

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Zuri Osterholt and)	
Michelle Benikov,)	
)	
Plaintiffs,)	
)	Case Number: 16-cv-5089
vs.)	
)	Judge Manish S. Shah
CorePower Yoga, LLC,)	
)	
Defendant.)	

JOINT STIPULATION OF SETTLEMENT AND RELEASE

This Joint Stipulation of Settlement and Release (the “Agreement”) is entered into by and between Plaintiffs (as hereinafter defined) and the class of individuals that they seek to represent (as hereinafter defined) and Defendant (as hereinafter defined) (together “the Parties”) to fully and completely settle *Osterholt v. CorePower Yoga, LLC.*, Case No. 16-CV-5089 (N.D. IL.) (the “Class and Collective Litigation”).

RECITALS

WHEREAS, in the Class and Collective Litigation, Plaintiffs, on behalf of themselves and other similarly situated individuals, asserted class claims under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, the Illinois Minimum Wage Law, 820 ILCS 105/1 *et seq.*, and the Chicago Minimum Wage Ordinance, Chicago, IL, Municipal Code § 1-24-020 and sought recovery of, among other things, unpaid minimum wages, civil and/or statutory penalties, injunctive relief, and attorneys’ fees and costs;

WHEREAS, the Parties participated in mediation on March 7, 2019 with the assistance of an experienced mediator, Michael E. Dickstein;

WHEREAS, based upon their analysis and their evaluation of a number of factors, and recognizing the substantial risks of continued litigation, including the possibility that the Class and Collective Litigation, if not settled now, might result in a recovery that is less favorable to Plaintiffs and Class and Collective Members, and that would not occur for several years, Class Counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate and that this Agreement is in the best interests of the Class and Collective Members;

WHEREAS, Defendant has denied and continues to deny all of the allegations made by Plaintiffs and has denied and continues to deny that it is liable or owes damages to anyone with respect to the alleged facts or causes of action asserted in the Class and Collective Litigation. Nonetheless, without admitting or conceding any fault, wrongdoing, liability or damages,

Defendant has agreed to settle the claims alleged in the Class and Collective Litigation on the terms and conditions set forth in this Agreement, to avoid the burden, expense, and uncertainty of continuing the litigation;

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties agree to a full and complete settlement of the litigation on the following terms and conditions:

1. DEFINITIONS

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

- 1.1 **Attorneys' Fees.** "Attorneys' Fees" shall mean the amount to be paid to Class Counsel pursuant to Class Counsel's motion and subject to the Court's approval and the limitations described in Section 3.2 below.
- 1.2 **Chicago Minimum Wage Ordinance ("CMWO") Class.** "Chicago Minimum Wage Ordinance ("CMWO") Class shall mean all individuals who rendered services to Defendant as Interns or Instructors where the work was performed in the City of Chicago within the Chicago Minimum Wage Ordinance Class Period. Individuals within the Chicago Minimum Wage Ordinance Class are referred to as "CMWO Class Members."
- 1.3 **Class and Collective Members.** "Class and Collective Members" are the Illinois Class Members, the Chicago Minimum Wage Ordinance Members, and the FLSA Collective Members as defined herein.
- 1.4 **Class Counsel.** "Class Counsel" shall mean Hart McLaughlin & Eldridge.
- 1.5 **Class and Collective Litigation.** "Class and Collective Litigation" shall mean *Osterholt v. CorePower Yoga, LLC.*, Case No. 16-CV-5089, pending in the United States District Court for the Northern District of Illinois.
- 1.6 **Covered Period.** "Covered Period" shall mean the period between May 10, 2013 through the Date of the Preliminary Approval, inclusive, for the Illinois Class Members (the "Illinois Class Period"), the period between July 1, 2015 through the Date of the Preliminary Approval, inclusive, for the Chicago Minimum Wage Ordinance Period (the "Chicago Minimum Wage Ordinance Class Period"), and the period dating three years from the date of the filing of their consent to the Date of Preliminary Approval, inclusive, for the FLSA Collective Members (the "FLSA Class Period").
- 1.7 **Court.** "Court" shall mean the United States District Court for the Northern District of Illinois.
- 1.8 **Date of Preliminary Approval.** "Date of Preliminary Approval" shall mean the date on which the Court, as defined below, enters an order granting preliminary approval of this Agreement.
- 1.9 **Defendant.** "Defendant" shall mean CorePower Yoga, LLC.

- 1.10 Effective Date.** The “Effective Date” is the date on which this Agreement becomes effective, which shall mean the later of (1) 30 days following the Court’s Order Granting Final Approval of the Agreement if no appeal is taken of such Order, or (2) the Court’s entry of a final order and judgment after any appeals are resolved.
- 1.11 Fairness Hearing.** “Fairness Hearing” shall mean the hearing on the Motion for Judgment and Final Approval.
- 1.12 FLSA Collective.** “FLSA Collective” shall mean all individuals who rendered services to Defendant as Intern or Instructor during the FLSA Class Period and opted-in to the Class and Collective Litigation. Individuals within the FLSA Collective are referred to as “FLSA Collective Members.”
- 1.13 FLSA Collective Action Discovery Participants.** “FLSA Collective Action Discovery Participants” shall mean all individuals who provided answers to Defendant’s written discovery requests and/or appeared for a deposition.
- 1.14 Illinois Class.** “Illinois Class” shall mean all individuals who rendered services to Defendant as Interns or Instructors in the State of Illinois during the Illinois Class Period. Individuals within the Illinois Class Period are referred to as “Illinois Class Members.”
- 1.15 Interns.** “Interns” shall mean all individuals who worked for Defendant in the position of an “intern” during the applicable Covered Periods, as defined above.
- 1.16 Instructors.** “Instructors” shall mean all individuals who worked for Defendant in the position of an “instructor” during the applicable Covered Periods, as defined above.
- 1.17 Net Settlement Fund** “Net Settlement Fund” shall mean the remainder of the Total Settlement Amount after deductions for court-approved Service Awards as described in Section 3.3; costs of the Settlement Administrator as described in Section 2.1; court-approved attorneys’ fees and out-of-pocket litigation expenses as described in Section 3.2; and a fund to cover errors and omissions.
- 1.18 Order Granting Final Approval.** “Order Granting Final Approval” shall mean the final Order entered by the Court after the Fairness Hearing.
- 1.19 Order Granting Preliminary Approval.** “Order Granting Preliminary Approval” shall mean the Order entered by the Court preliminarily approving, *inter alia*, the terms and conditions of this Agreement, the manner and timing of providing notice to the Class, and the time period for opt-outs and objections.
- 1.20 Participating Class and Collective Member.** “Participating Class and Collective Member” means a Class and Collective Member who does not opt out of the Class and Collective Litigation (as described in Section 2.5).
- 1.21 Plaintiffs.** “Plaintiffs” shall refer to Zuri Osterholt and Michelle Benikov.

- 1.22 Released Party.** “Released Party” shall mean Defendant, as defined herein, as well as its parent(s), subsidiaries, shareholders, affiliates, insurers, divisions, employee benefit plans, predecessors, successors and assigns, and all of their past and present officers, directors, stockholders, trustees, attorneys, fiduciaries, heirs, agents, employees, or any one of them. The Released Parties shall not include franchisees.
- 1.23 Service Payment.** “Service Payment” is a share of the Net Settlement Fund for services rendered to the Class.
- 1.24 Settlement Administrator.** “Settlement Administrator” shall mean the entity KCC.
- 1.25 Settlement Award.** “Settlement Award” is the share of the Net Settlement Fund granted to each Participating Class and Collective Member and determined by the calculation outlined in Section 3.4 below.
- 1.26 Settlement Fund.** “Settlement Fund” shall mean the account established by the Settlement Administrator for the Total Settlement Amount paid by Defendant. The Settlement Fund will be controlled by the Settlement Administrator subject to the terms of this Agreement and the Court’s Order Granting Preliminary Approval and Order Granting Final Approval. Interest, if any, earned on the Settlement Fund will become part of the Total Settlement Amount.
- 1.27 Total Settlement Amount.** “Total Settlement Amount” shall mean the \$1,492,500.00 payment, plus any interest accrued as provided in Section 3.1(A), that Defendant pays to settle the Litigation.

2. APPROVAL AND CLASS NOTICE

- 2.1 Selection of Settlement Administrator.** Plaintiffs select KCC as the settlement administration company. All settlement administrative costs will be paid from the Settlement Fund, including fees incurred during the conditional certification notice period. The Settlement Administrator shall be responsible for: (a) establishing a qualified settlement fund and qualified settlement fund account, and determining and finalizing the calculations of the Participating Class and Collective Members’ settlement shares and tax withholding amounts, as applicable; (b) providing notice of settlement to the Class and Collective Members via email that includes a link to a website with additional settlement information; (c) setting up and maintaining a website that provides additional information relating to the proposed settlement and administration; (c) preparing, printing, and disseminating notices of settlement and return envelopes to Class and Collective Members’ last known address for those whose email notices bounce back (d) ascertaining updated mailing addresses for Class and Collective Members for those whose mailed notices are returned as undeliverable; (e) copying counsel for all Parties on material correspondence and promptly notifying all counsel for the Parties of any material requests or communications made by any Class and Collective Member who receives notice; (f) determining the final settlement payment for each Participating Class and Collective Member in accordance with this Agreement; (g) withholding appropriate federal income taxes for Participating Class and Collective Members for whom taxpayer identification

number(s) cannot be determined; (h) mailing the settlement checks to Participating Class and Collective Members; (i) wiring Class Counsel's attorneys' fees, expenses, and costs and mailing the Service Payments and Settlement Awards in accordance with this Agreement and Order of the Court; (j) issuing W-2 and 1099 Forms for all amounts paid to Participating Class and Collective Members, as appropriate; (k) referring to Class Counsel all inquiries by Class and Collective Members that the Settlement Administrator cannot resolve and/or which involve matters not within the Settlement Administrator's duties specified herein; (l) promptly apprising counsel for the Parties of the activities of the Settlement Administrator; (m) maintaining adequate records of its activities, including the date(s) notice is administered, receipt of Opt-Out forms, returned mail, and other communications and attempted written or electronic communications with the Class and Collective Members; (n) confirming in writing to Counsel and the Court its completion of the administration of the settlement and retaining copies of all endorsed settlement checks; (o) timely responding to communications from the Parties or their counsel; and (p) such other tasks as called for by this Agreement, ordered by the Court, or that the Parties mutually agree. The Parties agree to cooperate with the Settlement Administrator and assist it in any way possible in administering the notice and calculating Class and Collective Members' share of the Net Settlement Fund. The Settlement Administrator's fees and costs shall be paid from the Total Settlement Amount.

2.2 Preliminary Approval by the Court. By May 17, 2019, Plaintiffs will submit to the Court a Motion for Preliminary Approval of the Class and Collective Action Settlement ("Preliminary Approval Motion"). Defendant shall have the right to review and comment upon the motion for preliminary approval and any motion for final approval of the settlement. Class Counsel to provide Defendant with a draft Motion for Preliminary Approval Motion at least seven days prior to filing. The Parties will agree on the form of any proposed orders or notices to Illinois Class Members, CMWO Class Members, and FLSA Collective Members, and shall work in good faith reasonably and promptly to present the settlement to the Court for preliminary approval. Plaintiffs will also seek to obtain from the Court, as a condition of settlement, a final order and judgment. The final order and judgment will, among other things, approve the settlement as fair, adequate, and reasonable, certify the Illinois Class and CMWO Class for settlement purposes only, dismiss the litigation described in this section with prejudice, and incorporate the terms of the release.

2.3 Denial of Preliminary Approval. If the Court denies the Motion for Preliminary Approval, then the Parties jointly agree to seek reconsideration of the ruling or seek Court approval of a renegotiated settlement addressing the issues raised by the Court, if any. Should reconsideration and/or the Parties' attempt to secure Court approval of a renegotiated settlement be denied, the case will proceed as if no settlement had been attempted, and the Parties retain all rights with respect to their respective claims and defenses.

2.4 Notices to Class Members.

(A) Within 5 business days of the Date of Preliminary Approval, Defendant will provide the Settlement Administrator with a list of Class and Collective

Members, in electronic form, of the (1) names, (2) last known mailing addresses, (3) last known electronic mail addresses, (4) last known telephone numbers, and (5) taxpayer identification numbers, where available. In no event shall Defendant have any obligation to provide contact information that is not in its possession, custody or control.

- (B) Prior to sending notice, the Settlement Administrator will cross-reference the data obtained during the conditional certification notice process with the data provided by Defendant pursuant to Section 2.4(A). In the event that the Settlement Administrator was already in possession of confirmed contact information through the conditional certification notice process, notice shall be sent to that confirmed email address. In the event that the Defendant provides the Settlement Administrator with contact information for Class Members who were not disclosed during the conditional certification notice process, notice will be sent to the newly provided contact information.
- (C) Within 10 business days of the Date of Preliminary Approval, the Settlement Administrator shall e-mail notice of the proposed settlement to all Class and Collective Members using each individual's last known email addresses as recorded in the Settlement Administrator's and/or Defendant's records. The notice shall contain the amount of that Class and Collective Member's estimated individual settlement share.
- (D) In the event the emailed notices bounce back, the Settlement Administrator shall send printed notice to the Class and Collective Members' last known address. The Settlement Administrator shall take all reasonable steps to obtain the correct address of any Class and Collective Member for whom the notice is returned by the post office as undeliverable, including using taxpayer identification numbers where available to obtain better address information, and shall attempt to re-mail. There shall be no obligation to re-mail a notice packet more than one time.
- (E) Defendant's Counsel and Class Counsel have the right to make inquiries and receive any information from the Settlement Administrator related to the settlement administration process.

2.5 Illinois Class Member and CMWO Class Member Opt-Out.

- (A) Illinois Class Members and CMWO Class Members may request exclusion from the settlement by "opting out." An Illinois Class Member or CMWO Class Member who wishes to opt out must mail a written, signed statement to the Settlement Administrator that he or she is opting out of the Settlement (an "Opt-Out Statement"). The Opt-Out Statement must contain the name, address, and telephone number of the Illinois Class Member or CMWO Class Member to be valid. It must also contain the words "I elect to exclude myself from the settlement in *Osterholt v. CorePower Yoga LLC*" in order to be valid. To be effective, Opt-Out Statements must be sent via U.S. Mail and postmarked within 60 calendar days after the date on which the Settlement Administrator mails the Notice. The 60-day

period will begin to run from the first mailing, except for those Illinois Class Members or CMWO Class Members whose first mailing was returned to the Settlement Administrator as undeliverable, in which case the 60-day period for any such Illinois Class Member or CMWO Class Member will begin to run from the date of the second mailing to such Illinois Class Member or CMWO Class Member, unless another period is set by the Court. The end of the "Opt-Out Period" shall be 60 days after the last day on which the Settlement Administrator makes a mailing to an Illinois Class Member or CMWO Class Member. The Settlement Administrator shall, within 10 calendar days after the last day on which it makes such a mailing, notify Class Counsel and Defendant's Counsel of the precise date of the end of the Opt-Out Period.

- (B) The Settlement Administrator shall stamp the postmark date on the original of each Opt-Out Statement that it receives and shall serve copies of each Statement on Class Counsel and Defendant's Counsel not later than 10 calendar days after receipt thereof. The Settlement Administrator shall, within 10 calendar days after the end of the Opt-Out Period, send a final list of all Opt-Out Statements to Class Counsel and Defendant's Counsel. The Settlement Administrator shall retain the stamped originals of all Opt-Out Statements and originals of all envelopes accompanying Opt-Out Statements in its files until such time as the Settlement Administrator is relieved of its duties and responsibilities under this Agreement.
- (C) Any Illinois Class Member or CMWO Class Member who does not timely and properly opt-out will be deemed to have accepted the settlement and will be issued a settlement check, which will contain consent to join the Action. Illinois Class Members or CMWO Class Members will not be required to submit any claims forms to participate in the settlement.

2.6 Option to Rescind. If ten percent (10%) or more combined total number of Illinois Class Members and/or CMWO Class Members opt out of the settlement, Defendant has the option of rescinding/voiding the settlement.

2.7 Objections to Settlement.

- (A) Illinois Class Members and CMWO Class Members who wish to present objections to the proposed settlement at the Fairness Hearing must first do so in writing. To be considered, such written objection(s) must be mailed to the Settlement Administrator by a date certain, to be specified on the Notice of Proposed Class Action Lawsuit and Fairness Hearing sent to Illinois Class Members and CMWO Class Members, which shall be 60 calendar days after the Settlement Administrator mails the Notice. The written objection must contain the name, address, and telephone number of the Illinois Class Member or CMWO Class Member to be valid. It must also contain the words "I object to the settlement in *Osterholt v. CorePower Yoga LLC*" and set forth the reasons for the objection. The Settlement Administrator shall stamp the date received on the original objection and send copies of each objection to Class Counsel and Defendant's Counsel not later than 10 calendar days after receipt thereof.

- (B) An objector may appear at the Fairness Hearing either in person or through counsel hired by the objector. An objector who wishes to appear at the Fairness Hearing must state the objector's intention to do so at the time the objector submits her or his written objections. An objector may withdraw her or his objections at any time. Any Illinois Class Member and/or CMWO Class Member who has requested exclusion may not submit objections to the settlement.
 - (C) The Parties may file with the Court written responses to any objections no later than 7 calendar days before the Fairness Hearing.
- 2.7 Motion for Judgment and Final Approval.** No later than 14 calendar days before the Fairness Hearing, Plaintiffs will submit a Motion for Judgment and Final Approval. The Fairness Hearing shall be held at the Court's convenience.
- 2.8 Entry of Judgment.** At the Fairness Hearing, the Parties will request that the Court, among other things, (a) finally certify the Rule 23 Illinois and CMWO Classes for purposes of settlement, (b) enter Judgment in accordance with this Agreement, (c) approve the settlement as fair, adequate, reasonable, and binding on all Participating Class and Collective Members, (d) dismiss the Class and Collective Litigation with prejudice, (e) enter an order permanently enjoining all Participating Class and Collective Members from pursuing and/or seeking to reopen claims that have been released pursuant to this Agreement, and (f) incorporate the terms of this Settlement and Release.
- 2.9 Effect of Failure to Grant Final Approval.** In the event the Court does not enter Judgment in accordance with this Agreement, or such Judgment does not become Final as defined herein, the Parties agree to proceed as follows. The Parties jointly agree to (a) seek reconsideration of the decision denying entry of Judgment, or (b) attempt to renegotiate a mutually agreeable settlement to address the issues raised by the Court and seek Court approval of the renegotiated settlement. In the event any reconsideration is denied, or a mutually-agreed-upon settlement is not approved:
- (A) The Class and Collective Litigation will proceed as if no settlement had been attempted. In that event, the class certified for purposes of settlement shall be decertified.
 - (B) The Court will provide notice to Class and Collective Members that the Agreement did not receive final approval and that, as a result, no payments will be made to Class and Collective Members under the Agreement. Such notice shall be emailed by the Settlement Administrator, or if email failed when notice of the proposed settlement was administered, via First Class United States Mail (postage prepaid) to the last addresses used by the Settlement Administrator in mailing the Notice of Proposed Settlement.

3. SETTLEMENT TERMS

3.1 Total Settlement Amount.

- (A) Defendant agrees to pay a gross settlement amount of up to a maximum of \$1,492,500.00 (the "Total Settlement Fund"), which shall resolve and satisfy: (1) all settlement payments to all Participating Class and Collective Members; (2) a court-approved Service Payment to Plaintiffs Osterholt and Benikov of up to \$10,000.00 each; (3) court-approved Service Payments for FLSA Collective Action Discovery Participants in amount of \$200.00 to those who answered written discovery requests and \$750.00 to those who appeared for deposition; (4) the cost of a third-party settlement administration company, including fees incurred during the conditional certification notice process; (5) court-approved attorneys' fees and out-of-pocket litigation expenses; (6) a fund to cover errors and omissions of \$6,000.00; (7) the Participating Class and Collective Members' share of employment taxes; and (8) all other costs associated with the settlement. Defendant will not be required to pay more than the Total Settlement Amount under this Agreement. To the extent the Settlement Administrator requires any fees prior to the funding of the settlement, Defendant shall advance those fees which will offset any amount Defendant is subsequently required to fund upon final approval.
- (B) Defendant shall fund the settlement within 5 business days after entry of final approval of the Class Settlement. Any interest accrued from the Settlement Fund, net of taxes and any fees associated with investing such amount, shall immediately be added to and become part of the Total Settlement Amount.
- (C) Within 14 days of the Effective Date, the Settlement Administrator will distribute the money in the Total Settlement Fund by making the following payments:
- i. Paying Class Counsel's Court-approved attorneys' fees and costs as described in Section 3.2.
 - ii. Paying the Court-approved Service Payments as described in Section 3.3.
 - iii. Paying Participating Class and Collective Members their portion of the Total Settlement Amount as described in Section 3.4.
 - iv. Paying the costs of the Settlement Administrator as described in Section 2.1.

3.2 Settlement Amounts Payable as Attorneys' Fees and Costs.

- (A) Class Counsel will petition the Court to approve up to forty percent (40%) of the Total Settlement Fund as their attorneys' fees; Defendant will not oppose such application. However, if the Court awards a lesser amount, it shall not affect the terms of the Agreement. Any portion of the requested attorneys' fees and costs not approved shall become part of the Net Settlement Fund. Approval of the settlement shall not be contingent upon approval of the attorneys' fee award. The parties agree to work in good faith to find mutually agreeable language to be used only in Class Counsel's motion for preliminary settlement approval and for certification of the proposed settlement class, petition for attorneys' fees, and motion for final settlement approval to accurately identify the benefit provided to Class and

Collective Members as a result of changes to Defendant's policies or practices that occurred after the initiation of the Class and Collective Litigation.

- (B) The substance of Class Counsel's application for attorneys' fees and costs is not part of this Agreement and is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Class and Collective Litigation. The outcome of any proceeding related to Class Counsel's application for attorneys' fees and costs shall not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Judgment and Final Approval. Any requested attorneys' fees and costs not approved by the Court become part of the Net Settlement Fund.
- (C) Class Counsel represents and warrants that they have no knowledge of any attorney, other than Class Counsel, that may have an attorney's fee lien on or claim to any proceeds arising out of, by virtue of, or in connection with the Class and Collective Litigation, and that the terms of this Agreement shall fully satisfy any and all claims by any attorney arising out of or by virtue of or in connection with the Class and Collective Litigation.

3.3 Service Payments. Plaintiffs Zuri Osterholt and Michelle Benikov will apply to the Court to receive up to \$10,000.00 each from the Total Settlement Amount for services rendered to the Class. The Parties also agree that FLSA Collective Action Discovery Participants shall be entitled to Service Payments in the amount of \$200.00 to those who answered written discovery requests and \$750.00 to those who appeared for deposition. If an FLSA Collective Action Discovery Participant withdraws his or her consent to join the Class and Collective Litigation, such individual(s) will not be entitled to a Service Payment. The Service Payments and the requirements for obtaining such a payment are separate and apart from, and in addition to, Plaintiffs' and/or the FLSA Collective Action Discovery Participant's recovery from the Net Settlement Fund. The substance of the above-referenced Plaintiffs' application for Service Payments is not part of this Agreement and is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy and good faith of the settlement of the Class and Collective Litigation. The outcome of the Court's ruling on the application for Service Payments shall not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Judgment and Final Approval. Any monies not approved by the Court become part of the Net Settlement Fund. Plaintiffs Osterholt and Benikov shall execute a general release of all claims, whether known, or unknown, as of the date of preliminary approval.

3.4 Distribution to Participating Class and Collective Members.

- (A) Participating Illinois Class Members and CMWO Class Members who do not opt out and FLSA Collective Members who opted-in to the FLSA collective action will be deemed eligible for a payment hereunder.
- (B) Prior to making any distributions, the Settlement Administrator shall conduct a taxpayer identification number validation process. In the event that said process discovers any taxpayer identification number discrepancies, the Settlement

Administrator shall contact the respective Class and Collective Members via U.S. Mail and request any missing or inconsistent information. In the event any related discrepancies cannot be resolved by contacting the respective Class and Collective Members, the Settlement Administrator shall make the necessary backup withholdings and work with counsel for all Parties to account for potential tax implications.

(C) **Final Allocation Formula.** A Participating Class and Collective Members' share of the Net Settlement Fund shall be determined as follows:

- i. Class and Collective Members' Proportional Share of the Net Settlement Fund shall be defined as follows:
 - a) During their respective Covered Periods, Participating Class and Collective Members shall each be assigned one point per class taught in a given week that they were employed by Defendant;
 - b) For each week referenced in subsection (a), Participating Class and Collective Members may receive up to 5 points per week;
 - c) Each Participating Class and Collective Members' assigned points shall then be divided by the total number of points assigned to all Participating Class and Collective Members. This shall represent each Participating Class and Collective Members' Proportional Share.
- ii. Each Class and Collective Member shall receive their Proportional Share of the first \$600,000.00 of the Net Settlement Fund;
- iii. Illinois Class Members and CMWO Class Members shall receive an additional distribution of up to 20% of their individual allocation pursuant to section (ii);
- iv. In the event there are insufficient funds to satisfy subsection (iii), Illinois Class Members and CMWO Class Members shall receive an additional distribution equal to their Proportional Share of the remaining Net Settlement Fund after the distribution set forth in subsection (ii);
- v. In the event there are remaining Net Settlement Funds after the distributions set forth in subsections (ii) and (iii), Class and Collective Members shall receive an additional distribution equal to their Proportional Share, of the remaining Net Settlement Funds.

(D) Any Class and Collective Member who wishes to challenge or dispute the share of the Net Settlement Fund that they have been allocated may notify the Settlement Administrator of his or her dispute and produce any supporting information and/or evidence available to him. Defendant will review its records and provide information to the Settlement Administrator and to Class Counsel in response to any such disputed claim. Defendant's records will be presumed accurate, but the

Settlement Administrator will evaluate the evidence submitted by the Class and Collective Member, consult with the Parties, and make the decision as to the correct calculation. The determination by the Settlement Administrator will be final and binding. The Class and Collective Member will be notified in writing of the results of the disputed claim by the Settlement Administrator as each disputed claim is resolved.

- (E) **Unclaimed Settlement Funds.** Any portion of the Net Settlement Fund allocated to the FLSA Collective Members, Illinois Class Members and/or CMWO Class Members that is not claimed will be distributed among the Illinois Class Members, CMWO Class Members, and FLSA Collective Members pro rata, or if the amount remaining is small enough that redistribution is not sensible or efficient, the unclaimed amount will be donated under the *cy pres* doctrine to a charity agreed to by the Parties.
- (F) Other than as described in Section 3.4(D), the Settlement Administrator's calculations regarding Participating Class and Collective Members' Settlement Awards from the Net Settlement Fund will be final and binding.
- (G) The Settlement Administrator shall mail to all Participating Class and Collective Members their Settlement Awards, less applicable tax withholdings, within 14 days of the Effective Date. The Settlement Administrator shall use all reasonable efforts to make an additional mailing to Participating Class and Collective Members whose checks are returned because of incorrect addresses.
- (H) Participating Class and Collective Members will have 90 calendar days after their check date to redeem their settlement payments. If Participating Class and Collective Members do not redeem their settlement payment checks within the 90-day period, their settlement checks will be void. If a Participating Class and Collective Member alerts Class Counsel, Defendant's Counsel, or the Settlement Administrator during the 90-day period to redeem settlement payments that he or she has not received his or her settlement check, the Settlement Administrator will, upon confirming that the settlement check in question has not been redeemed, issue a stop payment on the Participating Class and Collective Member's original settlement check and reissue that Participating Class and Collective Member's settlement check. All such reissued checks will be valid for 45 days after the date of issue and will be void thereafter.

3.5 Taxability of Settlement Payments.

- (A) For tax purposes, 50% of payments made to Class and Collective Members pursuant to Section 3.4 shall be treated as back wages and 50% of such payments shall be treated as liquidated damages. All Service Payments shall be treated as liquidated damages.
- (B) Payments treated as back wages pursuant to Section 3.5(A) shall be made net of all applicable employment taxes, including, without limitation, federal, state and local

income and employment tax withholding, and shall be reported to the Internal Revenue Service ("IRS") and the payee under the payee's name and taxpayer identification number on an IRS Form W-2. Where the payee's taxpayer identification number is available, payments treated as liquidated damages pursuant to Section 3.5(A) shall be made without withholding and shall be reported to the IRS and the payee, to the extent required by law, under the payee's name and taxpayer identification number on an IRS Form 1099. Where the payee's taxpayer identification number is not available, payments treated as liquidated damages pursuant to Section 3.5(A) shall be made after appropriate back-up withholding of federal income taxes and shall be reported to the IRS and the payee, to the extent required by law, under the payee's name on an IRS Form 1099. Payments of attorneys' fees and costs pursuant to Section 3.2 shall be made without withholding and shall be reported to the IRS and Class Counsel on an IRS Form 1099.

- (C) Defendant shall be responsible for applicable employer tax contributions associated with wage payments, including, but not limited to, Defendant's share of the FICA tax and any federal and state unemployment tax due, with respect to the amounts treated as wages pursuant to Section 3.5(A). Any such payroll taxes ordinarily borne by the employer shall be paid by Defendant in addition to the Total Settlement Amount.
- (D) In the event it is determined by a taxing authority that Plaintiffs and/or Class and Collective Members owe any additional taxes with respect to any money distributed under this Agreement, it is expressly agreed that the determination of any tax liability is between that individual and the taxing authority, and that Defendant shall not be responsible for payment of such taxes, including any interest or penalties. Plaintiffs and Class and Collective Members agree to indemnify Defendant for any such taxes, interest, and penalties owed by him or her, but required by a taxing authority to be paid by Defendant.
- (E) Neither Class Counsel nor Defendant's Counsel intend anything contained herein to constitute legal advice regarding the taxability of any amount paid hereunder, nor will it be relied upon as such.

3.6 Releases and Consents to Join

(A) Release of Claims.

- i. Illinois Class Members. All Illinois Class Members who do not opt out shall release all claims pled or that could have been pled in the Class and Collective Litigation, arising out of services to CorePower Yoga during the period covered by the settlement, including claims for wages, penalties, bonuses, attorneys' fees and/or costs. In addition, any Illinois Class Member who endorses a settlement check shall opt into the litigation and release their FLSA minimum wage claims arising out of their employment as Interns and Instructors during the period covered by the settlement.

The back of the checks issued to the Illinois Class Members will state: "By endorsing this check, I hereby consent to join the lawsuit captioned *Osterholt et. al. v. CorePower Yoga*, Case No. 16-cv-5089, pending in the United States District Court for the Northern District of Illinois, release all federal and state wage and hour claims as described in the notice I received in *Osterholt*, from the beginning of time through the date I sign this check."

- ii. CMWO Class Members. All CMWO Class Members who do not opt out shall release all claims pled or that could have been pled in the Class and Collective Litigation, arising out of services to CorePower Yoga during the period covered by the settlement upon final court approval of the settlement, including claims for wages, penalties, bonuses, attorneys' fees and/or costs. In addition, any CMWO Class Member who endorses a settlement check shall opt into the litigation and release their FLSA minimum wage claims arising out of their employment as Interns and Instructors during the period covered by the settlement.

The back of the checks issued to the CMWO Class Members will state: "By endorsing this check, I hereby consent to join the lawsuit captioned *Osterholt et. al. v. CorePower Yoga*, Case No. 16-cv-5089, pending in the United States District Court for the Northern District of Illinois, release all federal and state wage and hour claims as described in the notice I received in *Osterholt*, from the beginning of time through the date I sign this check."

- iii. FLSA Collective Members. All FLSA Collective Members who opted into the Action and receive a settlement check will release all claims that are alleged, related to, or that reasonably could have arisen out of the same facts alleged in the Class and Collective Litigation, including but not limited to any unpaid wages, penalties, premiums, bonuses, interest, or any relief of any kind.

The back of the checks issued to the FLSA Collective Members will state: "By endorsing this check, I hereby release all federal and state wage and hour claims as described in the notice I received in *Osterholt*, from the beginning of time through the date I sign this check."

- iv. Plaintiffs. Plaintiffs will execute a general release of all claims attached as Exhibit A, whether known or unknown as of the date of Preliminary Approval. The release will not include, however, claims that cannot be waived and released as a matter of law.
- v. The releases described in paragraphs (i)-(iv) shall include CorePower Yoga and all of its parent, subsidiary, affiliated, successor, and related companies and entities, including all of its/their officers, directors, employees, partners, and agents, and any entities or partnerships which they are affiliated with (collectively the "Released Parties"). The Released Parties shall not include franchisees.

- (B) **Non-Admission of Liability.** By entering into this Agreement, Defendant in no way admits any violation of law or any liability whatsoever to Plaintiffs and/or the Class, individually or collectively, all such liability being expressly denied. Likewise, by entering into this Agreement, Defendant in no way admits to the suitability of this case for class or collective action litigation other than for purposes of settlement. Rather, Defendant enters into this Agreement to avoid further protracted litigation and to resolve and settle all disputes with Plaintiffs and the Class. Settlement of the Class and Collective Litigation, negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of this Agreement or the settlement: (a) are not, shall not be deemed to be, and may not be used as an admission or evidence of any wrongdoing or liability on the part of Defendant or of the truth of any of the factual allegations in the Class and Collective Litigation; and (b) are not, shall not be deemed to be, and may not be used as an admission or evidence of fault or omission on the part of Defendant in any civil, criminal, administrative, judicial or arbitral proceeding. The Parties understand and agree that this Agreement is a settlement document and shall be inadmissible as evidence in any proceeding, except an action or proceeding to approve, interpret, or enforce the terms of the Agreement.

3.7 Miscellaneous

- (A) **Cooperation Among the Parties; Further Acts.** The Parties shall cooperate fully with each other and shall use their best efforts to obtain the Court's approval of this Agreement and all of its terms. Each of the Parties, upon the request of any other party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.
- (B) **Plaintiffs' Support of Settlement Approval.** Plaintiffs' counsel shall support the settlement and recommend the settlement to their clients. Neither the Parties nor their counsel shall directly or indirectly encourage Class and Collective Members to opt out of or object to the settlement.
- (C) **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with regard to the subject matters contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement.
- (D) **Binding Effect.** This Agreement shall be binding upon the Parties and, with respect to Plaintiffs and the Participating Class and Collective Members, their spouses, children, representatives, heirs, administrators, executors, beneficiaries, conservators, trustees in bankruptcy, attorneys, and assigns.
- (E) **Arms' Length Transaction; Materiality of Terms.** The Parties have negotiated all the terms and conditions of this Agreement at arm's length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are

material to this Agreement and have been relied upon by the Parties in entering into this Agreement.

- (F) **Captions.** The captions or headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- (G) **Non-disparagement.** The Plaintiffs agree that they will not make any statements, either oral or written, to take any action that disparage or reflect negatively on Defendant, or any of the Released Parties, except in court filings and/or as required by court order, subpoena, or otherwise by law.
- (H) **Confidentiality.** Other than as mutually agreed by the Parties, Class Counsel shall do nothing to publicize this settlement or use it for marketing purposes, including on web sites or on the internet or in any form of press whatsoever. Class Counsel may publicize this settlement on its firm website and/or on social media by using generic language that does not identify Defendant (e.g., "Obtained \$1,492,500 million settlement on behalf of classes asserting minimum wage claims"). Class Counsel may reference the settlement without identifying Defendant in legal pleadings (e.g., in petitions for appointment of class counsel) and on its firm resume. Class counsel shall do nothing to publicize this settlement or use it for marketing purposes other than as provided herein.
- (I) **Construction.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any party by virtue of draftsmanship.
- (J) **Blue Penciling.** Following the Effective Date, if any provision of this Agreement is held by a court of competent jurisdiction to be void, voidable, unlawful or unenforceable, the offending provision(s) shall be severed and the remaining portions of this Agreement will remain in full force and effect.
- (K) **Governing Law.** This Agreement shall in all respects be interpreted, enforced and governed by Illinois law without regard to choice of law principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.
- (L) **Continuing Jurisdiction.** The Court shall retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the settlement contemplated thereby.
- (M) **Waivers, etc. to Be in Writing.** No waiver, modification or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth in such written waiver,

modification or amendment, 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 shall 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, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

- (N) **When Agreement Becomes Effective; Counterparts.** This Agreement shall become effective upon its execution. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if Plaintiffs and Defendant had signed the same instrument.
- (O) **Facsimile/Electronic Signatures.** Any party may execute this Agreement by causing its counsel to sign on the designated signature block below and transmitting that signature page via facsimile or email to counsel for the other party. Any signature made and transmitted by facsimile or email for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the party whose counsel transmits the signature page by facsimile or email.
- (P) **No Pension/Benefit Obligation.** This Agreement shall not give rise to any pension or other benefit obligations or liability.
- (Q) **Taxes Obligations/Indemnification.** Plaintiffs shall be responsible for taxes on their individual settlement proceeds as a result of this Agreement. Plaintiffs' counsel shall be responsible for taxes on any attorneys' fees and costs received as a result of this Agreement. Plaintiffs and their counsel shall indemnify Defendant for any nonpayment of their respective tax obligations.

DATED: May 15, 2019

CorePower Yoga, LLC

By: Rebecca Plessner

Its: CFO

DATED: May 15, 2019

Zuri Osterholt

DATED: May 15, 2019

Michelle Benikov

DATED: May 2, 2019

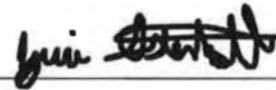
CorePower Yoga, LLC

By: _____

Its: _____

DATED: May 13, 2019

Zuri Osterholt

A handwritten signature in black ink, appearing to read "Zuri Osterholt", written over a horizontal line.

DATED: May __, 2019

Michelle Benikov

DATED: May 15, 2019

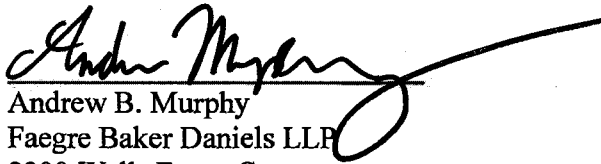
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DATED: May 15, 2019

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