

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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JOY EBERLINE, CINDY  
ZIMMERMAN, and TRACY  
POXSON, individually and on behalf  
of all others similarly situated,

Plaintiffs,

Case No. 5:14-cv-10887

Hon. Judith E. Levy

Magistrate Kimberly G. Altman

v

DOUGLAS J. HOLDINGS, INC.,  
DOUGLAS J. AIC, INC.,  
DOUGLAS J. INSTITUTE, INC.  
and SCOTT A. WEAVER,

Defendants.

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**SETTLEMENT AND RELEASE AGREEMENT**

Plaintiffs, Joy Eberline, Cindy Zimmerman, and Tracy Poxson, on behalf of themselves and the Class Members defined below, on the one hand, and Defendants, Douglas J. Holdings, Inc., Douglas J. AIC, Inc., Douglas J. Institute, Inc., and Scott Weaver, on the other hand, (Plaintiffs and Defendants together are referred to as the “Parties,” and each individually as a “Party”) agree to a settlement, subject to Court approval as discussed below, through this Settlement and Release Agreement (the “Agreement”):

**1. Recitals and Background**

A. On February 26, 2014, Plaintiffs filed a hybrid class and collective action complaint against Defendants on behalf of themselves and other similarly situated students who attended cosmetology schools run by Defendant Douglas J. Institute, Inc., which is now pending in the United States District Court for the Eastern District of Michigan before the Honorable Judith E. Levy, Case No. 5:14-cv-10887 (the “Litigation”). In the Litigation, Plaintiffs alleged, among other claims, that they and other similarly situated students were employees for purposes of the Fair Labor Standards Act (“FLSA”) and state wage-and-hour laws when they were performing specific cleaning, laundry, restocking, and/or sales tasks during their time enrolled as students in Douglas J. Institute, Inc.’s student clinic, and thus claimed should be paid wages for the time spent performing these tasks.

**B.** Defendants have denied any wrongdoing or liability, have defended against Plaintiffs' claims in the Litigation, and intended to continue to vigorously defend the Litigation on several bases, including that Plaintiffs were not "employees" under the governing statutes and thus not entitled to any wages, and that Plaintiffs did not actually spend the time claimed to have been spent completing the tasks at issue. Defendants, without admitting any wrongdoing or liability, nevertheless have agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and to be completely free of any further controversy with respect to the claims that are asserted and could have been asserted in, or relate in any way whatsoever to, the Litigation.

**C.** Following cross motions for summary judgment, the Court granted summary judgment in Defendants' favor on certain claims, granted partial summary judgment in Plaintiffs' favor on certain issues, and denied summary judgment on certain issues, leaving them for determination by a jury. In all, the Parties have litigated the matter vigorously for the better part of a decade and have determined that settlement is in the best interest of all Parties.

**D.** Class Counsel (as defined below) has analyzed and evaluated the merits of the claims made against Defendants and the impact of this Agreement on the Plaintiffs and the Class (as defined below). Class Counsel and Plaintiffs are

satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate, and that this Agreement represents a reasonable compromise of disputed claims in the Litigation, which is in the best interest of Plaintiffs and the Class.

**E.** Based upon their analysis and evaluation of relevant factors, the Parties recognize the substantial risks of continued litigation, including the possibility that the Litigation, if not settled now, might not result in any recovery whatsoever, or might result in a larger or smaller recovery.

**F.** The Parties participated in private mediation on December 16, 2022, with an independent third-party mediator, where they ultimately reached a preliminary agreement to resolve the Litigation. The Parties, subject to the Court's approval, have elected to settle the Litigation pursuant to the terms set forth in this Agreement, which shall be submitted to the Court for approval as set forth below.

**G.** The Parties agree that if this Agreement is terminated as set forth below, the Agreement shall be void and have no force and effect, shall be inadmissible in any further proceeding in the Litigation, the Litigation will proceed as if this Agreement had not been executed, without prejudice to any Party's arguments, claims, or defenses, including Defendants' opposition to certification of any class.

**2. Definitions**

**A. Claim Forms** means the forms attached to this Agreement as Exhibit B and as further described in Paragraph 3(I) below. The Claim Forms shall require each Class Member to identify whether he or she was eligible to work in the United States during all relevant periods.

**B. Claims Period** means 90 days from the date on which the Notice of Settlement is required to be mailed under Paragraph 3(E).

**C. Class** means any student who attended Defendant Douglas J. Institute, Inc.'s cosmetology programs in Michigan and participated in the Alpha, Beta, Gamma, and/or Salon Life courses in 2012 through 2022. Individual members of the Class are referred to as Class Members.

**D. Class Counsel** means John Philo (jphilo@sugarlaw.org), Sugar Law Center for Economic & Social Justice, 4605 Cass Avenue, 2nd Floor, Detroit, Michigan 48201 and Kathryn Bruner James (kjames@goodmanhurwitz.com), Goodman Hurwitz & James PC, 1394 E. Jefferson Avenue, Detroit, Michigan 48207.

**E. Class Data** means each Class Member's full name, last known address, social security number, total hours completed towards the state-required 1,500 minimum hours to sit for the cosmetology examination at Douglas J Institute's Michigan programs, and Qualifying Enrollment.

**F. Defendants** mean the Defendants remaining in the Litigation as of the date this Agreement is executed: Douglas J. Holdings, Inc., Douglas J. AIC, Inc., Douglas J. Institute, Inc., and Scott Weaver.

**G. Defendants' Counsel** means Matthew Nelson (mnelson@wnj.com) and Amanda Fielder (afielder@wnj.com) of Warner Norcross + Judd LLP, 150 Ottawa Avenue NW, Suite 1500, Grand Rapids, Michigan 49503, and Michael Brady (mbrady@wnj.com) of Warner Norcross + Judd LLP, 2715 Woodward Avenue, Suite 300, Detroit, Michigan 48201.

**H. Douglas J** means Douglas J. Holdings, Inc. and Douglas J. Institute, Inc.

**I. Effective Date** means the date of entry of a stipulated order of dismissal after the Final Approval Order if no objection to the Settlement is filed in accordance with the procedures of this Agreement. Otherwise, the "Effective Date" of this Agreement shall be the later of: (a) the date on which the time for all appeals relating to objections and the Final Approval Order has expired; and (b) if an appeal, review or writ is sought, the date on which the highest reviewing court renders its decision denying any such appeal, review, writ and/or petition and the time for any motion for reconsideration or rehearing of that decision has expired or the motion for reconsideration or rehearing in such highest court is denied.

**J. Employer Taxes** means all taxes an employer is required to pay arising out of or based upon the payment of wages.

**K. Escrow Account** means a federally insured bank account to be established by the Settlement Administrator into which all payments from Settling Defendants related to this Settlement will be deposited and from which all payments will be made.

**L. Final Approval Order** means the Order Granting Final Approval of Class Action Settlement entered by the Court as described in Paragraph 6(B) below.

**M. Final Fairness and Approval Hearing** means the hearing on Plaintiff's Motion for Final Approval of Class Action Settlement described in Paragraph 6(A) below.

**N. Hourly Rate** means, as to each Class Member, two times the minimum wage in effect in Michigan on the last date on which the Class Member was enrolled at Douglas J Institute in in the Alpha, Beta, Gamma, and/or Salon Life courses. The Michigan minimum wage rates by year are set forth below:

2022:	\$9.87	2016:	\$8.50
2021:	\$9.65	2015:	\$8.15
2020:	\$9.65	2014:	\$8.15
2019:	\$9.45	2013:	\$7.40
2018:	\$9.25	2012:	\$7.40
2017:	\$8.90		

**O. Interest Rate** means, as to each Class Member, the rate identified below applicable to the last year in which the Class Member was enrolled at Douglas J Institute in the Alpha, Beta, Gamma, and/or Salon Life courses.

2022:	1%	2016:	7%
2021:	2%	2015:	8%
2020:	3%	2014:	9%
2019:	4%	2013:	10%
2018:	5%	2012:	10%
2017:	6%		

**P. Non-Settling Defendant** means Defendant Douglas J. AIC, Inc.

**Q. Notice of Settlement** means the “Notice of Proposed Class Action Settlement and Final Approval Hearing,” the form of which is attached hereto as Exhibit A and as described in Paragraph 3(E) below.

**R. Opt Out Form** means the form attached to this Agreement as Exhibit C and as further described in Paragraph 4(D) below.

**S. Participating Class Members** means all Class Members who properly and timely execute and return a Claim Form and, if applicable<sup>1</sup>, fully executed W4 and W9 forms, in accordance with Paragraph 3(I) below.

**T. Parties** means Plaintiffs and Defendants together. Party means Plaintiffs or Defendants individually.

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<sup>1</sup> See Paragraph 5(M)(ii) for tax withholding provision for Participating Class Members who are not eligible to work or who lack a valid social security number.



**U. Plaintiffs** means the named Plaintiffs in this Litigation: Joy Eberline, Tracy Poxson, and Cindy Zimmerman.

**V. Preliminary Approval Date** means the date the Court enters an order granting preliminary approval of this Agreement, as described in Paragraph 3(A) below.

**W. Qualifying Activities** means general cleaning, laundry, and/or product sales tasks completed by Class Members while enrolled and participating in the Alpha, Beta, Gamma, and/or Salon Life courses of Douglas J. Institute, Inc.'s cosmetology program. Qualifying Activities *do not* include routine cleaning and sanitizing workstations following the provision of guest services.

**X. Qualifying Enrollment** means the number of the available 1,200 hours that a Class Member earned towards the state mandated hours to sit for the cosmetology exam from the Alpha, Beta, Gamma, and/or Salon Life courses in Douglas J. Institute, Inc.'s cosmetology programs in Michigan. Hours earned in the Introduction class at Douglas J Institute or earned at other institutions are not Qualifying Hours. For Class Members as to whom the Class Data does not contain the total number of hours completed toward the 1,500-hour requirement, Qualifying Hours will be products of 1,200 hours multiplied by the percentage of the total number of weeks a Class Member was enrolled in Douglas J Institute's Alpha, Beta, Gamma, and/or Salon Life courses up to 32 out of 33 weeks (approx. 97%) for day

students and 44 out of 45 weeks (approx. 98%) for night students.

**Y. Qualifying Hours** means the percentage of each Class Member's Qualifying Enrollment that each Class Member spent on Qualifying Activities up to a maximum of 10%.

**Z. Qualifying Time** means, as to each Class Member, the product of the Class Member's Qualifying Enrollment multiplied by the Class Member's Qualifying Hours.

**AA. Released Claims** means any and all claims arising out of or relating to, in any way, a Class Member's alleged employment by Douglas J or Scott Weaver while enrolled in Douglas J. Institute, Inc.'s cosmetology program, including any and all claims under any federal, state and/or local statute, law and/or ordinance, including, without limitation, claims under and/or based on the FLSA, the Michigan Workforce Opportunity Wage Act, the Michigan Minimum Wage Law, and the Michigan Wage and Fringe Benefits Act; any contract or quasi-contract theory; any constitution or regulation; any common law theory; and/or any other claims that were or could have been asserted in this action. The Released Claims include, but are not limited to, claims for unpaid wages, minimum wage, tips, service charges, overtime pay, misclassification, compensation, penalties, damages, liquidated damages, punitive damages, attorneys' fees, interest, expenses, disbursements, litigation costs and fees, restitution, equitable relief and/or any other

relief. The Released Claims include those claims identified in Paragraph 8(R).

**BB. Settlement** means the disposition of the Litigation and all related claims effectuated by this Agreement.

**CC. Settlement Class** means all Class Members other than those who properly and timely execute and return an Opt Out Form in accordance with Paragraph 4(D) below. Individual members of the Settlement Class are referred to as Settlement Class Members.

**DD. Settlement Administrator** refers to Kroll Settlement Administration LLC.

**EE. Settlement Administration Costs** means the fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement. Settlement Administration Costs will be paid out of the Settlement Amount in accordance with Paragraph 5(E) below.

**FF. Settlement Amount** means the gross amount of \$2,800,000, inclusive of all payments set forth in this Agreement.

**GG. Settling Defendants** means Defendants Douglas J. Holdings, Inc.; Douglas J. Institute, Inc.; and Scott Weaver.

**3. Class Notice**

**A. Preliminary Approval:** Within 14 days after the execution of this Agreement by all Parties (but not before the Revocation Deadline described in Paragraph 8(Q)(ii) below), Class Counsel shall file a motion for preliminary approval of the Settlement, applying to the Court for the entry of an Order that will be agreed upon by the Parties prior to submission and provide for the following:

i. Scheduling a fairness hearing on the question of whether the proposed Settlement should be approved as fair, reasonable, and adequate as to the Class Members;

ii. Conditionally certifying the Class according to the criteria identified in Fed. R. Civ. P. 23(e)(2) and a collective action pursuant to the FLSA;

iii. Approving as to form and content the proposed Notice of Settlement;

iv. Approving as to form and content the proposed Claim Form;

v. Approving the proposed method of opting out from the Settlement; and

vi. Preliminarily approving the Settlement.

Defendants will not oppose the relief sought in Class Counsel's motion for preliminary approval of the Settlement to the extent it is consistent with the terms

and conditions of this Agreement. Defendants may, however, provide a written response to the motion for preliminary approval, including any characterization of the law or facts contained therein.

**B. Effect of Non-Approval:** If the Court (a) enters an order expressly declining to enter the Preliminary Approval Order in any material respect; (b) refuses to approve this Settlement or any material part of it; (c) declines to enter a Judgment that conforms in all respects the material provisions of this Settlement; (d) proposes to enter a Preliminary Approval Order or Judgment that does not contain the material terms of this Settlement or (e) enters the Judgment, but after appellate review, the Judgment is vacated or modified or reversed in any material respect, and further appellate review has either been denied or the time for seeking further appeal has expired, then the Parties each shall have the right to terminate their participation in the Settlement within 30 days of the receipt of such ruling by providing written notice to the other Parties of an election to terminate. Any judicial decision with respect to an application for attorneys' fees or the allocation of the Settlement Amount, including the amounts of any service award, shall not be considered material to the Settlement and shall not be grounds for termination.

**C. Cooperation:** The Parties agree to reasonably cooperate to accomplish the terms of this Agreement, including but not limited to, execution of such documents and to take such other reasonably necessary actions to implement

the terms of this Agreement. If the Court does not approve the Settlement, the Parties agree to reasonably cooperate to modify the Agreement, to the extent acceptable to each Party, to conform with any changes requested by the Court and to resubmit the Agreement, as modified, to the Court for approval; provided that, if the Court does not approve the Settlement for a reason that any Party determines to be material, any Party may terminate the Settlement consistent with Paragraph 3(B) above. Likewise, if all Parties fail to agree upon an amendment that will obtain Court approval, the Settlement is terminated.

**D. Provision of Class Data:** Within 21 days after the Preliminary Approval Date, Defendants will provide the Settlement Administrator with the Class Data in an electronic format acceptable to the Settlement Administrator. Defendants will confirm to Class Counsel when the information has been provided to the Settlement Administrator. This information will remain confidential and will not be disclosed to anyone, except as required to applicable taxing authorities, pursuant to Defendants' express written authorization, by order of the Court, to Class Counsel, or as otherwise provided for in this Agreement.

**E. Notice of Settlement:** Using the Class Data, the Settlement Administrator will: (1) finalize and print the Notice of Settlement; (2) create and maintain a website at which Class Members may obtain and complete Claim Forms, a W4 tax form, and a W9 tax form; and from which Class Members may obtain and

print an Opt Out Form; (3) check all addresses against the National Change of Address database; and (4) within 21 days of receiving the Class Data, send the Notice of Settlement to the most recent address known for each Class Member via First-Class United States mail. It will be conclusively presumed that if an envelope so mailed has not been returned within 28 days of the mailing, the Class Member received the Notice Package.

**F. Returned/Undeliverable Notices:** For any Notice of Settlement that is returned as undeliverable within the 28-day period described in Paragraph 3(E) above, the Settlement Administrator will perform a utility database search. The returned Notice Package(s) will be re-mailed to the new addresses obtained for such Class Members, if any. To the fullest extent possible, such searching and re-mailing will be completed within 35 days of the date that Notices of Settlement were originally mailed. If a re-mailed Notice of Settlement is then returned as undeliverable for a second time, no further action is necessary.

**G. Declaration of Compliance:** As soon as practicable following completion of the procedures described in Paragraphs 3(D), 3(E), and 3(F) above, the Settlement Administrator shall provide Class Counsel and Defendants' Counsel with a declaration attesting to completion of those procedures, including the number of Notices of Settlement sent; the number of completed Claims Forms received; an explanation of efforts to resend undeliverable Notices of Settlement, if any; and

copies of all properly completed and timely returned Opt Out Forms. The Settlement Administrator's declaration shall be filed with the Court by Class Counsel along with their papers requesting final approval of the Settlement as described in Paragraph 6(A) below.

**H. Effect of Compliance:** Compliance with the procedures described in this Paragraph 3 shall constitute due and sufficient notice to Class Members of this Settlement and of the Final Fairness and Approval Hearing, shall satisfy the requirements of due process, and nothing else shall be required of the Plaintiffs, Class Counsel, Defendants, Defendants' Counsel, or the Settlement Administrator to provide notice of the Settlement and the Final Fairness and Approval Hearing.

**I. Class Member Election:** Only Class Members who properly complete the Claim Form attached hereto as Exhibit B and submit the Claim Form, along with a fully completed W4 form and W9 form (when applicable), to the Settlement Administrator within the Claims Period will become Participating Class Members. Claim Forms submitted electronically or postmarked before the Claims Period expires will be timely.

**J. Claims Reporting:** Within 28 days after the Claims Period ends, the Settlement Administrator shall furnish to Class Counsel and Defendants' Counsel a list of all Participating Class Members and the Qualifying Hours,



Qualifying Time, and projected payment to each.

**K. CAFA Notices:** The Settlement Administrator shall send notice to the appropriate federal and state officials in accordance with the Class Action Fairness Act, 28 U.S.C. § 1715(b) (“CAFA”) within 10 days after Class Counsel files the motion for preliminary approval of the Settlement as described above. The Settlement Administrator shall be responsible for all other CAFA notices or obligations required by law with respect to this Agreement.

**L. Verification of Eligibility to Work:** The Settlement Administrator shall verify the social-security numbers of each Participating Class Member to determine whether the social-security number is valid and to determine whether each Participating Class Member is eligible to work in the United States. The Settlement Administrator shall provide a report to Class Counsel and Defendants’ Counsel at least 90 days before the date the Second Installment Payment is due.

**M. Appropriateness of Claims-Made Approach:** The Parties agree that, given the likely variance in claims amounts and the probability that students attending different Douglas J. Institute, Inc. locations at different times had different experiences such that some Class Members may not have any Qualifying Time, a claims-made approach is appropriate in this case.

**4. Objections and Opt-Outs**

**A. Objections to Settlement:** Any Class Member wishing to object to the approval of this Settlement shall inform the Settlement Administrator in writing of his or her intent to object by following the procedure set forth in the Notice of Settlement within 75 days of the Preliminary Approval Date. Objections are timely if postmarked by the deadline. Failure to comply with this deadline will forever bar a Class Member from objecting to the Settlement. Within 14 days of the deadline to submit an objection under this Paragraph, the Settlement Administrator shall provide all such objections to Class Counsel and Defendants' Counsel.

**B. Responses to Objections:** Class Counsel and Defendants' shall file any written objections from Class Members submitted to the Settlement Administrator in accordance with this Agreement, and Class Counsel's and Defendants' responses to such objections, at least 7 days before the Final Fairness and Approval Hearing.

**C. Waiver of Appeal:** Any Class Member who does not timely submit an objection to the Settlement and/or does not comply with any other substantive or procedural obligations imposed by law or under this Agreement, waives any and all rights to appeal the Final Approval Order, including all rights to any post-judgment proceeding and appellate proceeding, including, without limitation, a motion to vacate the judgment, a motion for new trial, appeal, and any extraordinary writs.

**D. Opting Out of the Settlement:** Any Class Member who wishes to be excluded from the Settlement must submit to the Settlement Administrator, as indicated in the Notice of Settlement, an Opt Out Form, personally signed by the Class Member no later than 75 days after the Preliminary Approval Date. Opt Out Forms are timely if postmarked by the deadline. The Settlement Administrator shall date stamp the original of any Opt Out Form and serve copies on both Class Counsel and Defendants' Counsel via electronic mail within 7 days of receipt of any such Opt Out Form. Class Counsel shall file copies of all timely requests for exclusion, not timely rescinded, with the Court before the Final Fairness and Approval Hearing described in Paragraph 6(A) below.

**E. Failure to Properly Opt Out and Opt-Out Limitations:** Any Class Member who does not fully complete, personally sign, and timely submit his or her Opt Out Form will be deemed included as a member of the Settlement Class in accordance with this Settlement. Plaintiffs waive any right to opt out of the Settlement.

**F. Conflicting Responses:** If a Class Member submits both a Claim Form and an Opt Out form, the Opt Out form will be invalid, and the Class Member will be deemed to be a Participating Class Member and be bound by the terms of this Agreement.

**G. Notification to Counsel of Opt-Outs:** Within 14 days following

the last of the deadlines to opt out, the Settlement Administrator shall provide Class Counsel and Defendants' Counsel with information setting forth the total number of opt outs and the identities (which shall include all Class Data for those Class Members) of the Class Members who have decided to opt out.

**H. Termination for Lack of Sufficient Participation:** If 12% or more of the Class Members, in the aggregate, make a valid request to be excluded from the Settlement pursuant to Paragraph 4(D) above, Defendants will have the right, but not the obligation, to terminate this Agreement.

**5. Settlement Terms and Administration**

**A. Allocation of Liability:** Douglas J shall be liable for no more than \$1.0 million of the Settlement Amount, with Scott Weaver being liable for the remainder. All wages paid as part of the Settlement shall be the responsibility of Douglas J. The Parties agree that, in the event of default by Douglas J or Scott Weaver through failure to provide payment, Plaintiffs, at their sole discretion, may elect to terminate the Agreement in its entirety or to seek enforcement of this Agreement against the noncomplying party.

**B. Payments by Settling Defendants:** Provided that there are no timely Objections to the Settlement, one or more of the Settling Defendants shall make two wire payments to the Escrow Account as follows: (a) 50% of the Settlement Amount (i.e., \$1,400,000) shall be wired no later than December 31, 2023

(the “First Installment Payment”); and (b) the remaining 50% of the Settlement Amount (i.e., \$1,400,000) shall be wired no later than October 15, 2024 (the “Second Installment Payment”).

**C. Late Effective Date:** In the event the Effective Date does not occur by December 1, 2023, the deadlines in Paragraph 5(B) above are extended as follows: the First Installment Payment will not be due until the last day of the calendar month immediately following the month in which the Effective Date occurs, and the Second Installment Payment will not be due until one year after the deadline for the First Installment Payment.

**D. Service Award:** \$15,000 is to be distributed to each Plaintiff from the Escrow Account as a Service Award in recognition of, and in consideration for, the assistance they rendered to Class Counsel in pursuing the rights of all Class Members.

**E. Settlement Administration Costs:** All Settlement Administration Costs shall be paid from the Escrow Account.

**F. Class Counsel’s Attorneys’ Fees, Costs, and Expenses:** Class Counsel may request, and Defendants will not oppose, a payment from the Escrow Account for attorneys’ fees for all the work already performed and all the work remaining to be performed, and for costs and expenses incurred by Class Counsel in prosecution and implementation of the terms of the Settlement, in a gross amount

not to exceed the sum of Class Counsel's actual costs and one-third of the Settlement Amount after Class Counsel's actual costs are deducted from the Settlement Amount.

**G. Calculating Qualifying Hours and Qualifying Time:** The Settlement Administrator shall determine each Participating Class Member's Qualifying Hours and Qualifying Time based on information provided on the Claims Form.

**H. Payments to Participating Class Members:** Subject to the final approval of this Agreement, payments from the net Settlement Amount, which shall be the amount remaining after subtracting the amounts to be paid under Paragraphs 5(D), 5(E), and 5(F) above, shall be made by the Settlement Administrator to each Participating Class Member in the amount of the product of the Hourly Rate multiplied by the Qualifying Time multiplied by one plus the Interest Rate.

**I. Disbursement:** The Settlement Administrator shall disburse the funds to be paid under Paragraphs 5(D), 5(F), and 5(H) above from the Escrow Account as soon as practicable after receipt of the Second Installment Payment.

**J. Pro Rata Calculation:** To the extent the total payments to be made under Paragraph 5(H) above exceed the total remaining Settlement Amount after deducting the payments to be made under Paragraphs 5(D), 5(E), and 5(F) above, the payment to each Participating Class Member will be reduced on a pro rata

basis by the Settlement Administrator.

**K. Condition Precedent:** The Settlement and all payments described in this Agreement are conditioned upon passing of the Effective Date.

**L. Reversion of Remaining Fund:** All funds remaining from the Settlement Amount following all disbursements to Participating Class Members under this Agreement (the “Residual Funds”) shall revert to Settling Defendants. If the Residual Funds exceed \$1 million, then Douglas J shall use any Residual Funds that exceed \$1 million to fund scholarships for low-income cosmetology students. If after the Claims Period ends it seems that the Residual Funds will exceed \$1 million, the Parties will negotiate a Scholarship Agreement to be submitted to the Court as part of the motion identified in Paragraph 6(A).

The Parties agree that at the time of entering into this Agreement, it is hard to assess the total number of Participating Class Members or the size of their Qualifying Time and, as a result, the Settlement Amount is based on an estimated total amount of potential claims as opposed to an accurate assessment of damages. The Parties further agree that, given the size of the Settlement Amount, the provisions of this Paragraph 5(L) are critical to Defendants’ willingness to enter into this Agreement.

**M. Taxes and Indemnification:**

- i. For tax purposes, the amount received by each

Participating Class Member under Paragraph 5(H) equal to the applicable Michigan minimum wage multiplied by the Qualifying Time will be treated as wages and reported by the Settlement Administrator on an IRS Form W2. The remainder of the amount received by each Participating Class Member will be reported by the Settlement Administrator on an IRS 1099 form.

ii. The amount paid to each Participating Class Member attributable to wages shall be subject to all applicable taxes and other withholdings and shall be net of the Participating Class Member's share of all federal, state, and local taxes and required withholdings as provided for on the Participating Class Member's submitted W4 except as to Participating Class Members who are not eligible to work or who lack a valid social security number. As to the latter Participating Class Members, withholdings shall be made in accordance with applicable law including regulations and guidance from the Internal Revenue Service and the Michigan Department of Treasury. The Employer Taxes shall be paid by Douglas J separately and in addition to Settling Defendants' payment of the Settlement Amount. For each Participating Class Member, the Settlement Administrator shall determine the employer tax obligation and provide that information to Douglas J. If Douglas J disagrees with the Settlement Administrator's determination of the employer taxes, they will communicate with the Settlement Administrator and share information reasonably necessary to reach a good faith



determination of the correct taxes.

iii. The Parties agree that, for tax purposes, the Service Award to the Plaintiffs under Paragraph 5(D) above shall be treated as non-employee income and the Settlement Administrator shall issue each Plaintiff an IRS Form 1099 in the amount of her Service Award.

iv. Each Participating Class Member shall be solely and exclusively responsible for their taxes, interest and penalties, if any, of any nature, owed with respect to any payment received by them under this Agreement and will indemnify and hold Defendants, the Released Parties (as defined below), Defendants' Counsel, and Class Counsel harmless from and against any and all taxes, penalties, and interest of any nature assessed as a result of a Participating Class Member's failure to timely and properly pay their taxes.

## **6. Final Approval Procedures**

**A. Final Fairness and Approval Hearing:** Within 14 days of the deadline for Claims Reporting as described in Paragraph 3(J) above, Class Counsel shall file a motion with the Court requesting a Final Fairness and Approval Hearing in order to: (1) determine whether the Court should give this Agreement final approval; (2) determine whether Class Counsel's application for attorneys' fees and costs, and request for the Service Award (as defined above) to the Plaintiffs, should be granted; and (3) consider any timely Objections to the Settlement.

**B. Final Approval Order:** At the Final Fairness and Approval Hearing, the Plaintiffs, Class Counsel, and Defendants shall ask the Court to give final approval to this Settlement. Class Counsel will submit a proposed Final Approval Order (in a form submitted by Class Counsel and approved by Defendants' Counsel) for entry by the Court. The proposed Final Approval Order will adjudicate all claims set forth in the Litigation and implement the release of Released Claims, as set forth in this Agreement.

**7. Release and Dismissals**

**A. Initial Dismissals:** The Parties agree to dismiss the Litigation as to the Non-Settling Defendant within 14 days of the Preliminary Approval Date. That dismissal will be with prejudice and without costs or attorneys' fees to any Party. The Parties hereby authorize their attorneys to execute the stipulation attached as Exhibit D to be submitted by Defendants' Counsel to the Court to effectuate that dismissal.

**B. Release:** For and in consideration of the payments to be received under this Agreement, all Settlement Class Members waive and release Defendants, and each of their respective parents, subsidiaries, predecessors, successors, affiliates, and/or assigns, and any and all of its/their current and former owners, directors, officers, shareholders, members, managers, agents, representatives, and employees (collectively the "Released Parties"), both jointly and individually, from any and all

liability relating to all Released Claims. The foregoing release and waiver includes any rights and benefits of § 1542 of the California Civil Code, which the Parties agree was separately bargained for and is a material element of this Settlement of which the release and waiver in this Paragraph is a part.

**C. No Current Claims:** Other than the Litigation, Plaintiffs represent that they have not filed any complaints, claims, or actions against any of the Released Parties with any federal, state, or local court or governmental agency relating to Released Claims. Plaintiffs further acknowledge that they are not aware of any other claims against the Released Parties. Each Settlement Class Member shall be barred from bringing, continuing, or maintaining any claim or legal proceeding with respect to any Released Claim. Settlement Class Members will not authorize any other person or entity to seek individual remedies against any of the Released Parties concerning any Released Claim.

**D. No Assignment of Claims:** Plaintiffs warrant and represent that they: (a) have the sole right, title, and interest to the claims released under this Agreement; (b) have not assigned or transferred, nor purported to assign or transfer, to any person or entity, any claim, or any portion thereof or interest therein, released pursuant to this Agreement; and (c) have not assigned or transferred, nor purported to assign or transfer, to any person or entity, the right to the monies, in whole or in part, being paid pursuant to this Agreement. Plaintiffs represent that they are not

aware of any Class Member that has engaged in the foregoing.

**E. Interpretation of Release:** This release is to be construed as broadly as possible under the law, and the provisions of this Agreement should be interpreted to give effect to such intent.

**F. Dismissal of Settling Defendants:** Within 14 days of the entry of the Final Approval Order, counsel for the Parties will file a stipulated order of dismissal with prejudice, and without further costs or attorneys' fees to any party, dismissing the Settling Defendants. The Parties will request that the Court retain jurisdiction to reopen the Litigation to enforce the terms of this Agreement until all payments due hereunder are made.

**8. Interpretation and Enforcement**

**A. No Waiver of Arbitration Agreements:** The Parties agree that, by entering into and seeking Court approval of this Agreement, Defendants and the Released Parties in no way waive any rights to enforce arbitration agreements entered into between them and any Class Member, including the waiver of class and collective action litigation or to enforce similar agreements, relating to any disputes or issues not covered in this Agreement.

**B. Cooperation to Implement Settlement:** The Parties agree to reasonably cooperate with each other to accomplish the terms of this Settlement, including but not limited to executing such documents and taking such other actions

as may reasonably be necessary to implement the terms of the Settlement. The Parties shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate the terms of this Agreement.

**C. No Admission of Liability and Inadmissibility of Settlement**

i. Defendants deny liability to Plaintiffs and all other Class Members for any claim or cause of action. Defendants have denied and continue to deny each of the claims and contentions alleged by Plaintiffs in the Litigation. By entering into this Agreement, Defendants in no way admit to the suitability of the Litigation for class or collective action other than for purposes of this Settlement.

ii. Settlement of the Litigation and all acts performed or documents executed in furtherance of this Agreement or the Settlement are not, shall not be deemed to be, and may not be used: (a) as an admission or evidence of any wrongdoing or liability on the part of Defendants or the Released Parties, or of the truth of any of the factual allegations in the Litigation; (b) as an admission or evidence of fault or omission on the part of Defendants or the Released Parties in any civil, criminal, administrative, or arbitral proceeding; or (c) as an admission or evidence of the appropriateness of these or similar claims for class or collective action treatment other than for purposes of administering this Agreement. The Parties understand and agree that this Agreement and its exhibits are settlement

documents and shall be inadmissible in any proceeding for any reason, unless otherwise ordered by a court or in a proceeding to enforce the terms of this Agreement.

**D. Process of Termination:** To terminate this Agreement, the terminating party shall give the non-terminating party 30-days' notice in writing via email to the non-terminating party's counsel. During the 30 days between when such notice is given and the termination date, the Parties shall negotiate in good faith to resolve any concerns and/or cure any breaches of this Agreement. Nothing prevents the parties from extending the 30-day period between notice and termination.

**E. Effect of Termination:** In the event the Settlement or Agreement is terminated, the Parties shall be deemed to have reverted to their respective status in this Litigation as of the date of the filing of the motion for preliminary approval, with all their respective claims and defenses preserved as they existed on that date. The terms of this Settlement shall be null and void and shall have no further force or effect, and neither the existence nor the terms of this Settlement nor any acts performed pursuant to, or in furtherance of, this Settlement shall be used in this Litigation or in any other proceeding for any purpose; any judgment or order entered by the Court in accordance with the terms of this Settlement shall be treated as vacated *nunc pro tunc*. Upon termination by any Party, all claims asserted by Plaintiffs against Defendants will be tolled for all individuals

who have potential claims arising under Counts I-III of the Complaint as class members from the date this Agreement is fully executed to the date the termination becomes effective in accordance with Paragraph 8(D).

**F. Cooperation in Drafting:** The Parties agree that the terms and conditions of this Settlement are the result of negotiations between the Parties, and that this Settlement shall not be construed in favor of or against any Party by reason of the extent to which any Party, his, her, its, or their counsel participated in its drafting.

**G. Applicable Law:** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of Michigan, without giving effect to any conflict of law principles or choice of law principles.

**H. Captions and Headings:** Captions, headings, or paragraph titles in this Settlement are a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision.

**I. Modification:** This Agreement may not be changed, altered, or modified, except in writing, and signed by the Parties, and approved by the Court. This Settlement may not be discharged except as according to its terms or by a writing signed by the Parties. No waiver, modification, or amendment of the terms of this Agreement will be valid or binding unless in writing, signed by or on behalf of all Parties and then

subject to any required Court approval. Any failure by any Party to insist upon the strict performance by the other Party of any of the provisions of this Agreement will not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such Party, notwithstanding such failure, will have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

**J. When Agreement Becomes Binding; Counterparts:** Subject to Paragraph 8(Q)(ii) below, this Agreement will become binding upon its full execution. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same instrument.

**K. Integration Clause:** This Settlement contains the entire agreement between the Parties relating to the resolution of the Litigation. All prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged in this Agreement.

**L. Binding on Assigns:** This Settlement may be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

**M. Newly Discovered Facts:** Plaintiffs acknowledge that they may later discover facts different from or in addition to those that they now know or



believe to be true, and they agree that this Agreement will remain in effect regardless of such additional or different facts.

**N. Right to Engage in Protected Activity:** Nothing in this Agreement prevents Plaintiffs from filing a charge or complaint with or from participating in an investigation or proceeding conducted by any federal, state, or local agency charged with the enforcement of any laws, or from exercising rights under Section 7 of the NLRA to engage in joint activity with other employees. However, by signing this Agreement, Plaintiffs are waiving their rights to individual relief based on claims asserted in such a charge or complaint, except where such waiver of individual relief is prohibited.

**O. No Re-employment:** Plaintiffs understand that they are not presently Defendants' employees. Plaintiffs permanently, unequivocally, and unconditionally waive any and all rights they may now have, may have had in the past, or may have in the future to obtain or resume employment with Defendants. Plaintiffs agree never to apply for employment with Defendants, their parents, successors, affiliates, subsidiaries, or related entities. If Plaintiffs are ever mistakenly employed by Defendants, or any of their parents, successors, affiliates, subsidiaries, and/or related entities, Plaintiffs agree to have their employment terminated with no resulting claim or cause of action against Defendants, their parents, successors, affiliates, subsidiaries, and/or related entities.

**P. Sufficiency of Consideration:** Each Plaintiff and each Class Member acknowledges that the Settlement Amount is appropriate compensation or damages for all claims alleged, and the sufficiency of the consideration paid for this Agreement and all the paragraphs contained herein.

**Q. Compliance with Older Workers Benefit Protection Act:** Plaintiffs and each Participating Class Member, if 40 years of age or older, are advised of and acknowledge the following:

i. Plaintiffs may consider this Agreement for up to 21 days after it is delivered to Plaintiffs. Plaintiffs acknowledge that they have carefully read and fully understand the provisions of this Agreement, and that Plaintiffs are voluntarily entering into this Agreement. Plaintiffs acknowledge that they have been advised in writing to consult with an attorney. Plaintiffs affirm that they have consulted with an attorney of their choosing with respect to this Agreement.

ii. Plaintiffs reserve the right to revoke this Agreement for a period of 7 days following the date of execution (the “Revocation Period”). Plaintiffs must deliver by email notice any revocation of this Agreement within the Revocation Period to Defendants’ Counsel, Warner Norcross + Judd LLP, c/o Amanda Fielder, afielder@wnj.com. This Agreement shall not become effective or enforceable until after this Revocation Period has expired (the “Revocation Deadline”).

**R. Additional Medicare and Medicaid Conditions:**

i. The Parties intend to comply with the Medicare Secondary Payer statute (42 U.S.C. §1395y) and to protect Medicare's interests, if any, in this Settlement. As used herein, the term "Medicare" includes Medicare Part A (Hospital Insurance), Medicare Part B (Medical Insurance), Medicare Part C (Medicare Advantage Organizations) and Medicare Part D (Prescription Drug Insurance). Participating Claims Members agree that an inquiry has been made with all interested Medicare plans to determine the amount of any claim related Medicare conditional payments that have been made by Medicare, if any, and the amount requiring repayment for all Medicare liens.

ii. In addition to the Release set forth above, in consideration of the payments set forth in this Agreement, hereby waives any 42 US Code § 1395y (b)(3)(A) cause of action and/or private cause of action, and releases and forever discharges the Released Parties from any obligations, from any claim, known or unknown, arising out of the failure of Released Parties to provide for a primary payment or appropriate reimbursement pursuant to 42 US Code §1395y (b) (3)(A).

iii. Participating Claims Members agree to indemnify, defend, and hold the Released Parties harmless for any claim, loss or payment the Released Parties may suffer, including judgments, verdicts, awards, penalties, attorneys' fees and costs, that arises out of the failure to pay any unpaid medical bills or future

medical expenses, or to otherwise fail to protect Medicare’s interests under the MSP Act. Participating Claims Members agree and by this Agreement waive any claims for damages, indemnification and/or contribution from any causes of action of any kind or nature, including but not limited to a private cause of action provided in the Medicare Secondary Payer (MSP) Act, 42 U.S.C. Section 1395y(b)(3)(A).

Dated: \_\_\_\_\_, 2023

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Joy Eberline

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_

Cindy Zimmerman

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_

Tracy Poxson

Douglas J. Holdings, Inc.

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_

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

Its: \_\_\_\_\_

Douglas J. AIC, Inc.

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_

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

Its: \_\_\_\_\_

Douglas J. Institute, Inc.

Dated: \_\_\_\_\_, 2023

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

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
Scott A. Weaver