICKER-FIGUEROA, INC., NICKER-FLORENCE, INC., NICKER-IMPERIAL, INC., NICKER-LONG BEACH, INC., NICKER-MANCHESTER, INC., NICKER-MLK, INC., NICKER-PENDLETON, INC., NICKER-ROSECRANS, INC., NICKER-SLAUSON, INC., NICKER-WESTERN, INC., NICWIL-ALONDRA, INC., AND DOES 1 THROUGH 10 (NICKER MANAGEMENT I, INC., NICKER-18TH, INC., NICKER-ALAMEDA, INC., NICKER-AVALON, INC., NICKER-CARSON, INC., NICKER-CENTRAL, INC.,

WILSHIRE LAW FIRM, PLC
3055 Wilshire Blvd., 12th Floor
Los Angeles, CA 90010-1137

1 In the event that any one or more of the provisions contained in this Agreement shall for any
2 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
3 unenforceability shall in no way effect any other provision if Defendants' Counsel and Class
4 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if
5 such invalid, illegal, or unenforceable provision had never been included in this Agreement.

6 **L. Fair, Adequate, and Reasonable Settlement.**

7 The Parties and their respective counsel believe and warrant that this Agreement reflects a
8 fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through
9 arms-length negotiations, taking into account all relevant factors, current and potential.

10
11 APPROVED AS TO FORM AND CONTENT:

12 Date: January____, 2021

ON BEHALF OF PLAINTIFF:

13
14 By: _____

BIANCA HERNANDEZ ORELLANA,
Plaintiff

15
16 Date: January ^{1/20/2021}____, 2021

ON BEHALF OF DEFENDANTS:

17
18 By: _____

DocuSigned by:
Kerni Harper-Howie
D549F38560B2404...

Name:
Position:
For NICKER MANAGEMENT I, INC.,
NICKER-18TH, INC., NICKER-
ALAMEDA, INC., NICKER-AVALON,
INC., NICKER-CARSON, INC., NICKER-
CENTRAL, INC., NICKER-COMPTON,
INC., NICKER-CRENSHAW, INC.,
NICKER-FIGUEROA, INC., NICKER-
FLORENCE, INC., NICKER-IMPERIAL,
INC., NICKER-LONG BEACH, INC.,
NICKER-MANCHESTER, INC., NICKER-
MLK, INC., NICKER-PENDLETON, INC.,
NICKER-ROSECRANS, INC., NICKER-
SLAUSON, INC., NICKER-WESTERN,
INC., NICWIL-ALONDRA, INC., AND
DOES 1 THROUGH 10 (NICKER
MANAGEMENT I, INC., NICKER-18TH,
INC., NICKER-ALAMEDA, INC.,
NICKER-AVALON, INC., NICKER-
CARSON, INC., NICKER-CENTRAL, INC.,

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NICKER-COMPTON, INC., NICKER-CRENSHAW, INC., NICKER-FIGUEROA, INC., NICKER-FLORENCE, INC., NICKER-IMPERIAL, INC., NICKER-LONG BEACH, INC., NICKER-MANCHESTER, INC., NICKER-MLK, INC., NICKER-PENDLETON, INC., NICKER-ROSECRANS, INC., NICKER-SLAUSON, INC., NICKER-WESTERN, INC., NICWIL-ALONDRA, INC.

APPROVED AS TO FORM:

Date: January 13, 2021

WILSHIRE LAW FIRM

By: 
Justin F. Marquez
Attorneys for Plaintiff

Date: January _____, 2021

FISHER & PHILLIPS LLP

By: _____
Kristen J. Nesbit
Suzy E. Lee
Attorneys for Defendants

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Los Angeles, CA 90010-1137

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APPROVED AS TO FORM:

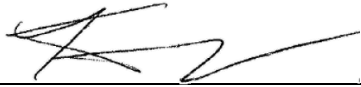
Date: January _____, 2021

WILSHIRE LAW FIRM

By: _____
Justin F. Marquez
Attorneys for Plaintiff

Date: January 20, 2021

FISHER & PHILLIPS LLP

By:  _____
Kristen J. Nesbit
Suzy E. Lee
Attorneys for Defendants

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Los Angeles, CA 90010-1137